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Dispute Settlement Body
20 July 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 July 2004

Chairperson: Ms Amina Mohamed (Kenya)

Prior to the adoption of the agenda, the representative of Canada said that his country wished to withdraw the request for the establishment of a panel in the case on: "United States – Determination of the International Trade Commission in Hard Red Spring Wheat from Canada" (WT/DS310/2) from the agenda of the present DSB meeting. While Canada was withdrawing this item from the present meeting, it reserved its rights under the Understanding on Rules and Procedures Governing the Settlement of Disputes with respect to the request for the establishment of a panel and, specifically, Canada did so on the understanding that, should Canada choose to include the request as an item on the agenda of a future meeting of the Dispute Settlement Body, the Dispute Settlement Body shall treat the agenda item as its second consideration of the request and establish a panel at that meeting, pursuant to Article 6.1 of the Understanding.

The Chairperson proposed that the DSB agree that the item entitled: "United States – Determination of the International Trade Commission in Hard Red Spring Wheat from Canada: Request for the Establishment of a Panel by Canada" (WT/DS310/2) be removed from the proposed agenda, as requested by Canada.

The DSB took note of the statements and agreed that the item entitled: "United States – Determination of the International Trade Commission in Hard Red Spring Wheat from Canada: Request for the Establishment of a Panel by Canada" (WT/DS310/2) be removed from the proposed agenda.

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.28 – WT/DS162/17/Add.28)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.21)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.21)

(d) United States – Continued dumping and subsidy offset act of 2000: status report by the United States (WT/DS217/16/Add.6 – WT/DS234/24/Add.6)

1. The Chairperson recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". She proposed that the four sub-items to which she had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.28 - WT/DS162/17/Add.28)

2. The Chairperson drew attention to document WT/DS136/14/Add.28 – WT/DS162/17/Add.28, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

3. The representative of the United States said that his country had provided an additional status report in these disputes on 8 July 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Act was pending in both the US Senate and the US House of Representatives. On 29 January 2004, HR 1073, which would repeal the 1916 Act, had been reported favourably out of the Committee on the Judiciary of the U.S. House of Representatives. On 30 June 2004, Ambassador Zoellick had written a letter to the leadership of the US House of Representatives urging the passage of repeal legislation "at the earliest opportunity". The US administration was continuing to work with the Congress to achieve further progress in resolving these disputes with the EC and Japan.

4. The representative of the European Communities said that the EC wished to thank Ambassador R. Zoellick for his letter urging to repeal of the 1916 Anti-Dumping Act. The EC welcomed the reaffirmation by the US administration of its commitment to comply with the WTO ruling regarding the 1916 Anti-Dumping Act. Nevertheless, it was seriously disturbing that almost four years after condemnation of the 1916 Act, the EC was still at the stage of "urging" support for repeal of the Act. Again, the US status report did not show any concrete progress. The EC strongly hoped that the US administration's call would be heard and that the Congress would finally give some evidence that it was not simply ignoring the US international obligations. The EC recalled that it might adopt, at anytime, a specific anti-dumping legislation applicable to US products pursuant to its right to suspend the application to the United States of its obligations under the GATT 1994 and the Anti-Dumping Agreement.

5. The representative of Japan said that his country remained gravely concerned over the prolonged non-implementation by the United States of the DSB's recommendations and rulings in this proceeding. Such a long delay in the implementation of the DSB's recommendations and rulings seriously undermined the credibility of the WTO dispute settlement system. At the 22 June 2004

DSB meeting, Japan had positively taken note of the fact that the US administration had expressed its support for the legislation repealing the 1916 Act in the 2004 Report to the Leaders on the "United States – Japan Regulatory Reform and Competition Policy", which had been issued in June. As a recent development, Japan had also taken note of Ambassador Zoellick's letter to the leadership of the US Congress, referred to in the US status report before the DSB at the present meeting, as an important step aiming to secure the implementation. However, until the day the implementation was fully secured, Japan strongly urged the US administration to re-double its effort *vis-à-vis* the US Congress so that the repealing legislations were approved during the current session of the Congress. As stated at the 22 June DSB meeting, it was to Japan's great regret that the Federal District Court had pronounced its final judgment to the effect that it had upheld the order imposing on a Japanese company a payment of damages amounting to US$30 million. In this light, Japan's call for the legislation repealing the 1916 Act with proper retroactive effect was all the more pressing. Even in the unfortunate event that the repealing legislations were likely to be passed without retroactive effect, Japan strongly urged the United States to take actions in order to ensure that this WTO-inconsistent Act inflicted no further damage upon the Japanese companies. Japan also requested the United States to be more specific when reporting on any further developments regarding the status of all the repealing bills of the 1916 Act. Should the United States fail to implement the DSB recommendations and rulings, Japan had no other option than to proceed to reactivation of the arbitration under Article 22 of the DSU, and to exercise its right to suspend concessions or other obligations.

6. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.21)

7. The Chairperson drew attention to document WT/DS176/11/Add.21, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

8. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation amending or repealing section 211 was pending in the US Senate and the US House of Representatives. In this connection, the Senate Judiciary Committee had held hearings concerning this legislation in the previous week, on 13 July 2004. The US administration was continuing to work with the US Congress concerning appropriate statutory measures that would resolve this matter.

9. The representative of the European Communities said that, for a long time, the United States had been advocating for international rules to guarantee in each country effective and non-discriminatory protection of intellectual property rights. The "United States – Cuba Trademark Protection Act" pending for adoption in the Senate and the House fully conformed with that objective. It would not only repeal a damaging special interest legislation, but would also provide enhanced and effective protection of intellectual property rights both in Cuba and in the United States. The EC expected that the US administration would take this opportunity to put rhetoric into practice and support the "US-Cuba Trademark Protection Act" as an appropriate solution to this dispute.

10. The representative of Cuba said that the reasonable period of time for compliance with the DSB's recommendations, which the EC had granted to the United States in December 2003, would expire on 31 December 2004. This was the third reasonable period of time, which had been established by the parties to the dispute. Half of that period had already passed, but there was no sign of any effective action being taken to repeal Section 211 of the Omnibus Appropriations Act of 1998, which was the only fair and sound solution. Cuba noted with concern that, for 29 months, the United States had been applying delaying tactics to avoid bringing its legislation into line with WTO rules. Furthermore, this was not an isolated incident, given that a number of disputes, in which compliance

by the United States with the DSB's decisions was pending, had been examined since January 2004 under the agenda item related to surveillance of implementation. This situation had given rise to mistrust in the DSB and had adversely affected the credibility of the WTO. Its significance earned it a mention in the annual report: "... developing countries have complained that it has been difficult for them, in certain circumstances, to ensure compliance with DSB recommendations on the part of larger trading partners given that developing countries have little effective economic leverage that they can apply in such cases ...". WTO Members had freely accepted to adhere to a rules-based multilateral system. Confidence and certainty that all Members would abide by such rules was conducive to multilateralism; the systematic failure to respect WTO's rules and principles, on the other hand, encouraged arbitrariness and unilateralism. She recalled that Section 211, as approved on 21 October 1998 by the US Congress, did not recognize in US territory trademark and trade name rights related to Cuban interests and indeed striped Cuban natural and legal persons of their trademark rights in the United States by preventing the rightful owners of such marks both from defending them before US courts and from renewing their registration. The determination that Section 211 violated basic principles, such as national treatment and most-favoured-nation treatment, served as confirmation of the US discriminatory treatment of Cuban nationals. Consequently, the recommendation that the United States abide by its commitments to these principles under the WTO was also a call for the elimination of its hostile policy towards Cuba. Her delegation wished to stress that the continued validity of a measure such as Section 211, which violated the intellectual property rights of third countries, called into question the stance of the United States which, for years, had tried to set itself up as an advocate of intellectual property rights within the WTO, but was yet again revealing its double standards to the international community. There was no reason for this law to remain in force more than two years after the DSB's decision. In light of this, Cuba would, once again, urge the United States to comply with its obligations as a Member of the WTO by repealing Section 211.

11. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.21)

12. The Chairperson drew attention to document WT/DS184/15/Add.21, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

13. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2004, in accordance with Article 21.6 of the DSU. The US administration was continuing to work with the US Congress with respect to the recommendations and rulings of the DSB that had not been addressed by 23 November 2002.

14. The representative of Japan said that, as stated at the 22 June 2004 DSB meeting, the end of the reasonable period of time for the US implementation in this proceeding was fast approaching. In such a context, it was a cause of great concern and dismay that there had been no concrete signs of progress toward the full implementation on the part of the United States. At the June DSB meeting, Japan had taken note of the US administration's stated commitment to work towards securing the implementation, as expressed in the "Third Report to the Leaders on the United States – Japan Regulatory Reform and Competition Policy". Since then Japan was aware of no significant movement on the part of the United States. Japan, therefore, urged the US administration to re-double its effort *vis-à-vis* the US Congress so that bills amending the relevant anti-dumping statutes would be introduced for consideration and passage during the current session of the 108th Congress. As Japan had repeatedly stated, the longer the United States delayed the implementation, the more the credibility of the WTO dispute settlement system would be compromised. Japan urged the United

States to seriously consider the systemic ramifications of such consequences resulting from delays in implementations.

15. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(d) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.6 – WT/DS234/24/Add.6)

16. The Chairperson drew attention to document WT/DS217/16/Add.6 – WT/DS234/24/Add.6, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Continued Dumping and Subsidy Offset Act of 2000.

17. The representative of the United States said that his country had provided a status report on 8 July 2004, in accordance with Article 21.6 of the DSU. As noted in the report, on 19 June 2003, legislation to bring the Continued Dumping and Subsidy Offset Act (CDSOA) into conformity with US WTO obligations had been introduced in the US Senate (S. 1299). On 10 March 2004, legislation repealing the CDSOA had been introduced in the US House of Representatives (H.R. 3933). In addition, on 2 February 2004, the US administration had, once again, proposed repeal of the CDSOA, in its budget proposal for fiscal year 2005. The US administration was continuing to work with the Congress to achieve further progress in resolving these disputes with the complaining parties.

18. The representative of the European Communities said that the EC noted, once again, that the US status report did not show any progress on implementation. This questioned the credibility of the US commitment to comply with its WTO obligations all the more that this was not an isolated example. The EC noted that all matters under item 1 of the agenda of the present meeting were related to implementation due by the United States. And, in all those cases, status reports month after month, and for years, had shown no or very little progress. Worse, in this case, repeated statements had been made questioning the need to implement the recommendations as well as some initiatives were made to rewrite the WTO rules to put them into conformity with US legislation. The EC urged, once again, the United States to show commitment to its international obligations and to respect of other Members' rights by implementing without further delay the ruling and recommendations on the CDSOA.

19. The representative of Chile said that like the current status report of the United States, which did not vary from the previous one, Chile's statement would have not much to add to what it had been pointed out ever since the expiry of the reasonable period of time for compliance by the United States with the DSB's recommendations and rulings. Chile was concerned that, just a few days before adjourning before its summer recess, the US Congress had not even given the slightest indication as to how and when the pending bills would be discussed. This was particularly significant in an election year such as this when legislative work was severely disrupted. Furthermore, the process of distributing offset payments for the fiscal year 2004 was already underway so as to avoid the delays, which had occurred in the past. Such "diligence" on the part of the US administration stood in marked contrast to its non-existent efforts to achieve progress in the legislative debate. Therefore, Chile asked that the United States, in its next status report, provide further details on the consultations which it claimed were being held in the US Congress, in particular regarding the next legislative steps for securing the earliest repeal of the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). Chile noted that the Arbitrator's decision determining the level of nullification and impairment was imminent and would enable Chile and seven other Members to suspend concessions and other equivalent obligations. Chile hoped that the repeal of the CDSOA would make recourse to this extreme measure unnecessary.

20. The representative of the Canada said that his country, once again, noted the status report of the United States and its continued failure to comply with its WTO obligations with regard to the

Byrd Amendment. The DSB had ruled on this dispute over one year ago. The lack of any progress by the United States to bring itself into conformity with the recommendations and rulings of the DSB remained an ongoing concern to Canada. The parties to the dispute were currently awaiting the ruling of the WTO Arbitrators on the level of retaliation that Members could impose on the United States for its failure to repeal the Byrd Amendment. The Canadian objective was not retaliation and Canada, therefore, urged the United States to comply with its international trade obligations. It should repeal the Byrd Amendment and end this dispute.

21. The representative of Japan said that his country had taken note of the status report of the United States, but with a strong sense of disappointment that there had been no development in terms of implementation of the DSB's recommendations and rulings. While Japan was still waiting for the award of the Arbitrator, it could not but reiterate its position that a top priority remained that the United States did not loose any more time to repeal the WTO-inconsistent CDSOA and fulfilled its obligation to implement the DSB's recommendations and rulings.

22. The representative of Korea said that his country wished to thank the United States for its status report and noted that no progress had been made on this matter since the introduction of legislation to repeal CDSOA in both the US Senate and the House of Representatives. Korea, as a co-complainant, had concerns about the US continued failure to comply with the recommendations and rulings of the DSB. Although Korea was reluctant to make a seemingly unfruitful eco to the other parties' statements, it would like again to urge the United States to promptly repeal its CDSOA and to comply with its WTO obligations in the hope that the last few drops could lead to an overflowing of the bowl.

23. The representative of India said that his country thanked the United States for the latest report regarding implementation of the DSB's recommendations in the United States – CDSOA dispute. Unfortunately, this report showed no progress by the United States; it was in fact a repetition of the report of the previous month. India had received no encouraging reports that could lead it to believe that there had been any progress towards repeal of the CDSOA, thereby enabling the United States to comply with the DSB's recommendations. India urged the Unites States to make better progress towards compliance, so that resort to suspension of concessions and other obligations would not be necessary.

24. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.