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DISPUTE SETTLEMENT BODY
10 April 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 April 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. United States - Standards for reformulated and conventional gasoline

- Recourse to Article XXIII:2 of the GATT 1994 and Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes by Venezuela (WT/DS2/2)

The Chairman recalled that at the meeting on 29 March 1995, speaking under "Other Business", he had informed the Dispute Settlement Body (DSB) about the communication from Venezuela contained in document WT/DS2/2 wherein Venezuela had requested a meeting for the purpose of the establishment of a panel in accordance with footnote 5 to Article 6 of the Dispute Settlement Understanding (DSU). In connection with this matter a statement by Venezuela made in Washington in the context of Article XXII:1 of GATT 1994 consultations with the United States had also been circulated in document WT/DS2/2/Add.1.

The representative of Venezuela said that his Government requested the establishment of a panel to examine the final decision with respect to the "Regulation of Fuels and Fuel Additives - Standards for Reformulated and Conventional Gasoline" (Gasoline Regulation) adopted on 15 December 1993 by the United States Environmental Protection Agency (EPA) and which entered into effect on

1 January 1995. Venezuela considered that the Gasoline Regulation violated United States obligations under GATT 1994 and the Agreement on Technical Barriers to Trade (TBT). In addition, it nullified and impaired Venezuela's rights under the WTO Agreement. Venezuela regretted that its objections to the Gasoline Regulation had not been satisfactorily taken into account in over two years of domestic regulatory procedures in the United States, nor in the procedures initiated this past year by Venezuela under GATT 1947, or in the recent consultations held under the GATT 1994, the TBT Agreement and the DSU. Although the US Government had recognized the need to modify the Gasoline Regulation to bring it into conformity with its obligations under the WTO Agreement, this did not materialize during the consultations. For this reason Venezuela had decided to exercise its right to request the establishment of a panel to examine the consistency of the Gasoline Regulation with the United States' obligations under the WTO Agreement.

This matter was of great importance and urgency for Venezuela. The Gasoline Regulation had an adverse impact on Venezuelan exports of gasoline to the United States. Transparency of rules and non-discrimination in respect of market access were of fundamental importance for Venezuela and for the multilateral trading system as well as for decision-making in the investment area. The objections of Venezuela to the Gasoline Regulation were clear. The Regulation contained provisions less favourable to Venezuelan gasoline than to gasoline produced in the United States and in a third country and was therefore inconsistent with the obligations of national treatment and the most-favoured-nation laid down in Articles III and I of GATT 1994 respectively. It also violated Articles 2.1 and 2.2 of the Technical Barriers to Trade (TBT) Agreement by creating unnecessary obstacles to trade and thereby being more trade-restrictive than necessary. There was no justification for the discriminatory treatment against Venezuelan gasoline under any of the provisions of the WTO Agreement. These restrictive commercial aspects of the Gasoline Regulation had serious implications in the context of the discussions currently held in the WTO and in other multilateral fora on trade and environment. Many countries had expressed their concern at the use of environmental measures as disguised barriers to international trade. Such unwarranted use existed in this case and could be proven. In this respect, it must be made clear that this was not a case of a country seeking to avoid compliance with legitimate environmental protection legislation. Venezuela was only seeking to ensure that its gasoline was subject to the same environmental protection legislation applied to gasoline produced in the United States and to gasoline produced by a third country. It was important that the international community recognized that Venezuela was only seeking equality of treatment for its gasoline.

Venezuela was currently implementing an investment programme of one billion dollars to ensure that its gasoline complied with the environmental protection requirements applicable to gasoline produced in the United States. As a result of the regulations that were now in force, Venezuela considered that the value of its gasoline exports to the United States would be reduced, as would its share of that market. The objectives of the Gasoline Regulation could be achieved in a less trade-restrictive manner than through the application of discriminatory legislation against Venezuelan gasoline and against almost all imported gasoline. Indeed, the EPA had recognized that the Gasoline Regulation violated GATT and was aware of the existence of other less trade-restrictive measures for the implementation of the Gasoline Regulation. Nevertheless, the US Congress had approved legislation under which it prevented the EPA from signing, enacting, implementing or enforcing any amendment to the Regulation which could be satisfactory for Venezuela and in accordance with the obligations of the United States under the WTO. In view of the violation of the GATT 1994 provisions and the TBT Agreement within the framework of the WTO Agreement and by virtue of the injury caused to Venezuelan exports, the Gasoline Regulation nullified and impaired Venezuela's rights under the WTO Agreement. In the light of these adverse effects, Venezuela urged the Dispute Settlement Body to establish a panel at the present meeting to examine the Gasoline Regulation and its inconsistencies with the obligations of the United States under the WTO Agreement, as well as any other implication that the Regulation might have on Venezuelan gasoline exports to the United States.

