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**Dispute Settlement Body**
**1 March 2001**

## MINUTES OF MEETING

Held in the Centre William Rappard
on 1 March 2001

*Chairman: Mr. R. Farrell (New Zealand)*

Subjects discussed: Page


**1. United States – Anti-dumping measures on stainless steel plate in coils and stainless steel sheet and strip from Korea ..... 1**

(a) Implementation of the recommendations of the DSB ..... 1

**2. Canada – Measures affecting the importation of milk and the exportation of dairy products ..... 2**

(a) Recourse to Article 21.5 of the DSU by the United States ..... 2

(b) Recourse to Article 21.5 of the DSU by New Zealand ..... 2

**3. Canada – Measures affecting the importation of milk and the exportation of dairy products ..... 5**

(a) Recourse to Article 22.2 of the DSU by the United States ..... 5

(b) Recourse to Article 22.2 of the DSU by New Zealand ..... 5

**4. Timing of notification of third-party interest in panel proceedings ..... 6**


### 1. United States – Anti-dumping measures on stainless steel plate in coils and stainless steel sheet and strip from Korea

(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 under surveillance the implementation of recommendations and rulings of the DSB in order to ensure the 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 date of 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 at its meeting on 1 February 2001, the DSB had adopted the Panel Report on "United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea". He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations in this case.

2. The representative of the United States said that her country intended to implement the DSB's recommendations and rulings in a manner which respected its WTO obligations. However, the United States would need a reasonable period of time for implementation and was ready to consult with Korea on this matter.

3. The representative of Korea said that his country welcomed the intention of the United States to fully comply with its WTO obligations. At the same time, Korea wished to reiterate its statement made at the 1 February DSB meeting in the context of the adoption of the Panel Report. In Korea's view the problems in this case derived not from US laws or regulations *per se*, but from the manner in which those laws and regulations were being applied. Therefore, the errors identified by the Panel could be corrected by minor changes in the calculating methodology and by implementing them in the calculated results through a revised determination of dumping. Korea believed that the implementation in this case could be accomplished promptly and in a manner that fully respected the Panel's findings. His country looked forward to early consultations with the United States regarding the manner and the time-frame in which the United States intended to implement the DSB's rulings. He noted that Canada had requested consultations with the United States with regard to the manner in which the US was implementing the DSB's rulings regarding its anti-dumping or countervailing duties (WT/DS221/1). Korea believed that Canada's request was relevant to the US implementation of the DSB's recommendations in this case and would closely follow any developments in this regard.

4. The representative of the European Communities said that the Panel Report pertaining to this case had dealt with important systemic and legal issues and had contributed to further clarification of the provisions of the Anti-Dumping Agreement. The EC had participated as a third-party in this case and was interested in faithful and timely implementation of the DSB's recommendations.

5. The DSB took note of the statements and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

## 2. Canada – Measures affecting the importation of milk and the exportation of dairy products

(a) Recourse to Article 21.5 of the DSU by the United States (WT/DS103/16)

(b) Recourse to Article 21.5 of the DSU by New Zealand (WT/DS113/16)

6. The Chairman proposed that the two sub-items be considered together since they pertained to the same matter. First, he drew attention to the communication from the United States contained in document WT/DS103/16.

7. The representative of the United States said that despite concerted efforts over the past several months, the United States and Canada had been unable to bridge their differences of views regarding the WTO consistency of Canada's measures taken to comply with the DSB's recommendations and rulings in this case. Those efforts had culminated in additional consultations on 9 February 2001, as required under the bilateral agreement between Canada and the United States, but unfortunately no progress had been made. In the US view, Canada had not brought its export regime for dairy products into compliance with its export subsidy obligations under the Agreement on Agriculture. Instead, Canada appeared to continue to export subsidized dairy products at a rate that was inconsistent with its export subsidy reduction commitments. As a result, the United States was requesting that a panel be established pursuant to Article 21.5 of the DSU to examine the provincial and other export measures introduced by Canada in the year of 2000.

