RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/17
6 June 1996

(96-2141)

DISPUTE SETTLEMENT BODY
20 May 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 May 1996

Chairman: Mr. Celso Lafer (Brazil)

Subjects discussed: Page

1. United States - Standards for reformulated and conventional gasoline 1
- Report of the Appellate Body and report of the Panel 1

2. European Communities - Measures concerning meat and meat products (Hormones) 3
- Request by the United States for the establishment of a panel 3

1. United States - Standards for reformulated and conventional gasoline
- Report of the Appellate Body and report of the Panel (WT/DS2/AB/R, WT/DS2/R)

The Chairman drew attention to the communication from the Appellate Body contained in WT/DS2/8 transmitting its report in WT/DS2/AB/R for circulation in accordance with Article 17.5 of the DSU. He also drew attention to the findings and conclusions of the Appellate Body in section V, pages 29 and 30 of the report. He stated that Article 17.14 of the DSU stipulated that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members. This adoption procedure is without prejudice to the rights of Members to express their views on an Appellate Body report".

The representative of Venezuela said that sixteen months after the initiation of this dispute by Venezuela and Brazil, Members had entered into a decisive phase of the process, namely the adoption of the Panel and Appellate Body reports by the DSB. The present meeting was of historical significance since this was the first time Members had to unconditionally adopt the reports. He expressed his Government's satisfaction with the results of both reports, not only because Venezuela's claim had been upheld, but also because they had reflected a balanced and objective interpretation of WTO rules. He expressed his country's appreciation to the members of the panel chaired by Mr. J. Wong, and to the members of the Appellate Body presided by Mr. F. Feliciano. He also thanked the Secretariat for its efficient and dedicated work.

The work of the Panel and of the Appellate Body had been carried out under particular circumstances given the difficult technical issues and understandable expectations which had surrounded this dispute. He did not wish to discuss the factual and legal elements in the reports, but only to point

out the following: (i) the dispute under consideration was of commercial nature where the application of domestic regulation was inconsistent with the principle of national treatment and unjustifiably distorted competitive conditions of gasoline imported to the United States *vis-à-vis* domestically produced gasoline; (ii) the environmental objectives of the Gasoline Rule pursued by the United States could have been achieved in a manner compatible with WTO rules, which would have avoided this controversy; (iii) the ruling had confirmed that the WTO Agreement did not prevent Members from pursuing environmental policies which they considered to be appropriate.

The concluding result had enabled all parties to be satisfied. It had provided greater certainty in international trade flows and had proved that the new dispute settlement mechanism was more efficient. This had increased the credibility of the multilateral trading system and had further committed Members to follow the rules and disciplines negotiated in the Uruguay Round. Venezuela hoped that the United States would implement the Panel and Appellate Body's recommendations as soon as possible. He believed that Members who frequently invoked dispute settlement procedures had a particular interest to ensure that these recommendations were implemented without delay. The United States had now an important responsibility to increase the credibility of the dispute settlement mechanism and thus, the rôle of the WTO. Venezuela requested that the DSB adopt the Panel report in WT/DS2/R together with the Appellate Body report in WT/DS2/AB/R.

The representative of Brazil said that although the adoption of the reports, in accordance with Articles 16.4 and 17.14 of the DSU, was not the final phase in the dispute settlement proceedings, it was an important event as the decisions had acquired legal status and thereby became binding on parties. His delegation expressed its gratitude to members of the panel (Messrs. J. Wong, C. Falconer, and K. Luotonen), and to the Appellate Body members (Messrs. F. Feliciano, Ch. Beeby and M. Matsushita) who had accomplished this difficult task with accuracy and fairness. He also thanked the WTO and the Appellate Body Secretariats for their reliability and efficiency. He believed that, irrespective of the positions defended forcefully by delegations, all parties involved in the proceedings had worked in good faith and in a very constructive manner. Brazil did not consider the dispute settlement mechanism as a contest to be won by some and lost by others, but believed that all Members would benefit from the strengthening of the multilateral dispute settlement mechanism. He requested that the DSB adopt the reports.

