WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/158
19 December 2003

(03-6655)

Dispute Settlement Body
21 November 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 21 November 2003

Chairman: Mr. Shotaro Oshima (Japan)

1. European Communities – Customs classification of frozen boneless chicken cuts

(a) Request for the establishment of a panel by Thailand (WT/DS286/5)

1. The Chairman recalled that the DSB had considered this matter at its meeting on 7 November 2003 and had agreed to revert to it. He drew attention to the communication from Thailand contained in document WT/DS286/5.

2. The representative of Thailand said that his country had requested a special DSB meeting in order to request, for the second time, the establishment of a panel in the dispute regarding the EC's classification of frozen boneless chicken cuts. He recalled that Thailand's reasons for requesting a panel on this matter had been provided in detail at the 7 November DSB meeting. Therefore, at the present meeting, he would briefly note that, as a result of the EC's measure, the product classified as frozen boneless chicken cuts with a salt content of 1.2 per cent or more, which had previously been classified as salted meat at the *ad valorem* rate of 15.4 per cent, was now classified as frozen chicken subject to a tariff rate in excess of the bound rate for salted meat in the EC's schedule of concessions under the GATT 1994. In view of Thailand, its exports of salted meat to the EC were being accorded less favourable treatment than that provided in the EC's Schedule and was in contravention of the EC's obligations under Articles II:1(a) and II:1(b) of the GATT 1994. In addition, the EC's measure created distortions in trade that nullified or impaired, within the meaning of Article XXIII, the benefits accruing to Thailand under the GATT 1994. Thailand was now, for the second time, requesting for the establishment of a panel with standard terms of reference. Thailand recalled that Brazil had requested a panel against the EC with regard to the same matter and the DSB had established such a panel on 7 November 2003. Thailand considered that it would be appropriate for the DSB to establish a single panel to examine these two complaints, as provided for in Article 9.1 of the DSU.

3. The representative of the European Communities said that Thailand's decision to reiterate its request for the establishment of a panel could not, but cause great disappointment to the EC. The EC regretted that Thailand, like Brazil, had chosen this course of action. The EC would defend its position before the panel and would demonstrate that it had acted consistently with its schedule of commitments, as read in the light of the Harmonized System of product classification. The EC agreed to the establishment of a single panel under Article 9.1 of the DSU.

4. The DSB took note of the statements and agreed that the request by Thailand for the establishment of panel with standard terms of reference is accepted and that as provided for in Article 9.1 of the DSU, in respect of procedures for multiple complainants, the Panel established at

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the 7 November DSB meeting to examine the complaint by Brazil contained in WT/DS269/3 would also examine the complaint by Thailand contained in WT/DS286/5 which pertained to the same matter.

5. The Chairman said that since a single Panel had been established, those delegations who had reserved their third-party rights to participate in the Panel established on 7 November at the request of Brazil shall be considered as third parties in the single Panel. He recalled that the following countries had reserved third-party rights at the 7 November DSB meeting: Chile, China, Thailand and the United States. He invited other delegations who would wish to reserve their third-party rights to raise their flags.

6. The representatives of Brazil, Chile and Colombia reserved their third-party rights to participate in the Panel's proceedings.

7. The representative of Chile said that he wished to explain why his delegation had raised its flag to reserve third-party rights in the proceedings of the Panel established at the present meeting, which would become a single Panel. He said that Chile, without prejudging its position regarding the question if there was one or two disputes under the single Panel, wished to protect its third-party rights in the dispute between Thailand and the EC. In this regard, he wished to know whether there were now two disputes or just one.

8. The Chairman said that, as he had previously stated, since there was an agreement to establish a single Panel, he had referred to Article 9.1 of the DSU, which provided that if complaints pertained to the same matter, it would be preferable to establish a single panel. As he had noted, Chile had already been recognized as a third party in the Panel established on 7 November to examine the complaint by Brazil and, at the present meeting, the DSB had agreed that the Panel established at the 7 November DSB meeting to examine Brazil's complaint would also examine the complaint by Thailand which pertained to the same matter.

9. The representative of Chile said that although a single Panel had been established there were two different complaints brought separately by two Members. Therefore, Chile wished to reserve its third-party rights in both complaints.

10. The Chairman said that Chile's right to be a third party in the dispute between Thailand and the EC had been recognized.

11. The representative of the United States said that to the extent it would be of help to the delegation of Chile, he wished to recall that the DSB had followed a similar procedure in a previous dispute, namely, the dispute involving safeguard measures on steel. He drew the attention of the DSB to what had occurred at the meeting on 14 June 2002[1], in which a similar procedure had been followed and delegations that had reserved third-party rights in a panel established at a previous meeting, had been considered third parties in the disputes that had then been referred to that same panel at subsequent meetings.

12. The DSB took note of the statements.

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[1] WT/DSB/M/127.