WORLD TRADE ORGANIZATION

RESTRICTED

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27 June 2006

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Dispute Settlement Body
9 June 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 9 June 2006

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

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1. European Communities – Anti-dumping measure on farmed salmon from Norway

(a) Request for the establishment of a panel by Norway (WT/DS337/2)

1. The Chairman drew attention to the communication from Norway contained in document WT/DS337/2, and invited the representative of Norway to speak.

2. The representative of Norway said that on 17 March and again on 27 March 2006, Norway had requested consultations with regard to the EC's definitive anti-dumping measures imposed on farmed salmon from Norway. On 12 May 2006, Norway had held consultations with the EC under Article 4 of the DSU regarding this matter. However, these consultations had not brought about a solution, which would be satisfactory to Norway. It was worth noting that, before seeking these formal consultations, Norway had held informal consultations with the EC over an extended period of time, with a number of bilateral meetings. These informal consultations had also been unable to secure a mutually satisfactory solution to this dispute. Consequently, on 29 May 2006, Norway had submitted a request for the establishment of a panel with regard to the anti-dumping measures imposed by the EC, which had been circulated in document WT/DS337/2, and had requested that a special DSB meeting be held to establish a panel to examine this matter.

3. He said that adjusting to increased international competition was part of the day-to-day challenges faced by enterprises throughout the world in a system of liberalized international trade. However, it had long been evident that some Irish and UK producers of salmon had been unwilling or unable to adapt to the competitive environment of salmon farming. There had long been a need for structural changes to this part of the industry in the EC, where necessary changes had not taken place to the extent needed. Consequently, the part of the industry which continued to seek trade protection

was highly inefficient. The productivity figures were striking in this respect: in 2004, Norway's salmon industry had produced 347 tonnes per worker while the whole Scottish industry had produced 136 tonnes per worker. The domestic industry, as defined by the EC, had produced 82 tonnes per worker. Thus, in this instance, Norwegian salmon farmers were almost five times as efficient as the domestic industry.

4. He then further noted that the domestic industry supporting and cooperating in this case had produced 18,000 tonnes of salmon. The entire salmon industry in the UK and Ireland had produced 173,000 tonnes in 2004. In essence, the domestic industry represented, in real terms, about 10 per cent of the total production in the UK and Ireland. This share had been steadily declining as most EC producers had adapted to market realities and had become more competitive. Rather than adapting to competition, a minority of EC producers had preferred to clamour for restrictions on trade. The EC had repeatedly imposed restrictions on imports in one form or another (including anti-dumping and countervailing duty measures, and safeguards). For nearly 20 years, hardly a year had gone by without some kind of restrictions in place. The EC industry could have made use of this situation of near constant protection to restructure or to put into place measures to become more efficient. Instead, the minority that he referred to, had apparently come to rely heavily on protection instead of undertaking necessary structural changes.

5. He recalled that Norway had requested consultations against the EC's safeguards measures on imports of farmed salmon in 2005. He further recalled that consultations had also been requested by Chile regarding the same matter. At that time, Norway had not requested a panel because the safeguards measures, which had been imposed in the fall of 2004, had been lifted in the spring of 2005. However, those measures, had then immediately been replaced by a provisional anti-dumping measure. Therefore, with the definitive anti-dumping measure now in place since January 2006, Norway was left with little choice but to bring the anti-dumping measure to a panel. Members might ponder the legality of switching from one form of trade restriction to another, forcing complainants to reargue the case under a different angle each time. While Norway was not claiming that the EC had improperly imposed a safeguard measure in the guise of an anti-dumping measure, it nevertheless recommended that Members consider the issue of how best to avoid such abuses in the future in the ongoing negotiations on Rules.

6. He said that Norway had identified a number of violations of the WTO Agreements in its request for the establishment of a panel. These related to almost all aspects of the anti-dumping investigation and determinations of the EC in this case. For the sake of brevity he would not repeat them at the present meeting, but would refer Members to the detailed description of the numerous violations contained in document WT/DS337/2. As set out in its request for the establishment of a panel, Norway was requesting that a panel be established at the present meeting to address the matter referred to in WT/DS337/2. Furthermore, Norway was requesting that the panel be established with standard terms of reference.

7. The representative of the European Communities said that the EC found it most regrettable to be faced, at the present meeting, with Norway's request for the establishment of a panel in this matter. First and foremost the EC did not believe that consultations, which were aimed at finding an amicable solution to this matter, had been fully exhausted. On 12 May 2006, the EC had sent to Geneva a large delegation to participate in those consultations, which comprised both case-handlers who had been involved in the anti-dumping investigation, as well as WTO experts. This clearly signalled the seriousness and good faith with which the EC had approached those consultations. The EC had also indicated its readiness to pursue a second round of consultations aimed at answering the remaining questions posed by Norway. However, Norway had replied to the EC in unclear terms and without directly addressing the proposal for further consultations. On the first working day following its unclear reply, Norway had submitted the request for a panel. It was regrettable that Norway appeared to be unduly rushing the matter, including by requesting a special DSB meeting for purposes of this

panel request. Needless to say, the EC continued to consider Norway's claims manifestly ill-founded as the EC acted in full consistency with the Anti-Dumping Agreement. The EC, therefore, could not accept Norway's request for the establishment of a panel on this matter.

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

2. Selection process for appointment of an Appellate Body member

(a) Statement by the Chairman

9. The Chairman, speaking under "Other Business", said that as all delegations were aware, there would be intensive negotiations among Members in the last week of June. In light of this and given that the members of the Selection Committee would be involved in those negotiations, it had become necessary to reschedule the interviews of candidates for appointment to the Appellate Body. These interviews would now take place on 10, 11 and 14 July. Subsequently, on 17 July, 19 July (afternoon) and 20 July, the Selection Committee would meet, upon request, with interested delegations who would wish to express any views concerning the candidates. Delegations wishing to do so were invited to contact Ms Margaret Kennedy of the Council and TNC Division to make an appointment. Alternatively, delegations may send their comments in writing addressed to the Chairman of the DSB, in care of the Council and TNC Division, by no later than 20 July. He said that he would send a fax regarding this matter to all delegations for transparency purposes. Finally, he noted that delegations wishing to meet with candidates were invited to contact directly the delegations of Australia, Benin, China, Ghana, Kenya, Mexico and South Africa to make appropriate arrangements.

The DSB took note of the statement.