The representative of the United States recalled that on 21 February 1996, the United States had appealed the findings of the panel with regard to Article XX of GATT 1994. He said that his country could agree with the adoption of the Appellate Body report. Although it would naturally have preferred if the Appellate Body had agreed with all its arguments, the United States was nevertheless gratified that the Appellate Body had agreed with several of the United States' arguments with regard to the interpretation of Article XX, and the scope of the conservation exception in Article XX(g). The panel did not have time to consider many of the arguments which had been raised by the United States at the interim stage. In accepting the United States' arguments with respect to Article XX, the Appellate Body had preserved the balance in the WTO Agreement which maintained the freedom of Members to protect the environment and conserve natural resources. This first appeal had vindicated the decision of the negotiators to establish an Appellate Body composed of eminent persons who were experts in GATT and international law. The panel's findings and conclusions had a number of significant flaws. The Appellate Body had demonstrated its willingness to thoroughly review and correct panel reports, and ensure that mistakes in legal reasoning were not perpetuated. This could only strengthen the WTO system and reinforce confidence in the quality of its dispute settlement mechanism. The Appellate Body's findings on Article XX (g) pointed to the need to interpret the GATT consistently with the text as drafted in 1947 and subsequently amended. The sophistication of the Appellate Body's approach to treaty interpretation was an example of the high quality of its analysis and drafting. This was how dispute settlement should work. The United States was examining all options available to it and was not, at this stage, in a position to provide an indication of its intentions with respect to the implementation

of the recommendations. It would inform the DSB of its intentions within the time-period provided for in the DSU.

The representative of the European Communities acknowledged the quality of the work carried out by the Appellate Body. Throughout the procedure, the European Communities had emphasized its full support of the environmental objectives pursued by the United States in the Clean Air Act. However, it had also stressed that in pursuing those objectives through the establishment of the baseline for gasoline, there had been no need nor justification in WTO terms, for the United States to treat imported products less favourably than domestic products. The Communities noted with satisfaction that this view had been shared by the Appellate Body. It was important that the United States inform Members of its intentions with regard to bringing the measures concerned into conformity with its obligations under the WTO.

The DSB took note of the statements, adopted the Appellate Body report in WT/DS2/AB/R and the Panel report in WT/ DS2/R as modified by the Appellate Body report, and agreed that in accordance with the procedures adopted by the GATT 1947 Council in May 1988 (BISD 35S/331), both reports be hereby derestricted.

The representative of Japan said that although his country had not expressed any objections as to the contents of both reports, this did not mean that Japan agreed with every point in the two reports. He added that Japan's position upon adoption of the reports was without prejudice to its position on the interpretation of Article III:4 of GATT 1994 which was now under discussion in another context.

The DSB took note of the statement.

2. European Communities - Measures concerning meat and meat products (Hormones)
- Request by the United States for the establishment of a panel (WT/DS26/6)

The Chairman recalled that at its meeting on 8 May, the DSB had considered the request by the Government of the United States for the establishment of a panel to examine its complaint, and had agreed to revert to this matter at the present meeting.

The representative of the United States said that his country was requesting the establishment of a panel to help resolve this long-standing dispute with the European Communities. The Communities' ban on the importation of meat from animals which had been treated with certain growth-promoting hormones had no legitimate basis and had nullified or impaired benefits accruing to the United States under the WTO. As his delegation had mentioned at the DSB meeting on 8 May, the United States believed that the new WTO rules would be instrumental in resolving a dispute that had remained unresolved under the GATT 1947 because of deficiencies in its rules and the Tokyo Round Codes, and the Communities' refusal in 1987 to permit a multilateral review of its Hormone Directive.

The representative of the European Communities said that the Communities would abide by the WTO rules and procedures with regard to the establishment of a panel. He reiterated the Communities' serious concern and regret at the way in which this issue had been treated by the United States. While the United States sought the establishment of a panel, the Communities' exports of a number of goods were subject to unilateral measures which had been adopted and applied for a number of years by the United States. The Communities found it difficult to accept that, in pursuing the procedures laid down in the WTO Agreement, a Member could decide to apply punitive unilateral measures before the outcome of such procedures was known, which adversely affected the trading interests of its partner. The Communities believed that this was not consistent with the spirit, the letter of the WTO, or with the responsibilities of Members.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with the provisions of Article 6 of the DSU.

The representatives of Australia, Canada, New Zealand and Norway reserved their third-party rights to participate in the panel proceedings.

The DSB took note of this information.