8. She underlined that the question of whether Canada's new measures constituted an export subsidy had implications that went far beyond trade in dairy products. Canada's new measures left the

most fundamental aspects of the programmes found to constitute export subsidies unchanged. However, Canada had indicated that it would not count such exports as part of its export subsidy commitments. All of the substantive elements of the prior export subsidy regimes in Canada were encompassed in the new measures. Under both the previous export subsidies and the new measures milk at discounted prices was still provided only to exporters. Indeed, prohibitive penalties existed to prevent any discounted milk or products made from such milk from entering the Canadian market. Most importantly, this exclusion of discounted milk from the Canadian market was accomplished through government action. Canada's actions threatened to jeopardize one of the most critical objectives of the Agreement on Agriculture, the reduction of export subsidies. The degree of Canada's circumvention was evident in the fact that Canada had not fulfilled its export subsidy commitment for the dairy sector for any year of the implementation period, now in its final year. Moreover, with the recent introduction of the new export measures, it was likely that the implementation period would expire without compliance by Canada. To preserve the integrity of the export subsidy reduction obligations for agriculture, the United States requested that a panel be established under Article 21.5 of the DSU to examine the consistency of Canada's provincial export schemes with its obligations under the Agreement on Agriculture.

9. The Chairman drew attention to the communication from New Zealand contained in document WT/DS113/16.

10. The representative of New Zealand recalled that, on 27 October 1999, the DSB had adopted the recommendations and rulings in this case. As had been found in this case, Canada was exporting subsidised dairy products in breach of its export subsidy reduction commitments under the Agreement on Agriculture and the DSB had recommended that Canada bring its measures into conformity with the Agreement. The staged process for the implementation of the DSB's rulings was to be completed by 31 January, 2001. Canada maintained that it was now in full compliance. New Zealand disagreed with this position. Over the past year, Canada had put in place new measures which were designed to continue the exportation of dairy products at levels in excess of export subsidy commitment levels. These mechanisms, established by Canada's federal and provincial governments, producers and processors, appeared to be aimed at minimizing the appearance of government involvement and overlaying a veneer of market-orientation so as to suggest that illegal export subsidy elements had been removed in the new schemes. However, in proceeding in this way, New Zealand believed that Canada had focused on form rather than substance and had failed to implement the relevant DSB's rulings. It had done nothing about the fundamental problem that processors were provided access to milk at prices lower than those otherwise available on the domestic market contingent upon the export of products manufactured from that milk. Canada had stated that it would not count the resulting exports against its subsidy reduction commitments. New Zealand considered that these schemes, no less than their predecessors, constituted a "transfer of economic resources" to processors for export that were inconsistent with Canada's obligations under Articles 3.3, 8, 9.1(a), 9.1(c), 10.1 and 10.3 of the Agreement on Agriculture. Despite extensive consultations with Canada over the past year, most recently on 9 February 2001, it had not been possible to resolve the differences of view over these schemes. Accordingly, New Zealand was requesting that, in accordance with Article 21.5 of the DSU, the matter be referred to the original panel, if possible, for examination.

11. The representative of Canada said that his country was disappointed that the United States and New Zealand had decided to request a compliance panel to examine the issue of Canada's implementation in this case. Canada had implemented fully the DSB's recommendations and rulings. As previously explained in the DSB, Canada had met with the United States and New Zealand several times over the past year to explain the modalities of its implementation. In these consultations, Canada had provided both countries with detailed information demonstrating how it would bring its measures into compliance by the deadline of 31 January 2001. He underlined that Canada had met that deadline and had also implemented the DSB's recommendations in a highly transparent manner. As explained in previous status reports, the Canadian government had removed itself from export

activities in the dairy industry so that exports from Canada were now concluded pursuant to market-based transactions. Federal and provincial regulatory changes had been implemented to ensure that sales of milk by individual producers to processors were free from government control in each of the provinces. As a result, the prices and volumes of Canadian export milk sales were determined commercially between individual producers and processors. This lack of government involvement confirmed that these commercial contracts did not confer export subsidies subject to reduction commitments under the Agreement on Agriculture. In other words, Canada had fully met its WTO obligations. Canada would vigorously defend its measures against the challenge from the United States and New Zealand and was confident that the Article 21.5 panel would agree with Canada's assessment. Finally, it was Canada's understanding that the two Article 21.5 panels, requested by the United States and New Zealand, would be joined pursuant to Article 9.1 of the DSU. It was Canada's understanding that this was in accordance with the wishes of the three parties to the dispute.

12. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by the United States in document WT/DS103/16 and the matter raised by New Zealand in document WT/DS113/16. It was confirmed that this would be a single Panel addressing both matters. The Panel would have standard terms of reference.

13. The representatives of the EC and Mexico reserved their third-party rights to participate in the Panel's proceedings.

14. The Chairman noted that those Members who had reserved their third-party rights by raising their flags did not need to send any confirmation in writing to the Secretariat. Other delegations who might wish to reserve their third-party rights should do so through a written communication within the next 5 days after this meeting.

15. The representative of Australia said that his delegation had noted that the issue concerning the timing of notification of third-party rights would be taken up under "Other Business". However, at this stage, he wished to register that Australia did not accept that the practice adopted in this case served to bind Members.

16. The representative of the United States said that her delegation wished to briefly comment on the Secretariat's note on the timing of the notification of third-party interest in Article 21.5 panel proceedings (JOB(01)/25). As stated by Australia this matter would be discussed under "Other Business" and, therefore, the United States would make its comments under that item. At this stage, she only wished to indicate that the United States did not understand the purpose of the Secretariat's note. It was the US understanding that the Secretariat had been requested to provide a factual background note on the issue of notifications, but instead it appeared that the Secretariat had gone beyond the bounds of what had been requested and had issued a legal opinion advocating a certain position. While the United States did not object to a five-day notification rule for Article 21.5 panels and would welcome it, it believed that this should not be based on the Secretariat's note.

17. The representative of Mexico said that his delegation did not share the view that there might exist a practice and, even less, a binding practice regarding a deadline for notifications of third-party interest and that such deadline should be five days. Under "Other Business", Mexico would make a detailed statement on this matter but, at this stage, he only wished to indicate that his country did not share the view expressed by the Secretariat in its note. Mexico believed that the Chairman's statement should not limit the rights of Members regarding third-party interest. He pointed out that Mexico had indicated its third-party interest in this case in order to ensure that there would be no peremptory time-frames. Mexico believed that Members might take a similar approach in other cases.

18. The representative of Hong Kong, China said that it was his delegation's understanding that the matter under consideration would be taken up under "Other Business". At this stage, he only

wished to indicate that his delegation had noted the Chairman's statement regarding a five-day period for notification of third-party interest in this case. However, this should not be based on the arguments contained in the Secretariat's note which, in the view of Hong Kong, China had given rise to certain legal and systemic problems. His delegation would provide more details in the context of consideration of this issue under "Other Business".

19. The representative of Uruguay said that his country supported the statements made by Mexico and other delegations with regard to the question of the reduction of a 10-day time-period for notification of third-party interest to participate in Article 21.5 panel proceedings.

20. The representative of the European Communities said that, like Australia and other countries, the EC also wished to reserve its rights on the question of notifications of third-party interest in panel proceedings. His delegation wish to make further comments on this matter under "Other Business".

21. The DSB took note of the statements.

**3. Canada – Measures affecting the importation of milk and the exportation of dairy products**

(a) Recourse to Article 22.2 of the DSU by the United States (WT/DS103/17)

(b) Recourse to Article 22.2 of the DSU by New Zealand (WT/DS113/17)

22. The Chairman proposed that the two sub-items be considered together since they pertained to the same matter. First, he drew attention to the communication from the United States contained in document WT/DS103/17.

