RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/2
21 April 1995

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DISPUTE SETTLEMENT BODY
29 March 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 29 March 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. Rules of Conduct (PC/R, paragraph 50)

The Chairman recalled that at the DSB meeting held on 10 February 1995 Mr. Trainor, on behalf of Mr. Armstrong (New Zealand), Chairman of the informal working group on the Rules of Conduct, had presented a progress report on the work done on Rules of Conduct.

Mr. Armstrong, Chairman of the informal working group on the Rules of Conduct presented a progress report and said that informal consultations on the Rules of Conduct for the DSU were continuing. Six meetings, open to all interested delegations, had been held since the DSB meeting on 10 February in order to further elaborate a text. Delegations recognized the need for rules which would reinforce the integrity of the dispute settlement process in a practical and focused manner. An interim revised text had been circulated on 24 February 1995 and he hoped to be able to bring forward a further updated and consolidated draft text in the near future. To that end, he had encouraged delegations to maintain close contacts with him.

The Chairman made an appeal to Members to bridge any remaining differences in this area quickly. A series of consultations had been held on the Rules of Conduct which were needed for the process of nominations of individuals on the indicative list of panelists and for the selection of Appellate Body members. He therefore urged Members to complete this work as quickly as possible as time was running out.

The Dispute Settlement Body took note of the statements.

2. Standing Appellate Body (PC/IPL/13)
   - Procedures for appointment of members of the Appellate Body
     - Statement by the Chairman

The Chairman recalled that at its meeting on 10 February 1995 the DSB agreed that suggestions for nominations to the Appellate Body should be submitted to the Secretariat by 24 March 1995. During informal consultations held on 15 March 1995 the above-mentioned deadline had been extended until Easter and delegations had been informed that the complete list containing the names of candidates for the Appellate Body would be circulated in due course.

During April and May 1995 pursuant to paragraph 13 of the guidelines for the establishment of the Appellate Body contained in document PC/IPL/13, the "Group of Six" i.e., the five Council Chairmen and the Director-General of the WTO, would be working on the appointment of members of the Appellate Body. The objective would be to have the "Group of Six" propose a slate of members to the Appellate Body during the month of May 1995. This process would involve extensive consultations with delegations. Views already expressed by delegations in December 1994 and at informal consultations held on 15 March 1995 on the criteria for the appointment of Members to the Appellate Body would be taken into account in the above-mentioned process. In this regard he invited delegations wishing to express further views to contact him directly. He recalled that it was agreed that governments should not sponsor candidates as such, but make "suggestions" only. The purpose of this was to allow a process of selection of names on the basis of personal and professional merit alone.

The Dispute Settlement Body took note of this statement.

3. Malaysia - Prohibition of imports of polyethylene and polypropylene
   - Request for the establishment of a Panel by Singapore under Article XXIII:2 of the GATT 1994 and Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (WT/DS1/2)

The Chairman drew attention to the communication from Singapore in document WT/DS1/2 which contained a request for the establishment of a panel to examine Malaysia's import restrictions on polyethylene and polypropylene.

The representative of Singapore recalled that the above-mentioned request had been preceded by two rounds of consultations in accordance with Article XXIII:1 of GATT 1994 and Article 4 of the Dispute Settlement Understanding (DSU). However, the Government of Singapore continued to be convinced that the import restrictions were inconsistent with Article XI and were not justified under Article XVIII:C because the requirements of the latter for prior notification, consultations and approval of the measures by the CONTRACTING PARTIES were not met. It also continued to be convinced that various notification, publication and information requirements under GATT law and under the WTO Agreement on Import Licensing Procedures had not been complied with.[1] Article 6 of the DSU gave Singapore the right to request the establishment of a panel at the latest at the DSB meeting following the present meeting. The Government of Singapore had decided to make use of this right at a special meeting of the DSB to be convened within fifteen days from the date of the present meeting, or at any meeting of the DSB that might take place before then.

