WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/193
28 July 2005

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Dispute Settlement Body
15 July 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 15 July 2005

Chairman: Mr. Eirik Glenne (Norway)

1. United States – Subsidies on upland cotton

(a) Recourse to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU by Brazil (WT/DS267/21)

1. The Chairman drew attention to the communication from Brazil contained in document WT/DS267/21, and invited the representative of Brazil to speak.

2. The representative of Brazil said that on 21 March 2005, the DSB had adopted the Reports of the Panel and the Appellate Body pertaining to the dispute under consideration. By doing so, the DSB had recommended that the United States withdraw by 1 July 2005 the prohibited subsidies under the export credit guarantees programs GSM 102, GSM 103 and SCGP, and under the so-called Step 2 program. One day prior to the expiration of the implementation deadline, on 30 June 2005, the United States had announced the adoption of measures concerning the export credit guarantee programs. These measures basically consisted of the following: (i) the introduction of a new risk-based fee structure for guarantees under GSM 102 and SCGP and (ii) no longer accepting applications for guarantees under GSM 103. No action at all had been taken in relation to Step 2 within the time-period specified by the DSB.

3. He recalled that on 5 July 2005, when Brazil's request for authorization to take appropriate countermeasures pursuant to Article 4.10 of the SCM Agreement and to suspend concessions or other obligations pursuant to Article 22.2 of the DSU had been circulated to WTO Members, the United States had made an announcement of additional measures with a view to implementing the DSB's recommendations concerning the prohibited subsidies in this case. Pursuant to the second announcement, the US administration would send a proposal to the US Congress that, if approved, should result in: (i) the elimination of the Step 2 program; (ii) the removal of the 1 per cent cap on fees that could be charged under the export credit guarantee programs; and (iii) the termination of the GSM 103 program. In light of the situation that had just been described, Brazil had decided to reserve its rights by requesting authorization to take appropriate countermeasures pursuant to Article 4.10 of the SCM Agreement and to suspend concessions or other obligations pursuant to Article 22.2 of the DSU *vis-à-vis* the United States. The corresponding document (WT/DS267/21) had been filed by Brazil and was before the DSB at the present meeting. Brazil hereby requested that the DSB approve the authorization set out in its request.

4. As stated in its request, Brazil, if authorized by the DSB, may take appropriate countermeasures in accordance with Article 4.10 of the SCM Agreement and Article 22.2 of the DSU until such a time when the United States withdraw the prohibited subsidies identified by the Panel and the Appellate Body, in an amount that corresponded to: (i) Step 2 payments made in the most recent concluded marketing year; and (ii) the total of exporter applications received under GSM 102, GSM 103, and SCGP, for all unscheduled commodities and rice, for the most recent concluded fiscal year. In principle, these countermeasures would take the form of suspension of tariff concessions and related obligations under the GATT 1994 by means of the imposition of additional import duties on a list of products imported from the United States, to be defined by Brazil. Brazil, however, considered that it was not practicable or effective to suspend concessions or other obligations with respect to the same sector/agreement as that in which the Panel and the Appellate Body had found the violations. Brazil also believed that the circumstances were serious enough to justify the suspension of concessions or obligations under the TRIPS Agreement and the GATS, as indicated in Brazil's request.

5. He noted that that Brazil's request referred only to the prohibited subsidies found in the present case. It did not deal with the subsidies that violated the serious prejudice provisions under the SCM Agreement, in respect of which the United States still had time – as Brazil expected – to take the necessary steps to withdraw the illegal measures or remove their adverse effects.

6. The DSB had also been notified that the United States and Brazil had reached an understanding – contained in document WT/DS267/22 – on procedures under Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement. Among other clauses, the understanding provided that Brazil and the United States would, at the earliest possible moment, request the arbitrator to be appointed once the United States objected to the request put forth by Brazil to suspend its work. In the event that the DSB, following a compliance panel procedure, found that measures taken by the United States to comply with the relevant recommendations and rulings of the DSB were inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, the arbitrator would resume its work at Brazil's request. On the other hand, in the event that the DSB were to find that measures taken by the United States to comply with the relevant DSB's rulings and recommendations were not inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, Brazil would withdraw its request under Article 22.2 of the DSU, thereby terminating the Article 22.6 arbitration procedure.

7. Before turning to a brief explanation of the reasons that had led Brazil to sign the bilateral understanding with the United States, he wished to underscore that, like Brazil's request for the DSB's authorization, the procedural agreement referred only to the prohibited subsidies found in the Cotton dispute. He noted that one was faced with an odd situation, in which his country had agreed to an understanding that would delay the DSB's authorization for Brazil to adopt countermeasures *vis-à-vis* the US non-compliance, whilst the United States had agreed to a procedural understanding even though Brazil had decided to present a request to take countermeasures. Part of the explanation was related to the so-called sequencing issue with which all Members had been struggling for years in the DSU Review negotiations. The other part of the equation – the dispute-specific reason – was that Brazil acknowledged that the measures taken and the announcements made by the United States constituted a positive step toward the resolution of the dispute.

8. In Brazil's view, much more had to be accomplished before Brazil could recognize that the DSB's recommendations and rulings had been fully implemented in the Cotton case. Brazil believed, however, that the announcements made by the US administration were a positive step and hoped that the US Congress would follow-up with concrete and timely actions that might enable a mutually satisfactory resolution of this dispute; a dispute that affected not only the two parties, but a number of poor countries in Africa and elsewhere that could not compete with the massive subsidies granted to the US producers of cotton. In this regard, Brazil would be following the US implementation actions with great interest.

9. The representative of the United States said that on 5 July 2005, Brazil and the United States had informed the DSB that they had agreed on procedures under Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement in the follow-up to this dispute. This agreement had been circulated to Members on 8 July 2005 as document WT/DS267/22. Pursuant to that agreement, Brazil had requested authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and to adopt appropriate countermeasures pursuant to Article 4.10 of the SCM Agreement "[i]n order to fully safeguard its rights under the [DSU]." In response to this procedural step by Brazil, on 14 July 2005, in document WT/DS267/23, which the Secretariat had just distributed in the room, the United States had objected to the appropriateness of the countermeasures and the level of suspension of concessions or other obligations proposed by Brazil and claimed that the principles and procedures set forth in Article 22.3 of the DSU had not been followed, thereby referring the matter to arbitration. Thus, the present meeting did not need to be held. Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirm that it might not consider Brazil's request for authorization, which was the agenda item of the present meeting since the matter was being referred to arbitration. Pursuant to the agreement mentioned by the US representative, Brazil and the United States "will, at the earliest possible moment," jointly request the Article 22.6 arbitrator to suspend its work. The United States had taken significant steps to implement the DSB's recommendations and rulings in this dispute. As noted in the chapeau to the understanding with Brazil, the United States had announced, effective 1 July, administrative changes to the three agricultural export credit guarantee programs at issue in this dispute. On 5 July, the US administration had announced a legislative proposal to repeal the user marketing "Step 2" cotton program and to make further changes to the guarantee programs. As stated at the 20 April 2005 DSB meeting, the United States fully intended to implement the DSB's recommendations and rulings in this dispute. Thus, the United States did not believe that the Article 22.6 arbitration, once suspended, would need to be re-activated.

10. The representative of the European Communities said that the EC had participated as a third party in the Cotton dispute and would continue to follow with great interest the developments in terms of implementation.

11. The DSB took note of the statements and it was agreed that the matter raised by the United States in document WT/DS267/23 is referred to arbitration, as required by Article 22.6 of the DSU.