WORLD TRADE ORGANIZATION

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Dispute Settlement Body
5 July 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 5 July 2000

Chairman: Mr. Stuart Harbinson (Hong Kong, China)

1. United States - Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom

(a) Implementation of the recommendations of the DSB

1. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that on 7 June 2000, the DSB had adopted the Appellate Body Report on "United States - Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" and the Panel Report on the same matter to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2. The representative of the United States said that at the 7 June DSB meeting, the United States had explained why it disagreed with the Reports of the Appellate Body and the Panel in this case. The US substantive concerns, including its concern about the standard of review issue - which had to be addressed elsewhere - were well-known. Therefore, at the present meeting, the United States did not wish to engage in a further debate of the substantive issues in this case. Instead, given that the Reports had been adopted, the United States had an obligation under Article 21.3 of the DSU to inform the DSB of its intentions with respect to the implementation of the DSB's recommendations and rulings. She was pleased to inform Members that not only did the United States intend to implement the DSB's recommendations and rulings, but that it had already done so. As identified by the Panel and the Appellate Body, the measures at issue in this dispute were the countervailing duties imposed in the context of three successive administrative reviews of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom (UK Lead Bar). She recalled that the DSB had recommended that the United States bring these measures into conformity with its obligations under the Agreement on Subsidies and Countervailing Measures (SCM).

3. While the dispute was pending, on 15 November 1999, the U.S. Department of Commerce had revoked the countervailing duty order on UK Lead Bar under its "sunset" procedures, the domestic industry having not expressed an interest in continuing the order. The revocation had become effective by operation of law on 1 January 2000. Thereafter, on 14 March 2000, the US Department of Commerce had issued the final results of a "changed circumstances" review in

which it had made the revocation of the UK Lead Bar order retroactive to 1 January 1995 and had rescinded the ongoing countervailing duty administrative reviews covering the following periods: 1 March 1998 through 28 February 1999 and 1 January 1998 through 31 December 1998, respectively. In light of these actions by the US Department of Commerce, the United States had implemented the DSB's recommendations and rulings in this dispute. Accordingly, the matter before the DSB had been concluded, and should no longer appear on the DSB's agenda.

4. The representative of the European Communities said that the EC welcomed the adoption of the Reports of the Panel and the Appellate Body, which had condemned the current US "change of ownership" methodology in countervailing cases. This approach, which had long been criticized by the EC and other Members, and which had been condemned by a GATT panel in 1993, had now been shown to be in breach of the SCM Agreement. The EC considered that this result was not only relevant for the UK Lead Bar case. The Community exporters were subject to about 20 countervailing duty orders in cases which involved a change of ownership. Most of these measures had been in force for a number of years, and all had been taken on the basis of the methodology which had been condemned in the UK Lead Bar case. As the EC had stated at the 7 June DSB meeting, it was now up to the United States not only to change its countervailing duty law and practice to remove its discredited change of ownership methodology but also, as a separate matter, to take immediate action to remedy these unjustified barriers to trade, in conformity with the Appellate Body's findings.

5. As the EC had already stated, one case could be dealt with immediately. Although the United States had terminated the lead and bismuth steel from the UK measures, there was an outstanding countervailing duty order on cut-to-length carbon steel plate from the United Kingdom. The company involved was the same as the one subject to measures in the UK Lead Bar case - British Steel plc. Both the alleged subsidies and the circumstances of the privatization were the same. On the basis of the Appellate Body's findings, British Steel plc (now Corus) had received no subsidy. Therefore, it should not be subject to countervailing duties. The United States should terminate this proceeding immediately.

6. With regard to the outstanding countervailing duty orders on other privatized companies in the EU, there was very little dispute about what constituted fair market value. In several cases, the United States had already concluded that privatizations were carried out under such conditions. In none of these cases had the United States actually examined the benefit to the firms concerned, nor had it taken account of the nature of the privatization. In the light of the Appellate Body's Report, this was a flagrant error which had violated the SCM Agreement. In the light of the changed circumstances created by the Appellate Body's finding, the United States should take prompt action to remedy this violation in each case.

7. The United States would have to change both its countervailing duty law and practice to ensure that its methodology used in the Lead Bar case could not be repeated in the future. Any such a change should fully reflect the findings of the Appellate Body: i.e. that a privatization at fair market value eliminated prior subsidies. The EC looked forward to constructive proposals from the United States in the framework of its implementation of the ruling.

8. The representative of the United States emphasized that the UK Lead Bar case presented a unique set of facts and the Appellate Body had been careful to note that its analysis was limited to the circumstances of that case. With regard to the issue concerning a change of ownership methodology, the US Department of Commerce was currently considering the implications of the Appellate Body Report as well as recent developments in US domestic law concerning this issue.

9. The representative of Brazil said that when the Panel and Appellate Body Reports had been adopted at the 7 June DSB meeting, Brazil had expressed its interest in the way the United States was

planning to implement the findings and recommendations of the Reports. Like the privatizations in the dispute at hand, Brazil had privatized all of its flat-rolled steel producers in the early 1990s. Like the British Steel privatization, Brazil's privatization had resulted in arm's-length fair value sales of the shares of these companies to private owners. In the US proceedings involving both British Steel and the Brazilian mills, the US Department of Commerce had found no reason to question the arm's-length, fair value nature of the privatization transactions. While the privatization of British Steel had resulted from a combination of asset sales and share sales, the Brazilian mills had been privatized entirely by sales of shares in the companies; a process that ensured the highest possible degree of transparency and market responsiveness. Consequently, the findings and recommendations of the Panel and Appellate Body applied in full force to the US Department of Commerce's analysis of the privatizations of the Brazilian steel mills. There simply were no meaningful factual or legal distinctions between the privatizations of the Brazilian mills and the privatizations at issue. The only consequential distinction between the privatizations at issue and the Brazilian privatizations of its flat-rolled mills, was that Brazil had not yet requested consultations or a panel to address the treatment by the US Department of Commerce of the Brazilian privatizations in its countervailing duty proceedings.

10. Brazil was, therefore, surprised and disappointed about the US statement. The United States was fully aware that the imposition of countervailing duties on imports from the privatized Brazilian mills was a practice that squarely violated the SCM Agreement. The Reports adopted on 7 June 2000 left no margin for doubts. The United States was also fully aware of the amount of time and resources required by a new dispute, even if the complaining party was sure that it was litigating a clear "winner". As a developing country, Brazil would deeply regret if Members were to impose such a burden on other parties for whatever alleged reasons. Brazil hoped that the United States had not yet exhausted its implementation measures with the steps announced at the present meeting, and that it would proceed to adjust its countervailing practices in order to conform to the DSB's recommendations. He requested clarification from the United States as to whether its authorities would look into similar cases where privatized companies were being subject to the imposition of countervailing duties on the grounds that pre-privatization subsidies were "passed on" to the "new owners" of the company. He also requested that the United States provide information on the time-frames of the review of its practice and legislation.

11. The representative of the United States said that the concerns raised by delegations at the present meeting would be conveyed to capital. On a preliminary basis, she wished to respond to the question raised by Brazil. She underlined that the purpose of the present meeting was for the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations in the UK Lead Bar case. Therefore, the United States was only prepared to discuss the measures affecting that particular UK Lead Bar case with regard to which it had fulfilled its obligations. She added that the United States had been informed that the US Department of Commerce was looking into the questions involving the change of ownership methodology and that there were some outstanding countervailing duty orders. The United States would always be glad to discuss with its trading partners, in particular with Brazil, any concerns they might have.

12. The DSB took note of the statements and of the information provided by the United States with respect to implementation of the DSB's recommendations in this case.