RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/10
15 March 1996

(96-0946)

DISPUTE SETTLEMENT BODY
31 January 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 January 1996

Chairman: Mr. Donald Kenyon (Australia)

Subjects discussed: Page

1. Brazil - Measures affecting desiccated coconut 1
- Statement by the Philippines 1

2. United States - Restrictions on imports of cotton and man-made fibre underwear 2
- Request for consultations by Costa Rica 2

3. Additional proposed nominations for the indicative list of governmental and non-governmental panelists 3

4. European Communities - Implementation of the Uruguay Round commitments concerning rice 3
- Request for consultations by Uruguay 3

5. DSB schedule of meetings 4
- Announcement by the Chairman 4

6. Working procedures of the Appellate Body 4
- Announcement by the Chairman 4

7. Election of Chairperson 4

1. Brazil - Measures affecting desiccated coconut
- Statement by the Philippines

The representative of the Philippines said that the item proposed for consideration at the present meeting had originally been titled: "Brazil - Measures Affecting Desiccated Coconut: Request for the Establishment of a Panel" as contained in WT/DS22/2. For reasons mutually agreed to, the Philippines had not objected to postponing consideration of the above-mentioned request. However, her delegation would make a statement at the next meeting of the DSB to be held on 21 February when this request would be considered.

The representative of Brazil said that his country was still open -- as it had always been since this matter was first raised in the WTO -- for consultations with the Philippines on the substance of the definitive countervailing measures adopted by Brazil in August 1995, following an investigation which had started in June 1994. Brazil's arguments concerning this dispute were explained in document WT/DS22/3 and therefore it did not wish to reiterate them at the present meeting. Brazil once more invited the Philippines for consultations on the question of the applicable law before any further steps were taken towards the establishment of a formal dispute settlement mechanism. Brazil sincerely wished that the parties involved in this dispute could succeed in solving this deadlock and move on to a more fruitful debate which might lead to a mutually satisfactory solution on the substantive issues. Brazil wished, however, to reserve its right to revert to the question of the applicable law in the DSB.

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

2. United States - Restrictions on imports of cotton and man-made fibre underwear
- Request for consultations by Costa Rica (WT/DS24/1 and Corr.1)

The Chairman drew attention to the communication from Costa Rica contained in document WT/DS24/1 and Corr.1.

The representative of Costa Rica said that on 22 December 1995 his authorities requested consultations with the United States under Article 4 and the other relevant provisions of the DSU, Article XXIII of the GATT 1994 and the corresponding provisions of the Agreement on Textiles and Clothing (ATC), in connection with the introduction and implementation of quantitative restrictions on Costa Rican exports of cotton and man-made fibre underwear (category 352/652). On 27 March 1995, the United States requested consultations with Costa Rica on the above-mentioned textiles category. After the bilateral consultations had broken down on 23 June 1995, the United States imposed unilateral restrictions on Costa Rican exports retroactive to 27 March 1995. In July 1995 the Textiles Monitoring Body (TMB) reviewed the matter. It found that the serious damage had not been demonstrated. However, as no consensus was reached on the existence of actual threat of serious damage the TMB recommended that further consultations be held between the parties concerned. These consultations had been held in August 1995 but it had not been possible to reach an understanding. Thus, on the second occasion when the TMB reviewed the case it reaffirmed its previous conclusions and considered that the examination of the question had been completed. More than nine months had elapsed since quantitative restrictions had been imposed on Costa Rica on the above-mentioned category of textiles. Also since nine months the United States had not supplied justification in accordance with the Agreement on Textiles and Clothing. The restrictions were causing unemployment in a sector vital for Costa Rica's economy and had created uncertainty for its exporters and threatened to divert the investment towards other countries in the region since it was not possible to enter this market. For these reasons and under the above-mentioned provisions Costa Rica requested consultations with the United States on 22 December 1995. These consultations, which had already begun, had not found a solution to this dispute. Therefore, Costa Rica urged the United States to join its efforts to find a solution to existing differences of views and reaffirmed the intention to continue to use the dispute settlement mechanism unless a solution could be found.

The representative of India said that his country appreciated Costa Rica's initiative in seeking a solution to the problem with regard to its exports of one particular product to the United States within the framework of the DSU, Article XXIII of GATT 1994 and the provisions of the Agreement on Textiles and Clothing. India would be watching the progress of this dispute closely since the matter related to certain fundamental concerns of a large number of countries exporting textiles and clothing. His delegations's understanding was, that once the TMB process was exhausted and the matter remained unresolved, the either party to the dispute had the option to request the establishment of a panel under

Article 6 of the DSU. This was provided for in Article 8.10 of the Agreement on Textiles and Clothing namely that if the matter remained unresolved even after the TMB process was exhausted, either Member involved in the dispute could bring the matter before the DSB and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the DSU.