23. The representative of the United States said that her country was requesting authorization to suspend the application to Canada of tariff concessions and related obligations under the GATT 1994 covering trade in the amount of US$35 million on an annual basis. This level of suspension was equivalent to the level of nullification and impairment of benefits accruing to the United States that resulted from Canada's failure to bring its export subsidy measures concerning dairy products into compliance by 31 January 2001. Since Canada had objected to the level of suspension requested by the United States, the matter was being automatically referred to arbitration. The United States and Canada had agreed to request that the arbitration be suspended until after completion of the Panel's proceedings and any Appellate Body review regarding this matter.

24. The Chairman drew attention to the communication from New Zealand contained in document WT/DS113/17.

25. The representative of New Zealand said that pursuant to Article 22.2 of the DSU, his country was requesting authorisation from the DSB to suspend the application to Canada of tariff concessions and other obligations under the GATT 1994 covering trade in the amount of US$35 million. This level of suspension was equivalent on an annual basis to the level of nullification or impairment of benefits accruing to New Zealand resulting from Canada's failure to bring its export subsidy measures concerning dairy products into compliance, by 31 January 2001, with the Agreement on Agriculture or otherwise to comply with the DSB's recommendations and rulings in this case. He noted that the DSB had just agreed to refer, under Article 21.5 of the DSU, New Zealand's complaint about Canada's non-compliance to the original Panel, if possible. In accordance with the Understanding between Canada and New Zealand Regarding Procedures under Articles 21 and 22 of the DSU (WT/DS113/14), in the event Canada objected to New Zealand's request under Article 22.2 and the matter was referred to arbitration pursuant to Article 22.6 of the DSU, New Zealand had agreed to request the arbitrator to suspend its work until either the adoption of the Article 21.5 compliance panel

report or, if there was an appeal, the adoption of the Appellate Body report. New Zealand hoped that, following the adoption of the Article 21.5 report in this matter, Canada would bring its measures into compliance with the DSB's recommendations and rulings and that it would, in the event, not prove necessary to suspend concessions or other obligations. However, if this was not the case, New Zealand would be obliged to take action in the form of the suspension of tariff concessions and related obligations under the GATT 1994 by imposing duties in excess of bound rates on a range of products exported by Canada to New Zealand, as drawn from the list set out in the attachment to document WT/DS113/17.

26. The representative of Canada said that his country disagreed with the allegations by the United States and New Zealand that it had failed to implement the DSB's recommendations and rulings in this case. However, without prejudice to its position on the WTO-consistency of its measures, which would be examined in the Article 21.5 panel process, Canada also objected to the level of suspension sought by the complaining parties. As set out in its communications dated 28 February 2001[1], Canada considered that the level of suspension sought by the United States and New Zealand was by no means equivalent to the level of the nullification or impairment of benefits accruing to these parties as a result of Canada's alleged failure to comply with the DSB's recommendations and rulings. Therefore, in accordance with the provisions of Article 22.6 of the DSU, Canada requested that this matter be referred to arbitration. He noted that in accordance with the agreed procedures, as set out in documents WT/DS103/14 and WT/DS113/14, the parties to the dispute would jointly request the arbitrator, at the earliest possible moment, to suspend its work pending the outcome of the Article 21.5 process.

27. The DSB took note of the statements and it was agreed that the respective matters raised by Canada in documents WT/DS103/18 and WT/DS113/18 are referred to arbitration, as required by Article 22.6 of the DSU.

**4. Timing of notification of third-party interest in panel proceedings**

28. The Chairman, speaking under "Other Business", said that Mexico had asked him to suggest a way forward regarding the consideration of this matter. He recalled that the statements made by several delegations on this subject under item 2 of the present meeting had been noted carefully and he did not think that under "Other Business" one should have a substantive discussion on this matter. He recalled that the note by the Secretariat on this subject had been circulated in document JOB(01)/25. He proposed that, given the level of interest in this matter, the item entitled "Timing of Notification of Third-Party Interest in Panel Proceedings" be inscribed on the agenda of the next regular DSB meeting.

29. The DSB so agreed.

[1] WT/DS103/18; WT/DS113/18.