RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/19

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DISPUTE SETTLEMENT BODY
19 June 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 June 1996

Chairman: Mr. Celso Lafer (Brazil)

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1. Canada - Certain measures concerning periodicals
- Request by the United States for the establishment of a panel (WT/DS31/2)

The Chairman recalled that the DSB had considered this matter at its meeting on 6 June, and had agreed to revert to it at the present meeting. He then drew attention to the communication from the United States in WT/DS31/2.

The representative of the United States said that his country was requesting the establishment of a panel to examine Canada's measures concerning treatment of periodicals. These measures included an import ban on certain periodicals and discriminatory treatment of certain imported periodicals with respect to excise taxes and postal rates. These measures were inconsistent with Canada's obligations under GATT 1994 and nullified and impaired benefits accruing to the United States under the WTO Agreement. The United States had raised these measures with Canada on a number of occasions, both informally and in consultations. Since the consultations had not settled the matter, the United States was now requesting the establishment of a panel.

The representative of Canada said that her country's measures related to the magazine sector reflected long-standing policy objectives in the cultural sector. These measures did not prevent the full participation in the Canadian market by US or other non-Canadian magazines. On the contrary, over 80 per cent of magazines sold at Canadian news-stands were of foreign origin, mainly from the United States. More than 450 US magazine titles were available in Canada. Her country believed that Canada's measures were fully consistent with its international obligations. Nevertheless, it recognized the right of the United States to request the establishment of a panel to examine these measures. Canada was prepared to fully defend these measures before a panel.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with the provisions of Article 6 of the DSU.

2. United States - Standards for reformulated and conventional gasoline (WT/DS2/9)
- Implementation of the recommendations of the DSB

The Chairman said that the DSU provisions required the DSB to keep under surveillance 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 required the Member concerned to inform the DSB, within 30 days after the date of adoption of the Panel and 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 20 May, the DSB had adopted the Appellate Body report in WT/DS2/AB/R and the Panel report in WT/DS2/R with regard to the US standards for reformulated and conventional gasoline as modified by the Appellate Body report.

The representative of the United States said that, as his delegation had noted at the DSB meeting on 20 May, the United States, while disappointed that the Appellate Body report had found the regulations at issue not consistent with the obligations of the United States under the WTO, believed that the report contained a number of positive messages regarding WTO rules and protection of the environment. In accepting much of the United States' interpretation of Article XX of the General Agreement, the Appellate Body had underscored that the WTO Agreement recognized the freedom of Members to protect the environment and conserve natural resources. The United States also welcomed that the report acknowledged that Article XX provided flexibility to Members to take into account important enforcement concerns in adopting environmental measures. As required in Article 21.1 of the DSU, it was now the responsibility of the United States to inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. It was the intention of the United States to meet its obligations under the WTO with respect to this matter.

The United States had initiated an open process to examine any and all options for compliance with the recommendations of the DSB. In evaluating such options, a key criterion would be the full protection of public health and the environment. The examination would consider, *inter alia*, the two "omissions" on the part of the United States that had been cited by the Appellate Body: (i) to explore adequately means of mitigating the administrative problems identified in the earlier rule-making process; and (ii) to consider the costs for foreign refiners that might result from the use of the statutory baseline on imports. Under its law and regulations, the United States was required to follow certain procedures and not to prejudge the result of the process.

To begin this process, the United States' Environmental Protection Agency (EPA) was issuing a notice, which would soon be published in the United States' Federal Register, providing all interested parties with an opportunity for input into the process, which would set out the considerations to guide the United States regarding the issues that must be addressed. As envisaged under the DSU, the United States would require a "reasonable period of time" to complete its rule-making process and would be meeting with Venezuela and Brazil to discuss this matter further. The public interest that this case

had engendered in the United States had highlighted the critical importance of transparency, in particular with respect to dispute settlement, to the strength and credibility of the WTO. The United States believed that it was essential to redouble the efforts to make progress in this regard.

The representative of Venezuela noted with interest the statement made by the United States which he would convey to his authorities. His delegation hoped that, as indicated in the statement, the US Government would implement its intention to comply with its WTO obligations. In Venezuela's view this meant complying with the recommendations of the DSB at its meeting of 20 May (WT/DS2/9). His delegation regretted that the United States, at this stage, was not in a position to specify a time-period for the implementation of the recommendations, but hoped that the period of time to be proposed by the United States would be reasonable as required in Article 21 of the DSU. His authorities hoped that the United States would contact Venezuela with the view to determining a mutually agreed period of time for implementation of the recommandations, in accordance with Article 21.3 (b) of the DSU.

