WORLD TRADE ORGANIZATION

RESTRICTED

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14 March 2012

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Dispute Settlement Body
5 January 2012

MINUTES OF MEETING

Held in the Centre William Rappard
on 5 January 2012

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. United States – Certain country of origin labelling (COOL) requirements

(a) Joint request by Canada and the United States for a decision by the DSB (WT/DS384/11)

(b) Joint request by Mexico and the United States for a decision by the DSB (WT/DS386/10)

1. The Chairperson proposed that the two sub-items to which he had just referred be considered together. He said that first he wished to draw attention to the joint communication from Canada and the United States contained in document WT/DS384/11 and invited the representative of Canada to speak.

2. The representative of Canada recalled that in the case of many panel reports circulated over the past year, the DSB had been asked to extend the deadline for adoption or appeal to allow the Appellate Body to clear its backlog and better manage its workload. As in other cases before, the parties to the disputes in "US - COOL" had been asked to make a similar request to extend the deadline for adoption or appeal. While Canada would have preferred to see this dispute move forward to resolution as quickly as possible, it acknowledged the current strain on the Appellate Body's resources and took seriously its responsibility to cooperate to alleviate that strain. Therefore, after consultations between Canada, Mexico and the United States, the parties had agreed to jointly request that the DSB adopt a decision at the present meeting to extend the deadline for adoption or appeal of the Reports in the "US - COOL" dispute until no later than 23 March 2012. To that end, Canada and the United States had submitted a draft text for the DSB's consideration and a similar decision was being proposed by Mexico and the United States in their parallel dispute. Canada hoped that it could count on the support of all Members to have the DSB adopt these decisions at the present meeting and, in doing so, continue its cooperative efforts to assist the Appellate Body in managing its workload.

3. Canada wished to take the opportunity to echo the views expressed by many other Members before, that while there had been several such decisions in recent months, those decisions were − and must remain − exceptional in nature. These extension decisions were only a response to the circumstances in which the Appellate Body found itself in the past year which had, for a variety of reasons, made it difficult to adhere to the timelines. However, Canada understood that this period of mismatch, between the demand on the Appellate Body's time and the resources available to it, was coming to an end. In fact, it may even be the last time that the DSB would be asked to take this kind of decision, at least for the foreseeable future. Should that be the case, Canada would be pleased to see a return to the normal time lines provided for in the DSU, and to the promise in the DSU of the "prompt settlement" of disputes. However, if that ultimately would turn out not to be the case, it may become necessary to consider a more systemic discussion of this issue − rather than the case-by-case approach that had been taken thus far − with a view to finding a more sustainable solution to the issue of the WTO dispute settlement system's ability to meet the time-lines provided for in the DSU provisions. In the meantime, Canada appreciated the support of all delegations in having the DSB adopt the two extension decisions before it at the present meeting.

4. Subsequently, the Chairperson drew attention to the joint communication from Mexico and the United States contained in document WT/DS386/10 and invited the representative of Mexico to speak.

5. The representative of Mexico said that, taking into account the current workload of the Appellate Body, Mexico and the United States wished to request that, as stated in their joint communication, the DSB adopt the decision with respect to the dispute: "United States – Certain Country of Origin Labelling (COOL) Requirements" (DS386). Mexico considered that the draft DSB decision, if adopted, would provide greater flexibility in scheduling any possible appeal of the Panel Report in this dispute, which had been circulated on 18 November 2011. Mexico had agreed with the United States to make this joint request due to the Appellate Body's current workload. Mexico would have preferred to have had the regular time-table for this dispute, but was ready to cooperate with this special situation regarding the Appellate Body's workload. Therefore, Mexico requested to extend the set deadline to no later than 23 March 2012, as was the case with Canada.

6. The representative of the United States said that his country was joining Canada and Mexico in asking that the DSB agree to provide additional time for adoption or appeal of the Panel Reports in these disputes by adopting the draft decision set forth in document WT/DS384/11 and the draft decision in document WT/DS386/10. The Appellate Body had informally requested the parties to delay any appeal in these disputes to allow it to better manage its current workload and complete pending appeals from 2011. As Canada and Mexico had expressed, and as had been stated at several previous DSB meetings, the United States viewed such DSB decisions as exceptional in nature and taken in response to the unusual circumstances faced by the Appellate Body and WTO Members presently. After discussions with Canada and Mexico, the United States had agreed to join in making these requests. The draft decisions would provide for DSB adoption of the Panel Reports by negative consensus no later than 23 March 2012. The United States therefore would appreciate the DSB's support for the draft decisions.

7. The representative of Japan said that his country wished to refer to Japan's statements made at the previous DSB meetings held on 21 April, 27 September, 1 November and 19 December 2011, when the DSB had taken similar decisions regarding the 60-day time period provided for in Article 16.4 of the DSU. Japan wished to emphasize again that: (i) the decision at the present meeting would give greater transparency, flexibility and certainty as to the procedures for adoption and appeals of the panel reports subject to the decision; and that (ii) the circumstances to be addressed by the DSB's decision at the present meeting were exceptional in nature, as the parties in this dispute had emphasized. Finally, he said that a decision of this kind must remain as an exception.

8. The DSB took note of the statements.

9. The Chairperson proposed that: "The DSB agree that, upon a request by Canada or the United States, the DSB shall, no later than 23 March 2012, adopt the Report of the Panel in the dispute: *United States – Certain Country of Origin Labelling (COOL) Requirements*, contained in document WT/DS384/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."

10. The DSB so agreed.

11. The Chairperson also proposed that: "The DSB agree that, upon a request by Mexico or the United States, the DSB shall, no later than 23 March 2012, adopt the Report of the Panel in the dispute: *United States – Certain Country of Origin Labelling (COOL) Requirements*, contained in document WT/DS386/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."

12. The DSB so agreed.