WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/309
2 March 2012

(12-1163)

Dispute Settlement Body
22 December 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 December 2011

Acting Chairperson: Mr. Mario Matus (Chile)

Prior to the adoption of the Agenda, Amb. Mario Matus, the Chairman of the Trade Policy Review Body, welcomed delegations and said that he had been asked to chair the present meeting in the absence of Amb. Elin Østebø Johansen, the Chairperson of the DSB. He noted that this was in accordance with the Rules of Procedure for meetings of the Dispute Settlement Body which provided that if the DSB Chairperson 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.

1. European Communities and certain member States – Measures affecting trade in large civil aircraft

(a) Recourse to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU by the United States (WT/DS316/18)

1. The Chairperson drew attention to the communication from the United States contained in document WT/DS316/18, and invited the representative of the United States to speak.

2. The representative of the United States said that on 1 June 2011, the DSB had adopted its recommendations and rulings in this dispute. The DSB had recommended that the Member granting each subsidy found to have resulted in adverse effects bring the subsidy into compliance with its obligations under the SCM Agreement. Under Article 7.9 of the SCM Agreement, the EU and certain member States had six months to withdraw the subsidies or take appropriate steps to remove the adverse effects of the subsidies. That six-month period had ended on 1 December 2011. The EU and the four member States at issue had not removed the adverse effects or withdrawn the subsidies within that period. In the absence of any agreement on compensation, the United States had requested authorization to take countermeasures at an annual level commensurate with the degree and nature of the adverse effects determined to exist, pursuant to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU. This amount corresponded to the annual value of lost sales, of exports of US large civil aircraft displaced from the EU market, and of exports of US large civil aircraft displaced from third country markets. The United States had taken this step in light of Article 22.6 of the DSU, which provided for the negative consensus rule to apply within 30 days of the end of the period for compliance. If the EU were not to object to the US request, the DSB would approve the US request for authorization at the present meeting unless the DSB decided by consensus to reject the request. If the EU objected, the matter would automatically be referred to arbitration.

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3. On 9 December 2011, in order to facilitate a resolution of this dispute, the United States had also requested consultations with the EU and the member States at issue with regard to this matter. The EU had accepted the US request, and consultations were scheduled for early January 2012. The United States said that it was looking forward to those consultations. As mentioned at the previous DSB meeting, the United States remained prepared to engage in any meaningful efforts that would lead to the goal of ending subsidized financing of large civil aircraft at the earliest possible date. The United States hoped to find willing partners at the consultations and beyond. Finally, the United States noted that it was currently working with the EU on a sequencing agreement for procedures under Articles 21 and 22 of the DSU for the purposes of this dispute. Any such agreement would be notified to the DSB.

4. The representative of the European Union said that the EU noted that the United States had stated that it considered that the EU had failed to comply with the DSB's recommendations and rulings in this dispute, and that it had requested the DSB's authorization to suspend the application of concessions or other obligations under the WTO covered agreements to the EU, pursuant to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU. At the present meeting, the EU was formally objecting to the US proposal. In particular, the EU objected to the level of suspension of concessions or other obligations contained in the US request, and claimed that the principles and procedures set forth in Article 22.3 of the DSU had not been followed and that the proposal was not allowed under the covered agreements. The EU was requesting that the matter be referred to arbitration pursuant to Article 22.6 of the DSU, recalling that, according to this provision, concessions or other obligations shall not be suspended during the course of the arbitration. The EU and the United States were informally discussing the issue of sequencing, and the EU expected an agreement to be concluded shortly.

5. The representative of the United States said that his country took note of the EU's objection in its statement pursuant to Article 22.6 of the DSU and that Members would be aware of the different views of the parties on this issue. In the US view, under the terms of the DSU, the EU's objection automatically resulted in the matter being referred to arbitration. Article 22.6 of the DSU did not refer to any decision by the DSB in this regard. Thus, there was no need at the present meeting for the DSB to take any further action or decision for this matter to be referred to arbitration. Nevertheless, the United States had no objection if the DSB wished to take note of the fact that this issue had been raised and confirmed that it may not consider the US request for authorization, which was the item on the Agenda of the present meeting, since the matter was being referred to arbitration. The United States noted that it would have been preferable had the EU objection been filed before the present meeting. The United States would then have been willing to withdraw its request in light of the referral of the matter to arbitration, and this meeting would have been cancelled. This was the procedure that had been followed by Japan and the United States in the "US - Zeroing" (DS322) dispute. Nonetheless, in light of the EU's objection at the present meeting, the United States recognized that the DSB could not take action on the US request for authorization to take countermeasures.

6. The representative of the European Union said that Members were aware that the EU and the United States did not agree on the interpretation of Article 22.6 of the DSU. The EU considered that this was a matter for the DSB. The agreed form of wording was designed to allow the process to move forward without prejudice to the views of either party on the correct interpretation of the DSU.

7. The DSB took note of the statements, and it was agreed that the matter raised by the European Union in its statement is referred to arbitration, as required by Article 22.6 of the DSU.