The representative of Brazil noted the United States' intentions regarding its compliance with the Appellate Body recommendations, but was disappointed that the United States did not propose immediate compliance with these recommendations. Article 21.3 of the DSU contemplated immediate compliance with the recommendations and rulings and permitted a delay only if immediate compliance was impracticable. Brazil also noted the United States' proposal that compliance would be effected within a "reasonable period of time". He underlined that specific limits and conditions for determining this "reasonable period of time" were contained in Article 21 of the DSU, and urged the United States strictly to observe them. His delegation noted that the United States intended to meet with Brazil to discuss the issue of "reasonable period of time". Brazil would work with the United States in every possible way with the view to amicably resolve this matter. However, at this stage, his delegation wished to reserve Brazil's rights under the DSU regarding implementation, or lack thereof, by the United States of the very first recommendations made by the Appellate Body.

The representative of Norway thanked the United States for its statement. Norway would also prefer immediate implementation, but in view of the complexity of the matter some time was needed. He requested the United States to inform Members in which issue of the Federal Register the notice of the EPA would be published.

The DSB took note of the statements and of the information provided by the United States regarding its intentions to implement the recommendations of the DSB.

3. United States - Tariff increases on products from the European Communities
   - Request by the European Communities for a special meeting of the DSB to establish a panel

The representative of the European Communities, speaking under "Other Business", requested that the DSB hold a special meeting in order to consider the Communities' request for the establishment of a panel with regard to tariff increases by the United States on products from the European Communities. The consultations held on 22 May, had not resulted in a settlement of the matter. Since the Communities maintained its position that these measures were unilateral and were not consistent with the WTO provisions, it had therefore decided to request the establishment of a panel to examine this matter.

The DSB took note of this request.

4. European Communities - Régime for the importation, sale and distribution of bananas - Third-party rights to participate in the panel

The representative of Jamaica, speaking under "Other Business", said that at the DSB meeting on 8 May, Jamaica and other ACP banana-producing countries, having a substantial interest in the matter, had sought an enhanced status as third parties in the deliberations of the Panel on the European Communities' regime for the importation, sale and distribution of bananas as follows: (i) to make submissions;(ii) to attend all meetings of the panel;(iii) to receive all submissions of the parties;(iv) to be heard (i.e., to ask questions and to respond to questions). Jamaica understood that the Panel had only granted those countries a very limited status, namely participation as observers at the first substantive meeting of the panel. This hardly met the legitimate interests of Jamaica and the other ACP countries, bearing in mind that the DSU imposed stricter disciplines and mandatory compliance with panel conclusions. It was impossible for due process to be served, when a party, which would be affected by such conclusions, was denied participation and full transparency in the process.

This dispute was extremely important for the legitimate trade interests of the ACP countries secured through treaty obligations under the Lomé Convention. The economic stability of many of the ACP banana-producing and exporting countries would be threatened. Jamaica believed that the Panel should enable third parties to present arguments in support of their legitimate trade interests as the process unfolded. Unless the Panel reconsidered its position, the ACP countries would not be able adequately to protect their interests in keeping with the commitments under the WTO Agreement which encouraged growth and development "in a manner consistent with their respective needs and concerns at different levels of economic development". The DSB was the appropriate forum of Members in a contractual relationship to ensure that this objective was attained. Her delegation, therefore, hoped that the Chairman would initiate consultations with all interested parties, including Jamaica.

The representative of Cameroon said that in her delegation's view transparency was one of the fundamental principles of the WTO. This became even more important when substantial interests of a country had been placed in jeopardy, which was the case of the ACP countries, in particular Cameroon, with regard to the dispute on bananas. Cameroon could not be satisfied with the Panel's decision to participate as an observer only during a session of the first substantive meeting of the panel. Her delegation supported the statement made by Jamaica, in particular that consultations be held by the Chairman in order to arrive at a satisfactory solution to all parties.

The representative of Côte d'Ivoire supported the statements made by Jamaica and Cameroon. At a time when much was being said about transparency, it was surprising that the ACP countries were being excluded from panel proceedings. The future recommendations or rulings of the Panel would have an impact on the ACP trade in bananas. Since the ACP countries would not be exempted from the impact of the panel's recommendations, particularly if the results were similar to those which were already familiar, there was no basis for excluding the ACP countries from participating in the Panel.

The representative of the European Communities said that the Communities fully supported the statements made by the previous speakers and wished to be associated with their request for consultations. It would be paradoxical, if countries having no economic interest could participate in the panel but not those having a vital interest in this matter. In his understanding there was nothing in the DSU precluding participation in the panel of countries having important trade interests. Therefore, a request to hold consultations on this matter was appropriate and he hoped that such consultations would produce a satisfactory result. He found encouraging what the United States had said on another point with respect to full transparency and in this context believed that in addition to the ACP countries, those that were part of the Framework Agreement with the Communities should also be represented.

The representative of the United States said that his delegation did not support the request for consultations at this stage because it would undermine a decision taken already by the Panel.

The Chairman said that the issue under consideration was very complex because it had raised the question of the scope to be given to "substantial interests" and the rôle of third parties in the dispute settlement mechanism, the range of the nullification or impairment, and the question of global coherence in the interpretation of the WTO legal system. In theory, there was more than one point of view on this matter. He indicated his intention to examine whether the consultations requested by delegations were appropriate.

The DSB took note of the statements.