WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/168
2 June 2004

(04-2335)

Dispute Settlement Body
26 April 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 26 April 2004

Chairperson: Ms Amina Mohamed (Kenya)

1. United States – Investigation of the International Trade Commission in softwood lumber from Canada

(a) Report of the Panel (WT/DS277/R)

1. The Chairperson recalled that at its meeting on 7 May 2003, the DSB had established a panel to examine the complaint by Canada. She said that the Report of the Panel, contained in WT/DS277/R, had been circulated on 22 March 2004 as an unrestricted document pursuant to the Procedures for the Circulation and Derestriction of WTO Documents contained in WT/L/452. The Panel Report was before the DSB for adoption at the present meeting at the request of Canada. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

2. The representative of Canada said that his country wished to thank the Panel and the Secretariat for their work in this matter. Canada welcomed the Report and the Panel's conclusion that the fundamental basis for the US International Trade Commission's determination was not consistent with the provisions of the Anti-Dumping and SCM Agreements. This decision confirmed Canada's long-standing position that countervailing and anti-dumping duties imposed by the United States on Canadian softwood lumber exports violated international trade rules. Canada urged the United States to bring its measures into conformity as soon as possible.

3. The representative of the United States said that her country was of course disappointed that the Panel had concluded that the USITC determination in this dispute was not consistent with certain Anti-Dumping and SCM Agreement obligations in its analysis and explanation. However, the Panel had reached a number of conclusions that the United States supported and that it wished to highlight. The United States noted first the Panel's careful discussion of standard of review in a dispute involving claims under both the Anti-Dumping Agreement and the SCM Agreement. In particular, the Panel had taken into account the Declaration of Ministers relating to dispute settlement under these Agreements, and had concluded that it "should seek to avoid inconsistent conclusions" under the two Agreements. Second, the United States welcomed the Panel's rejection of Canada's approach of arguing claims of a general nature simply by referring to its arguments on claims of a more specific nature. For instance, the United States welcomed the Panel's rejection of Canada's suggestion that facts demonstrating a violation of other articles of the Agreements necessarily demonstrated a violation of the "special care" provisions of Article 3.8 of the Anti-Dumping Agreement and Article 15.8 of the SCM Agreement. Third, the United States wished to underscore the Panel's rejection of Canada's argument that Article 3.7 of the Antidumping Agreement and Article 15.7 of the SCM Agreement required an investigating authority to identify a single or specific event as a change

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in circumstances that would cause a threat of injury to ripen into actual injury. Fourth, the United States noted with approval the Panel's confirmation that the word "consider" did not mean "make a finding", and thus, when an investigating authority was required to "consider" certain factors, it did not need to make explicit findings with respect to the factors considered. Fifth, the United States welcomed the Panel's finding that the ITC was not required to undertake a separate consideration of certain factors identified in the Anti-Dumping Agreement and the SCM Agreement in the context of its threat analysis, because it already had considered those factors in the context of its present injury analysis. Sixth, the United States welcomed the Panel's recognition that its review of an investigating authority's determination was based on the entirety of that determination and that not all analysis must be contained in the specific parts of the report dealing with particular issues. Seventh, the United States welcomed the Panel's rejection of Canada's argument that the ITC improperly combined in a single determination its analysis with respect to dumping and its analysis with respect to subsidized imports.

4. On the other hand, as mentioned at the outset, the United States was, of course, disappointed with the Panel's ultimate conclusion. The Panel's discussion of the evidence before the ITC and the ITC's analysis of that evidence seemed to focus on the threat analysis in the ITC's report as a stand-alone section, rather than the determination as a whole, as the Panel had earlier indicated was appropriate. While the United States disagreed with the Panel's ultimate conclusion, it believed that the practical significance of that factual conclusion was limited. For that reason, the United States had decided not to appeal.

5. The DSB took note of the statements and adopted the Panel Report contained in WT/DS277/R.