Malaysia had informed Singapore only this past week, on a bilateral basis, that its Government had decided to "continue with the import licensing measure pertaining to polypropylene (HS 39902.10.300 and 3902.30.000) and polyethylene (HS 3901.10.000 and 3901.20.000). However, the existing import licensing procedure would be modified to that of automatic licensing whereby approved permits would be issued freely irrespective of the grade and quantum to be imported. This new mechanism was necessary for purposes of close monitoring of imports of both items and would be reviewed in April 1996." Unfortunately, Singapore's request for consultations on the new measures prior to the present meeting had been turned down by Malaysia. Singapore was still seeking information as to whether the existing import restrictions had actually been terminated, when the new measures would enter into force, whether they would be GATT-consistent and comply with the obligations under the Agreement on Import Licensing Procedures for automatic licensing. Malaysia had invoked Article XVIII:C to justify its otherwise GATT-inconsistent measure. As Malaysia had not revoked its notification, it must be assumed that it still felt it needed this cover and had therefore not switched to a GATT-consistent measure. Singapore had therefore to proceed on the understanding that the original import prohibition scheme had not been removed. He recalled that the existing import restrictions had been introduced more than a year ago without prior notification or consultation, and in clear violation of Malaysia's obligations under the GATT. Singapore had suffered considerable trade damage as a result of these illegal import restrictions. Until these restrictions had actually been abolished, the Government of Singapore could not renounce its right to have these import restrictions examined by a panel. Hence, Singapore requested the establishment of a panel at the latest at the DSB meeting following the present meeting with the following standard terms of reference:

> "To examine, in the light of the relevant provisions in the GATT 1994, in the 1994 Agreement on Import Licensing Procedures and in the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance as confirmed by the 1994 WTO Agreement and WTO Decision on Notification Procedures, the matter referred to the DSB by Singapore in documents WT/DS1/1 and 2 and in its statement today and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."

The representative of Malaysia informed the DSB that there had been new developments with regard to the import licensing measure but his country would not object to the establishment of a panel requested by Singapore. The Government of Malaysia had decided to maintain the import licensing measure. However, the existing licensing procedures would be modified to that of automatic licensing whereby import permits would be issued freely. This automatic licensing mechanism was necessary for the purposes of close monitoring of imports of both items. The decision of 22 March 1995 had

[1]For further details of this complaint see documents WT/DS1/1 and 2.

been communicated officially to Singapore on 23 March 1995. Malaysia had not turned down Singapore's request for a bilateral consultation but had proposed the date of 11 April 1995 for such a consultation. The Article XVIII:C notification was a separate issue and would be dealt with at an appropriate time in the appropriate fora. The terms of reference contained in document WT/DS1/2 were not clear. However, Malaysia accepted the clarification put forward by Singapore at the present meeting. The proposed standard terms of reference should be basis for further consultation.

The representative of Singapore was pleased to learn from Malaysia that the import restrictions on polyethylene and polypropylene had been terminated. However, under the Agreement on Import Licensing Procedures, automatic import licensing was consistent with GATT/WTO rules only under certain conditions. For instance, Article 1 required publication of the rules and all information concerning such procedures; Article 2 required that "automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing"; and Article 5 required notification of all import licensing procedures. Despite its requests for consultations to clarify these matters, Singapore thus far had not received any information from Malaysia that it had complied with these obligations under the Import Licensing Agreement. Therefore, Singapore maintained its request for a panel to examine Malaysia's import licensing procedures until one could be sure that Malaysia had met all its obligations under GATT and the Import Licensing Agreement.

The representative of the United States noted the complicated procedural questions raised in the request for establishment of a panel, since Malaysia had revoked the measure that had been the subject of consultations over the past sixty days and had replaced it with a different measure that had not yet been a subject of consultations. The United States reiterated its concern about the measure that had allegedly been revoked and stated that if a panel were to be established, the United States would want to participate in that panel process as an interested third party.

The representative of Japan said that his Government had a substantial interest in this issue and wished to have further information on this matter. He hoped that the latest information concerning this matter would be submitted to the DSB as well as to other bodies.

The Chairman said that, as indicated by the United States, certain questions of procedure were involved in the discussion on the above-mentioned subject. However, the question of procedure was clear when one looked at what had been said by both parties to this dispute. Singapore was exercising its rights at the present meeting under Article 6 of the DSU which provided the complaining party with the option of seeking the establishment of a panel, at the latest, at the DSB meeting following that at which the request first appeared as an item on a DSB agenda. Since certain changes had been announced by Malaysia, Singapore and others were interested in further clarification of the details of those measures. It was clear that Singapore's intention was to revert to this issue at a further meeting to be set within fifteen days of the present meeting.