The representative of the United States said that as indicated by Venezuela, his country had a useful exchange of information in the context of consultations under Article 4 of the DSU for clarifying the questions raised by Venezuela. The United States took note that Venezuela was interested in pursuing further dispute settlement procedures and sought the establishment of a panel at the present meeting. It would not stand in the way of the establishment of a panel on the basis of Venezuela's request contained in WT/DS2/2. He also reported that officials in the two capitals had been discussing plans to make available to the public positions taken by Venezuela or the United States before the panel, in accordance with Article 18:2 of the DSU, and wished to express the United States' appreciation for the direction that these discussions had taken. This was a welcome sign that WTO Members understood the importance of enhancing the credibility of the dispute settlement process, and the implications of this improvement for the effective and expeditious implementation of the results of dispute settlement proceedings.

The representative of Brazil said that his delegation supported Venezuela's request for the establishment of a panel. As Members were aware, the Gasoline Regulation had also caused concerns in Brazil, which had exported some 3.8 million cubic meters of gasoline to the United States in 1993. Brazil had pointed out during the past year, when this issue had been raised in the GATT Council, that one of the pillars of the multilateral trading system was at stake in this dispute, namely the obligation of national treatment, contained in Article III. Therefore, this dispute was of capital importance not only to Members directly affected by such standards, but to all those committed to the maintenance and strengthening of the multilateral trading system. Brazil, after careful examination of this issue, was presenting at the present meeting a request for consultations with the United States regarding the application of the regulation on fuels and fuel additives which imposed the standards for reformulated and conventional gasoline.[1]

The representatives of Norway, Australia, European Communities and Canada said that, as they had indicated on a previous occasion when a panel was established under the GATT 1947,[2] they wished to reserve their right to participate in the panel as interested third-parties. The representative of the European Communities added that he was surprised to learn that two parties had agreed to apply the provisions of Article 18 of the DSU to this dispute. The Community wished to adhere fully but also strictly to Article 18 and it would expect everybody to do so without any side agreement.

The Dispute Settlement Body took note of the statements and agreed to establish a panel in accordance with Article 6 of the DSU.

2. Malaysia - Prohibition of imports of polyethylene and polypropylene
   - Recourse to Article XXIII:2 of the GATT 1994 and Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes by Singapore (WT/DS1/2)
   - Communication from Malaysia (WT/DS/3)

The Chairman recalled that the DSB had considered this matter at its meeting on 29 March 1995 and had agreed, at the request of Singapore, to revert to it at the present meeting. He drew attention to document WT/DS1/2 concerning Singapore's request for the establishment of a panel, and

[1]The request for consultations with the United States was subsequently circulated in document WT/DS4/1.

[2]A panel was first established in October 1994 (C/M/275) under the GATT 1947. Subsequently the Government of Venezuela withdrew its complaint (DS47/5 and DS47/6).

to a communication from Malaysia in document WT/DS1/3 which contained information on Malaysia's modified import licensing measures for polypropylene and polyethylene. He also informed the DSB that a similar notification had been submitted by Malaysia to the Committee on Import Licensing under the Agreement on Import Licensing Procedures (document G/LIC/N/2/MYS/1).

The representative of Singapore recalled that at the last DSB meeting on 29 March 1995, Singapore had requested that a panel be established at the DSB meeting on 10 April 1995 to examine Malaysia's import prohibitions on polyethylene and polypropylene imposed since 7 April 1994, in the light of insufficient information regarding Malaysia's recent announcement that it would modify its existing import licensing procedures. Singapore had also written bilaterally to Malaysia to seek clarifications on its modified import licensing procedures. Following the DSB meeting on 29 March 1995, Malaysia had notified the DSB in document WT/DS1/3, dated 31 March 1995, and the Committee on Import Licensing in document G/LIC/N/2/MYS/1, dated 5 April 1995, that it had modified the import restrictions on polyethylene and polypropylene into an automatic import licensing procedure for the purpose of statistical data collection with effect from 23 March 1995. Singapore's understanding was that Malaysia intended to administer the new automatic licensing scheme in conformity with its obligations under the GATT 1994 and the WTO Agreement on Import Licensing Procedures. Singapore was glad that Malaysia, even though it intended to maintain its Customs (Prohibition of Imports) (Amendment) (No. 5) Order, dated 16 March 1994, had modified the administration of its licensing system for polyethylene and polypropylene. In view of the developments since 29 March 1995, Singapore had decided not to request the establishment of a panel at the present meeting. However, it was unfortunately not yet in a position to withdraw its complaint under Article XXIII completely. Singapore felt therefore bound to maintain its original complaint under Article XXIII and reserved the right to revert to this matter.

