WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/93
15 January 2001

(01-0184)

Dispute Settlement Body
28 November 2000

MINUTES OF THE MEETING

Held in the Centre William Rappard
on 28 November 2000

Acting Chairman: Mr. Kåre Bryn (Norway)

1. United States – Tax treatment for "Foreign Sales Corporations"

(a) Recourse by the European Communities to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU (WT/DS108/13)

1. The Chairman drew attention to the communication from the European Communities contained in document WT/DS108/13.

2. The representative of the European Communities said that on 17 November 2000 the EC had requested the DSB's authorization to impose countermeasures and to suspend concessions against the United States in the FSC dispute for an amount of US$4043 million. This was equivalent to the amount of the illegal subsidy being granted by the United States under the FSC scheme, which the EC believed would be appropriate to induce compliance. The EC had also presented an indicative list of products on the basis of which it would select the final products to be subject to sanctions. In a letter to the DSB Chairman, dated 27 November 2000, the United States had requested that the matter be referred to arbitration. On 17 November 2000, the EC had also requested consultations with the United States under Article 21.5 of the DSU concerning the FSC Replacement Act. These consultations would take place in the course of the week. In accordance with the agreed procedures for the follow-up of the FSC dispute concluded by the EC and the United States on 29 September 2000, the parties would request the arbitrators, at the first organizational meeting, to suspend their work until the Article 21.5 compliance panel procedure was completed.

3. The representative of the United States said that, by letter dated 27 November 2000, her country had informed the DSB that, pursuant to Article 4.11 of the SCM Agreement and Article 22.6 of the DSU, it objected to the appropriateness of the countermeasures and the level of suspension of concessions proposed by the EC in document WT/DS108/13. Under the terms of the DSU and Article 4.11 of the SCM Agreement, the filing of such an objection automatically resulted in the matter being referred to arbitration, and no further DSB action was required. Article 22.6 of the DSU did not refer to any decision by the DSB. Consequently, the matter was already being referred to arbitration. Nevertheless, the United States had no objections if the DSB wished to take note of that fact and confirmed that it might not consider the EC's request for authorization, which was the agenda item of the present meeting, since the matter was being referred to arbitration. In accordance with the agreement reached with the EC, and notified to the DSB in WT/DS108/12, the United States and the EC would be requesting the arbitrator, at the earliest possible moment, to suspend its work pending the outcome of the Article 21.5 challenge to the FSC replacement legislation. The United States was confident that should the arbitrators ever have to consider the matter, they would find that the US objections to the EC's proposed actions were well-founded.

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4. The representative of the European Communities said that, as stated by the United States, a referral to arbitration was mandatory but there was a need to stick to precedents, and it was up to the DSB to note and agree that the matter be referred to arbitration by the original panel as required by Article 22.6 of the DSU.

5. The DSB took note of the statements and it was agreed that the matter raised by the United States in document WT/DS108/15 is referred to arbitration as required by Article 22.6 of the DSU.