The representative of Malaysia said that his delegation had been informed by its authorities that the import licensing measure had been implemented effective 23 March 1995. Malaysia was fully cognizant of the requirement on transparency and the provisions of the Licensing Agreement and would be taking appropriate steps to submit the relevant details on the modified procedures of the import licensing mechanism.[2]

The Dispute Settlement Body took note of the statements and agreed to revert to this matter at its next meeting.

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[2]Information concerning the modified procedures of the import licensing mechanism was recently provided by Malaysia in document WT/DS1/3.

4. Arrangements for programming meetings of the Dispute Settlement Body
- Announcement by the Chairman

The Chairman recalled that the DSU required that the Dispute Settlement Body remain on call throughout the year. However, for practical reasons and to ensure a minimum degree of predictability and order in the work of the DSB, as foreshadowed in the informal consultations held on 15 March, he proposed the following schedule for regular meetings of the DSB in 1995 which, of course, would remain subject to change if required: 25 April 1995; 31 May 1995; 19 July 1995; 27 September 1995; 9 November 1995; 19 December 1995.

Special meetings of the DSB might be convened at the request of a member in accordance with the relevant provisions of the DSU and its additional and special rules, provided that at least ten days advance notice of the meeting would be given.

The Dispute Settlement Body took note of this information.

5. United States - Standards for Reformulated and Conventional Gasoline
- Request by Venezuela to convene a meeting for the purpose of the establishment of a panel (WT/DS2/2)
- Announcement by the Chairman

The Chairman drew attention to the communication by Venezuela contained in document WT/DS2/2 wherein Venezuela was requesting a meeting for the purpose of the establishment of a panel, in accordance with the footnote 5 of Article 6 of the DSU. To this effect, a special meeting of the Dispute Settlement Body would have to be convened within fifteen days. He proposed that the meeting be held on Monday, 10 April 1995 at 10 a.m. He then referred to the discussion concerning item 3 of the agenda of the present meeting and said that Singapore's request for the establishment of a panel would also be considered by the DSB at its next meeting to be held on 10 April 1995.

The representative of Brazil said that at the DSB meeting on 10 February 1995 his delegation had expressed its interest in this matter. The United States' regulation on conventional and reformulated gasoline was being examined in detail by his authorities. The Government of Brazil was presently considering a request for consultations with the United States on this matter. A decision to this effect was about to be formally taken and would be duly notified to the DSB as well as to the relevant Councils and Committees in accordance with Article 4.4 of the DSU.

The Chairman said that in light of the established schedule of regular meetings of the DSB and consistent with the rights of the DSB members one could work to the fullest extent possible within that slate of regular meetings. This would provide maximum flexibility and prior organization of the work of the DSB. It would also facilitate meeting commitments of DSB members and would prevent undue proliferation of DSB meetings. He therefore urged Members to try to work as much as possible within the time-frame of the agreed slate of meetings.

The Dispute Settlement Body took note of the statements.

6. Indicative list of governmental and nongovernmental panelists
- Announcement by the Chairman

The Chairman, speaking under "Other Business", informed the Dispute Settlement Body that he had recently held informal consultations on the administration of the indicative list of governmental

and non-governmental panelists. In the light of these consultations the Secretariat was now preparing a document containing suggestions put forward by delegations on this matter which would subsequently be circulated to Members for comments.

The Dispute Settlement Body took note of this information.

7. "Date of circulation" in the DSU and its additional and special rules
- Announcement by the Chairman

The Chairman, speaking under "Other Business" informed the Dispute Settlement Body that he had recently held informal consultations on the meaning of "date of circulation" as referred to in the DSU and its additional and special rules. At the consultations held on 24 March 1995 he had proposed that when there was a reference to the terms "date of circulation" or "issuance to all Members" or "issuance to the Members" in the DSU and its additional and special rules, the date to be used would be the date printed on the WTO document to be circulated with the assurance of the Secretariat that the date printed on the document was the date on which this document was effectively put in the pigeon holes of delegations in all three working languages. It had been agreed on 24 March 1995 that this practice would be used on a trial basis and be subject to revision when necessary.

The Dispute Settlement Body took note of this information.