WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/204
24 February 2006

(06-0804)

Dispute Settlement Body
2 February 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 2 February 2006

Chairman: Mr. Eirik Glenne (Norway)

1. United States – Measures affecting trade in large civil aircraft

(a) Request for the establishment of a panel by the European Communities (WT/DS317/5)

1. The Chairman drew attention to the communication from the European Communities contained in document WT/DS317/5, and invited the representative of the European Communities to speak.

2. The representative of the European Communities said that his delegation would keep its statement brief since the EC's communication to the DSB spoke for itself. He said that the EC had requested the meeting of the DSB to prepare the ground for resolving a number of procedural imbroglios that had arisen in this dispute in good faith and with a view to reaching an effective and positive solution of this dispute. During the Annex V process the United States had refused to provide information, *inter alia*, on 13 US programmes stating that they had not been explicitly listed in the EC's initial consultation request. Unlike the EC which had filed a request for a preliminary ruling in DS316 on 26 October 2005, also concerning measures which were outside the scope of the proceeding, the United States had refused to do so in DS317. In view of the US inaction to clarify the scope of the panel proceeding in DS317, the EC had requested, on 23 November 2005, the Panel to invite the United States to make a preliminary ruling request before the completion of the Annex V process, or take any other decision with equivalent effect. The Panel had not issued such a decision. The final working procedures only required the United States to make a preliminary ruling request at the latest at the time of their first submission.

3. This situation of procedural limbo needed to be resolved quickly, since the US non-cooperation deprived the EC of access to documents essential to its case, in particular regarding NASA and the Department of Defense Subsidies. The United States had submitted a supplementary consultation request in DS316 on 31 January 2006, which had largely the same purpose as the EC request; i.e. to explicitly list measures which were contained in the US panel request, but not in the US consultation request. The additional panel request was without prejudice to the EC's view that all measures identified in the initial request for the establishment of the panel were properly before the Panel. However, the EC was faced with a situation where disagreement on this issue had led to non-cooperation by the other party in the Annex V process, and this needed to be addressed. The EC had a very clear view on who should have acted in the first place to clarify any procedural uncertainties and who was responsible for the procedural limbo in this case. Finally, he said that the EC and the United States had already started discussions on how to efficiently follow up on this request. The EC

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was willing to fully engage in this endeavour in good faith with a view to reaching a pragmatic and positive solution to this dispute.

4. The representative of the United States said that as Members recalled there was a long history to this dispute, which was a challenge that the EC had brought in response to the US challenge to the EC's subsidies to Airbus. The DSB had first considered an EC panel request on 13 June 2005. At that meeting, the United States had pointed out numerous procedural defects in the EC's panel request, including that the panel request covered 13 alleged subsidies that had not been covered in the consultations. A simple side-by-side comparison of the original consultation and panel requests made this difference clear. Accordingly, the EC had been on notice for months about the deficiencies in its panel request. The United States appreciated that at the present meeting the EC was taking steps to address the concerns that the United States had raised in June 2005. The United States hoped to work with the EC so that this new panel request would result in simplifying some of the procedural issues involved in the dispute. At the same time, there was some overlap between the claims raised in this panel request and those that were properly before the Panel that had previously been established.

5. The overlap between the present request and the EC's earlier panel request raised some procedural questions. The United States and the EC had both recognized this point. The United States had had productive discussions with the EC about how to address those questions, but those discussions had not yet reached a conclusion. In light of these considerations, the United States was not in a position to accept the establishment of a panel at the present meeting. His delegation also wished to take this opportunity to note that the EC's panel request, once again, cited several measures that had not been cited in the June 27 consultation request, such as measures taken by the State of Kansas, as well as certain projects of the Department of Commerce.

6. At the present meeting, his delegation also wished to take a moment to react to two things that the EC had just mentioned. First, the EC had referred to a consultation request that had recently been filed and his delegation thought that it would wish to take some opportunity to discuss that in the future with the EC in the first place. He would not wish, since this matter was not on the agenda of the present meeting, to comment on the characterizations that the EC had ascribed to that consultation request. Second, he noted that the EC had stated that the United States had failed to cooperate in the Annex V process and with that the United States had to differ. He said that the United States had cooperated fully in the Annex V process. Over the course of three months, the United States had submitted more than 40,000 pages of documents and 360 pages of narrative responses to questions directed to it. By comparison, in the dispute brought against the United States, the EC had submitted far less than half this much material.

7. The representative of the European Communities said that the EC understood the reason for the United States to request a delay and trusted that the time would be put to good use in order to reach a pragmatic and positive solution.

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