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Dispute Settlement Body
9 February 2018

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 9 FEBRUARY 2018

Chairman: Mr. Junichi Ihara (Japan)

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1 INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

A. Recourse to Article 21.5 of the DSU by India: Request for the establishment of a panel (WT/DS456/20)

1.1. The Chairman drew Members' attention to the communication from India contained in document WT/DS456/20 and invited the representative of India to speak.

1.2. The representative of India said that her country thanked the Chairman for convening this meeting. India had requested the establishment of a panel under Article 21.5 of the DSU to determine India's compliance with the DSB's recommendations and rulings in "India – Solar Cells" (DS456). India said that it wished to highlight the key issues of its communication, dated 23 January 2018, in which it had requested the establishment of a panel pursuant to Article 21.5 of the DSU. India said that its request for this special DSB meeting, for the purpose of considering India's request for the establishment of a panel under Article 21.5 of the DSU, was necessary given the US request (WT/DS456/18) for DSB authorization to suspend concessions or other obligations *vis-à-vis* India pursuant to Article 22.2 of the DSU. The US action clearly demonstrated that there was disagreement between India and the United States regarding India's compliance with the DSB's recommendations and rulings. Since the matter relating to the US request under Article 22.2 of the DSU had been referred to arbitration pursuant to Article 22.6 of the DSU, it was in the interests of both parties to have the issue of compliance resolved urgently by a panel under DSU Article 21.5. India recalled that it had filed a report on compliance, dated 14 December 2017 (WT/DS456/17). Therein, it had informed the DSB that it had ceased to impose any measures that had been found inconsistent with the DSB's recommendations and rulings. Thereafter, the United States had filed its DSU Article 22.2 request for suspension of concessions.

1.3. As India had explained in its communication dated 3 January 2018 (WT/DS456/19), the United States had not engaged with India on its specific concerns regarding India's compliance. Issues in this regard had been brought before the DSB by India at the 12 January 2018 DSB meeting. India was of the view that in the event of any disagreement between the parties with

respect to the "existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings", the logical course of action would be to first have recourse to Article 21.5 of the DSU. While India believed that it had brought the measures at issue into full compliance with its WTO obligations, the United States appeared to disagree. Therefore, India's compliance had to be evaluated by a panel pursuant to Article 21.5 of the DSU. In its communication dated 23 January 2018, in which it had requested the establishment of a panel pursuant to Article 21.5 of the DSU, India had explained the actions that it had taken to ensure compliance with the DSB's recommendations and rulings. India was confident that compliance proceedings pursuant to Article 21.5 of the DSU would address any doubts regarding India's compliance with the DSB's recommendations and rulings, and would thereby nullify the need for any DSU Article 22.6 proceedings. India therefore requested the establishment of a panel, pursuant to Article 21.5 of the DSU, to resolve the disagreement between India and the United States regarding India's compliance with the DSB's recommendations and rulings. India also requested that, if possible, the DSB refer the matter to the original Panel. India thanked the WTO Secretariat for assisting the parties in this dispute and the DSB Members for their attention to India's statement.

1.4. The representative of the United States said that, at a previous DSB meeting, the United States had noted that it had not been aware of any basis for India to assert compliance in this dispute. The US view had not changed upon reading India's panel request. In its request, India claimed that it had complied with the DSB recommendations in this dispute because it "no longer enters into any [Power Purchasing Agreements] involving the DCR measures". India, however, had not provided any evidence to substantiate this claim. Moreover, India's panel request appeared to indicate that India would continue to apply the WTO-inconsistent DCR measures contained in Power Purchase Agreements that India had entered into before December 2016. The United States did not understand how India could claim compliance while it continued applying these WTO-inconsistent DCR measures. The United States had reserved its rights to move forward under DSU Article 22.6 to obtain authorization to take countermeasures in relation to India's DCR measures. However, the United States remained willing to work with India to find a bilateral resolution to this dispute without further proceedings. For these reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

1.5. The representative of Canada said that his country noted that this request for the establishment of a panel by India continued a trend in the WTO's dispute settlement practice. This trend had seen the responding party request the establishment of a panel and had occurred in DS381, DS430 and DS461. Canada also noted that the Russian Federation had recently initiated compliance consultations with the EU in DS475, where it was the responding party. Each of these examples illustrated the utility and appropriateness of the right of a responding party to initiate compliance proceedings. They were also consistent with the Appellate Body's observation in paragraph 353 in "Canada – Continued Suspension" (DS321) that the "respondent will be able to identify in its panel request the measure that it has taken to comply and the specific inconsistencies found in the DSB's recommendations and rulings in the original proceedings, and claim before the Article 21.5 panel that it has complied with the DSB's recommendations and rulings by rectifying those inconsistencies".

1.6. The representative of the European Union said that his delegation referred to its statement made at the special DSB meeting held on 12 January 2018 with respect to the issue of sequencing. The EU recalled that in cases of disagreement about the existence or consistency with WTO rules of compliance measures, concessions or other obligations could be suspended under the DSU once there was a multilateral determination on the alleged compliance action. The EU, therefore, hoped that India and the United States would ensure that the procedures of the DSU, regarding compliance and suspension of obligations in this dispute, would be conducted efficiently and in the correct sequence.

1.7. The representative of Japan said that his country referred to the statement it had made under Agenda item 5 in relation to "India – Agricultural Products" (DS430) at the 22 May 2017 DSB meeting. Similarly, in DS430, India, as the original respondent, had requested the establishment of a panel under Article 21.5 of the DSU. Japan recalled that it had clearly stated its position on this in May 2017, which applied equally to this case.

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

2 UNITED STATES – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS FROM KOREA

A. Statement by the United States

2.1. The representative of the United States, speaking under "Other Business", said that, on 12 January 2018, the DSB had adopted the Report of the Panel in the dispute "US – OCTG (Korea)" (DS488). As provided in the first sentence of Article 21.3 of the DSU, the United States said that it would like to inform the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respected US WTO obligations. The United States said that it would need a reasonable period of time, in which to do so.

2.2. The representative of Korea said that Korea recalled that the DSB had adopted the Panel Report in the dispute "US – OCTG (Korea)" (DS488) on 12 January 2018. Korea further recalled that pursuant to Article 21.3 of the DSU, within 30 days from the adoption of the Panel Report, the responding Member was required to inform the DSB of its intention to implement the DSB's recommendations and rulings. This 30-day period would expire on 11 February 2018. In light of this, Korea found it unusual that the issue of implementation with respect to DS488 had not been included as a regular Agenda item at the previous or present DSB meeting. Instead, Korea noted that the United States had decided to inform the DSB, under "Other Business", of its intention to implement the DSB's recommendations and rulings in this dispute. Korea believed that that, at the present meeting, the United States had confirmed its intention to implement the DSB's recommendations and rulings within the meaning of Article 21.3 of the DSU. In this regard, Korea welcomed the statement by the United States that it intended to comply with the DSB recommendations and rulings in this dispute. Concerning the reasonable period of time, Korea informed the DSB that it had held fruitful consultations with the United States. Korea believed that these consultations would result in a mutually agreed reasonable period of time, as stipulated under Article 21.3(b) of the DSU. Korea expected that the United States would, promptly, take all necessary action to bring its measures into conformity within the agreed reasonable period of time.

2.3. The DSB took note of the statements.