As specified in documents WT/DS1/1 and WT/DS1/2, consultations with Malaysia had related to its Customs (Prohibition of Imports) (Amendment) (No. 5) Order 1994, dated 16 March 1994, which restricted imports of polyethylene and polypropylene and to the administration of the import licences for these two product categories. Malaysia's notification to the Committee on Import Licensing had indicated that the automatic licensing scheme was administered under this same Customs (Prohibition of Imports) (Amendment) (No. 5) Order 1994, for the product categories concerned. Article 2.2 of the Agreement on Import Licensing Procedures required that "automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing". Singapore hoped that Malaysia would implement its licensing scheme under its Customs (Prohibition of Imports) (Amendment) (No. 5) Order 1994 in full conformity with the GATT 1994 and the Agreement on Import Licensing Procedures. Consultations would be held on 11 April 1995 in order to obtain further clarification on how Malaysia administered its automatic licensing scheme. Pending further clarification on the details relating to the automatic import licensing scheme and feedback from companies, Singapore reserved its right to revert to its complaint under Article XXIII at a future meeting of the DSB, if necessary. Singapore hoped that it would not be necessary to raise this matter again before the DSB, and it would inform the DSB eventually of the complete withdrawal of this complaint.

The representative of Malaysia welcomed Singapore's statement and confirmed that consultations would be held on 11 April 1995. These consultations would provide opportunities for both parties to discuss the import licensing measures for polypropylene and polyethylene and for Singapore to obtain detailed clarification on the modifications of Malaysia's licensing system. As Members were aware, Malaysia had already notified the DSB and the Committee on Import Licensing about the changes of its import licensing system which would pave the way for the resolution of this matter. He stressed that Customs (Prohibition of Imports) (Amendment) (No. 5) Order 1994, dated 16 March 1994, should

be read in conjunction with the Notice to Importers - Procedures on Import of Polypropylene (PP) and Polyethylene (PE) dated 27 March 1995.[3]

The representative of Japan wished to register his country's interest in further clarification of the newly introduced measure in particular its WTO-consistency since Japan was one of the parties affected by this measure.

The Dispute Settlement Body took note of the statements and agreed to revert to this matter at a future meeting, if necessary.

3. Deadline for submissions of names of candidates for the Appellate Body

The representative of the European Communities, speaking under "Other Business", said that since the deadline for submission of names of candidates for the Appellate Body was approaching he would like that the Chairman confirm that this deadline remained unchanged and that it would be applicable for all[4]. He also inquired whether consultations on this matter would take place, since at this stage one would wish to know what happened and whether the previously agreed arrangements concerning this matter were still in place.

The Chairman assured that consultations on appointments to the Appellate Body, as indicated on previous occasions, would be held. To this effect at the next meeting of the DSB to be held on 25 April he would present a list of names of candidates which had already been proposed for appointment to the Appellate Body and would begin consultations on that list.

The Dispute Settlement Body took note of the statements.

4. Rules of Conduct

The representative of Brazil, speaking under "Other Business", wished to bring to the attention of the DSB that a number of substantial issues concerning the negotiations on the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes were still under discussion and that the participants were still seeking a common ground on which a compromise text could be based. The latest version of the text on the Rules of Conduct was generally recognized as an important step towards a possible future consensus. However, Brazil considered that it would be premature to establish a deadline for the conclusion of work presently under way.

The representative of Argentina, said that his delegation wished to endorse Brazil's statement and indicated that the work on the Rules of Conduct was sufficiently important to to be carried out without creating artificial time pressures. In particular, Argentina believed that one should have sufficient time in order to be able to reach a consensus that reflected what was understood to be the shared interest of all Members, namely to strengthen the dispute settlement mechanism. His delegation was ready to make every effort necessary to ensure that the Rules of Conduct were a useful tool for the protection of interests of all Members.

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[3]Copies of these publications are available at the WTO Secretariat.

