RESTRICTED

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Dispute Settlement Body
18 December 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 18 DECEMBER 2013

Acting Chairman: Mr. Mario Matus (Chile)

Prior to the adoption of the agenda, the Deputy-Director General, Mr. K. Brauner, said that, in the absence of Amb. Jonathan Fried, Chairman of the DSB, he had the pleasure to open the meeting of the Dispute Settlement Body. He recalled that in accordance with the Rules of Procedure for meetings of WTO bodies, if the Chairperson of the Dispute Settlement Body was absent from any meeting or part thereof, the Chairperson of the General Council or in the latter's absence, the Chairperson of the Trade Policy Review Body shall perform the functions of the DSB Chairperson. If the Chairpersons of the General Council and the Trade Policy Review Body were also not present, the DSB shall elect an interim Chairperson for that meeting or that part of the meeting. In light of this he proposed that Amb. Mario Matus of Chile be elected as an interim Chairman to preside over the proceedings of the present meeting.

The DSB so agreed.

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1 UNITED STATES - ANTI-DUMPING AND COUNTERVAILING MEASURES ON LARGE RESIDENTIAL WASHERS FROM KOREA

A. Request for the establishment of a panel by Korea (WT/DS464/4)

1.1. The Chairman drew attention to the communication from Korea contained in document WT/DS464/4, and invited the representative of Korea to speak.

1.2. The representative of Korea said that, on 5 December 2013, his country had filed its panel request in the dispute concerning anti-dumping and countervailing measures imposed by the United States on large residential washers from Korea. As explained in detail in the panel request, Korea believed that the measures were inconsistent with the US obligations under the WTO Agreements. More specifically, Korea challenged the legality of: (i) the use by the USDOC of zeroing "as applied" and "as such" in applying the second sentence of Article 2.4.2 of the Anti-Dumping Agreement; (ii) the use by the USDOC of "targeted dumping" methodology "as applied" and "as such"; and (iii) the determination and calculation by the USDOC of countervailing duties.

1.3. At the present meeting, Korea wished to highlight a number of aspects of the USDOC "targeted dumping" methodology, which it believed were in contravention of the US obligations under the second sentence of Article 2.4.2 of the Anti-Dumping Agreement. Among other things, Korea considered that: (i) the USDOC failed to find "a pattern of export prices which differ significantly" within the meaning of Article 2.4.2, and failed to provide a reasoned explanation as to why certain export prices constituted a "pattern"; (ii) the USDOC used statistically unsound rules to define a "pattern" of export prices that "differ significantly"; (iii) the USDOC applied the average-to-transaction comparison to all of the export transactions, rather than applying it only to the subset of export transactions for which "targeted dumping" was found; (iv) the USDOC failed to determine separately the amount of dumping in the targeted subset for which "targeted dumping" was found; and (v) the USDOC failed to provide a reasoned explanation of why the pattern of price differences could not be "taken into account appropriately by the use of a weighted average-to-weighted average comparison" and gave no explanation of why it could not be "taken into account appropriately by the use of a transaction-to-transaction comparison".

1.4. Korea and the United States had held consultations on 3 October 2013. While the consultations had been helpful in understanding each other's respective positions on this matter, they had not led to a mutually satisfactory resolution of this dispute. The US measures were having a significant adverse impact on Korean exports to the United States. Korea, therefore, respectfully requested that a panel be established with the standard terms of reference, as set forth in Article 7.1 of the DSU.

1.5. The representative of the United States said that his country was disappointed that Korea had chosen to request the establishment of a panel with regard to this matter. As the United States had explained to Korea, the measures identified in the request were fully consistent with the US obligations under the WTO Agreement. Further, the request described certain issues that were not measures and were, therefore, not subject to WTO dispute settlement. For example, in addition to challenging the results of a completed anti-dumping investigation, the request purported to address future determinations in other types of proceedings that had not even been initiated. For these reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

1.6. The DSB took note of the statements and agreed to revert to this matter.

2 EUROPEAN COMMUNITIES – DEFINITIVE ANTI-DUMPING MEASURES ON CERTAIN IRON OR STEEL FASTENERS FROM CHINA

A. Recourse to Article 21.5 of the DSU by China: Request for the establishment of a panel (WT/DS397/18)

2.1. The Chairman drew attention to the communication from China contained in document WT/DS397/18 and invited the representative of China to speak.

2.2. The representative of China said that, on 28 July 2011, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, in this dispute. The Reports had concluded that Article 9(5) of the EU Basic AD Regulation and the definitive anti-dumping measure on imports of certain iron or steel fasteners originating in China were inconsistent with the Anti-Dumping Agreement and the WTO Agreement. The DSB had recommended that the EU bring its measures into conformity with its obligations under these Agreements. On 11 October 2012, the EU had informed the DSB that it had adopted measures necessary to comply with the DSB's recommendations. The measures were set out in the EU's status report (WT/DS397/15/Add.3). China considered that the measures taken by the EU had failed to bring the EU into compliance with its obligations under the Anti-Dumping Agreement and the GATT 1994. In particular, China considered that the measure, taken by the EU to implement the DSB's recommendations and rulings in relation to the anti-dumping duties on imports of certain iron or steel fasteners originating in China through Council Regulation (EU) No. 924/2012 of 4 October 2012, did not fully and correctly implement the DSB's recommendations and rulings and that it was not consistent with various provisions of the Anti-Dumping Agreement and of the GATT 1994, as set out in detail in document WT/DS397/18.

2.3. Pursuant to the Agreed Procedures between China and the EU (WT/DS397/16), on 30 October 2013, China had initiated procedures under Article 21.5 of the DSU by requesting consultations with the EU. These consultations had been held on 27 November 2013. They allowed a better understanding of each party's position. However, they had failed to settle the dispute. At the present meeting, China had no choice but to request the establishment of a panel under Article 21.5 of the DSU, with standard terms of reference as set forth in Article 7 of the DSU. Pursuant to Article 21.5 of the DSU, China also requested that, if possible, the DSB refer the matter to the original Panel. According to Paragraph 2 of the Agreed Procedures between China and the EU, China noted that the EU had to accept the establishment of a panel at the first DSB meeting at which China's request under Article 21.5 of the DSU would appear on the Agenda.

2.4. The representative of the European Union said that the EU had engaged constructively and in good faith during the consultations in order to address China's questions and concerns. The EU, therefore, regretted that China decided to take this step. The EU was convinced that its challenged measures were fully in line with WTO rules. In particular, the EU had ensured a full implementation of the DSB's recommendations and rulings in the "Fasteners" Dispute. Pursuant to Agreed Procedures under Articles 21 and 22 of the DSU between the EU and China, the EU accepted the establishment of an Article 21.5 panel at the present meeting.

2.5. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by China in document WT/DS397/18. The Panel would have standard terms of reference.

2.6. The representatives of Japan and the United States reserved their third-party rights to participate in the Panel's proceedings.

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