The representative of Hong Kong said that in this case the TMB had found that serious damage caused by world imports of the product concerned -- cotton and man-made fibre underwear (category 352/652) -- had not been demonstrated. However, there was no consensus on the existence of actual threat of serious injury. Even if "actual threat of serious injury" had been found -- which was not the case -- it could not be assumed that any such threat could be attributed to imports from Costa Rica. Therefore, no conclusion could be drawn that imports from Costa Rica had caused problems to the United States domestic industry which warranted restraint action. In reality, however, the United States restrictions on Costa Rican underwear had been imposed and remained in existence. Bilateral consultations had failed to produce results. Costa Rican trade was disrupted. Apparently the effect of these restrictions amounted to "serious damage" rather than "actual threat". Hong Kong made these observations not to suggest that any party had necessarily acted outside its WTO rights. This was not a matter for his delegation to judge. However, as reflected in this case, there remained many genuine imminent problems confronted by textile exporters which called for urgent solutions.

The DSB took note of the statements.

3. Additional proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/17)

The Chairman drew attention to document W/DSB/W/17 which contained additional names proposed by Members for inclusion on the indicative list of governmental and non-governmental panelists in accordance with Article 8.4 of the DSU. He recalled that as agreed by Members the above-mentioned document, following the approval of names contained therein by the Dispute Settlement Body, would be circulated as unrestricted. He also informed Members that the Secretariat would soon be issuing a consolidated version of the indicative list which would contain the names approved by the DSB thus far. He proposed that the DSB approve the names contained in W/DSB/W/17[1].

The DSB so agreed.

4. European Communities - Implementation of the Uruguay Round commitments concerning rice - Request for consultations by Uruguay (WT/DS25/1 and Corr.1)

The representative of Uruguay, speaking under "Other Business" recalled that on 18 December 1995, his country had requested consultations under Article XXII:1 of the GATT 1994 with the European Communities with respect to the implementation of the commitments on rice undertaken by the latter in the Uruguay Round. Uruguay wished to express its gratitude for the prompt response received from the Communities which enabled holding consultations on 9 January 1996 in Brussels. The results of these consultations were currently being examined by the competent Uruguay authorities. Therefore, at this stage, his delegation was not in a position to provide any substantive information on this matter. However, it would keep the DSB informed whenever appropriate.

[1]The names contained in WT/DSB/W/17 have been included in the consolidated version of the indicative list circulated in document WT/DSB/4.

The DSB took note of the statement.

5. DSB schedule of meetings
- Announcement by the Chairman

The Chairman, speaking under "Other Business" recalled that the schedule of DSB meetings for 1996 had already been circulated to Members in document WTO/AIR/237 on 12 December 1995. However, he wished to inform Members that the meeting originally scheduled for 16 April would now be held on 24 April.

The DSB took note of this information.

6. Working procedures of the Appellate Body
- Announcement by the Chairman

The Chairman, speaking under "Other Business", informed the DSB that during the month of January the Appellate Body members had been in Geneva to draw-up their working procedures. As the Chairman of the DSB, he had received views on the above-mentioned working procedures from individual delegations to be conveyed to the Appellate Body. These views had been passed on to the Appellate Body members who were now reaching an advanced stage of their work. In accordance with paragraph 14 of the Recommendations on the establishment of the Appellate Body approved by the DSB on 10 February 1995 (WT/DSB/1) he wished to provide interested delegations with a further opportunity to present any views that they would wish to convey to the Appellate Body members in the final stages of the drawing-up of their working procedures. In order to do so, he and Amb. Lafer would be available on Thursday, 1 February at 10 a.m. to hear additional views of any delegations on the Appellate Body working procedures. To help Members in their own thinking as to whether there were any individual views that they would wish to have passed on to the Appellate Body, he informed them that the work of the Appellate Body, over the past couple of weeks, had been focused on some key issues of the working procedures. These key issues encompassed the question of rotation, the issue of collegiality to which he had referred in his statement on 29 November while submitting the recommendation on the composition of the Appellate Body to the DSB. Attention had been given to the application of the draft rules of conduct in regard to the work of the Appellate Body. Some consideration had also been given to the issue of having a chairman of the Appellate Body on a basis of rotation as well as to the issues of multiple appeals, hearing procedures and the question of nationality in relation to the rotation procedures namely, which three out of seven Appellate Body members would be hearing each individual appeal.

The DSB took note of this information.

7. Election of Chairperson

The Chairman said that as Members were aware, the Chairman of the General Council carried out informal consultations on a slate of names for appointment as chairpersons to different WTO standing bodies in accordance with the established guidelines for appointment of officers. These proposed nominations had been approved by the General Council at its meeting on 13 December 1995. Therefore, on the basis of the understanding reached, he proposed that the DSB elect Amb. Celso Lafer (Brazil) as Chairman of the DSB by acclamation.

The DSB so agreed.

The outgoing Chairman of the DSB, Amb. D. Kenyon (Australia) made a concluding statement subsequently circulated in document WT/DSB(96)/ST/1.