[4]During informal consultations held on 15 March 1995 the deadline for submission of names of candidates for the Appellate Body had been extended until Easter.

The representative of Mexico said that her Government attached considerable importance to the work on the Rules of Conduct which, if well designed, could constitute a useful tool and would contribute to the strengthening of the new dispute settlement mechanism established in the WTO. However, this appropriate design of the Rules of Conduct, which Mexico hoped would come into force, required careful consideration of basic principles and provisions to be contained therein. As Brazil and Argentina had just mentioned Mexico also felt that discussions on such rules required the necessary time in order to reach a consensus on the principles and provisions to be contained in such a text. Since there were still some substantive points which required further discussion, Mexico wished to have sufficient flexibility to conclude these negotiations in the best way possible without any unnecessary pressure.

The representative of Chile supported the statements made by the previous speakers with regard to the work on the Rules of Conduct and said that since certain substantive issues still required clarification Chile would request that the Dispute Settlement Body grant sufficient time to conclude this work in order to have a consensus text which would satisfy all Members.

The representative of India said that his delegation also felt that the work on the Rules of Conduct was important and that India had, and continued to have, a number of concerns in this area. He recalled that at the informal consultations held on 7 April 1995 Argentina had proposed a number of amendments which were supported by India. Apart from this, there was another substantive issue still to be discussed. India had one major concern in this field namely, the non-coverage in the text of the Textiles Monitoring Body and a number of delegations had now started appreciating India's point of view on this subject. It was necessary and desirable to have detailed discussions on the various substantive issues which were yet to be finalized so that all Members would be comfortable with the final outcome and be in a position to join the consensus.

The representative of Uruguay said that the new text on the Rules of Conduct represented a considerable step forward in the right direction and therefore served a good purpose for further negotiations. However, there were certain difficulties of a substantive nature given the effect they could have on the overall operation of the dispute settlement mechanism since this system constituted the very cornerstone of the whole multilateral trading system. Therefore, Uruguay believed that one should proceed extremely cautiously in this area particularly as the very content of the DSU might be modified directly or indirectly. One would wish to be sure that the smooth operation of the dispute settlement mechanism was guaranteed and therefore neither time nor effort should be spared in assuring a consensus. Uruguay, therefore, supported Brazil's proposal and wished to endorse the points made by the previous speakers in this regard.

The representative of Switzerland welcomed the considerable progress on work on the Rules of Conduct, but believed that "on the last lap one must not be over hasty". It was important to find a good solution because as all knew this matter was very sensitive in nature.

The representative of Australia underlined that there had been exhaustive discussions on the text of the Rules of Conduct which were reflected therein. In this regard Australia wished to compliment Mr. Armstrong, Chairman of the Informal Group on the Rules of Conduct, on the very good work that he had done in coming up with this compromise text. Like a number of other Members, Australia did not want a premature conclusion of these discussions but equally did not want to discount what had already been achieved.

The representative of Indonesia, speaking on behalf of the ASEAN countries, supported Brazil's proposal with regard to the Rules of Conduct and thanked Mr. Armstrong, the Chairman of the Informal Group on the Rules of Conduct for conducting consultations on this matter.

Mr. Armstrong, the Chairman of the Informal Group on the Rules of Conduct, thanked delegations for their statements and their positive input into the open-ended informal consultations on the Rules of Conduct. In view of the statements made he wished to update Members on the situation of the consultations. Since his progress report presented at the DSB meeting on 29 March 1995 a revised consolidated draft text of the Rules of Conduct had been distributed on 31 March 1995 to all participating delegations. A further meeting of the Informal Group was held on 7 April 1995 and further consultations had taken place on that draft text which had been put forward as the basis for advancing to a final text. Several delegations had indicated that the latest text was acceptable to them but outstanding issues had been identified by a number of other delegations as the statements at the present meeting made clear. At the meeting on 7 April 1995 he had recalled the concerns that had been expressed to conclude the work of the Informal Group, and had indicated that this should be done thoroughly but expeditiously. He therefore sought from delegations a willingness to intensify what had been already a very considerable effort to resolve the outstanding issues. Within the informal consultations there had, of course, been no question of setting a deadline for the Group's ongoing work to find consensus.

The Chairman thanked delegations for the statements made on this issue at the present meeting and particularly Mr. Armstrong for the excellent work and also for the very valuable update he had given up to the present meeting. Clearly, as Mr. Armstrong and a number of other delegations had just said, this was a very important task.

The Dispute Settlement Body took note of the statements.