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WORLD TRADE ORGANIZATION

DISPUTE SETTLEMENT BODY
11 October 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 11 October 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. Composition of the Standing Appellate Body

The Chairman said that further to the progress report made at the DSB Meeting on 27 September 1995, he was pleased to report that the Selection Committee had now concluded its deliberations on the candidates for appointment to the Appellate Body. The Committee's conclusions had been communicated to the twenty-three Members who had proposed candidates for appointment to the Appellate Body. A few Members had requested a further short period for reflection with regard to the conclusions reached by the Selection Committee. Following this further short period of reflection and on the basis of the conclusions reached by the Selection Committee, he on behalf of the Selection Committee, would be bringing a recommendation to the DSB on the appointment of seven persons to the Appellate Body by the end of October 1995 or no later than 1 November 1995. The Selection Committee's recommendation would be fully in accord with all aspects of the guidelines for appointment to the Appellate Body contained in the DSU and WT/DSB/1.

The representative of Switzerland said that his delegation noted with interest that the Selection Committee had completed its deliberations. His country had been informed of the Selection Committee's conclusions and he wished to thank that Committee for the difficult task and the hard work it had undertaken in selecting the seven-member Appellate Body. Obviously a perfect solution satisfactory to all did not exist and any opinion of a country on the outcome of the consultations had to disregard the fact that the candidate proposed by that country was or was not selected. Each country had to take the risk that its candidate would not be selected. However, Switzerland was concerned that moving away from the criteria contained in WT/DSB/1 and the DSU could have unfortunate consequences for the functioning of the dispute settlement mechanism and the WTO. His authorities would make full use of the additional time-period for reflection until the end of October 1995 in order to take a decision.

The Chairman thanked the representative of Switzerland for his statement and in particular for his comments concerning the difficulties that the Selection Committee had had to face in conducting the selection process. Members understood these problems and in particular the problem referred to by Switzerland, namely that there were many more good candidates for appointment than available posts. The task, therefore, had been very difficult and it had taken some time. He noted that Switzerland had referred to the importance of the criteria set out in the DSU and the guidelines contained in WT/DSB/1 as well as to the difficulties of reaching a perfect decision. He reiterated that the Selection Committee was confident that the recommendation to be put forward to the DSB would be fully in accord with all aspects of the guidelines contained in WT/DSB/1 and the DSU.

The Dispute Settlement Body took note of the statements.

2. European Communities - Duties on Imports of Cereals
   - Request by Canada for the Establishment of a Panel (WT/DS9/2)

The Chairman recalled that the DSB had considered this matter at its meeting on 27 September 1995 and had agreed to revert to it at its next meeting.

The representative of Canada reiterated that her country considered that certain regulations of the European Communities which were intended to implement some of the European Communities' Uruguay Round concessions on cereals were: (i) inconsistent with Articles II and VII of the GATT 1994; (ii) inconsistent with Article I of the Agreement on Implementation of Article VII of the GATT 1994; (iii) nullifying and impairing the benefits accruing to Canada pursuant to Article XXIII:1 (a) and (b) of the GATT 1994 and WTO Agreement. The Communities had not agreed to the establishment of a panel at the DSB meeting on 27 September. Canada therefore was again requesting the establishment of a panel with the standard terms of reference set out in Article 7 of the DSU.

The representative of the European Communities said that his delegation could not accept the basic premises referred to by Canada but could agree to the establishment of a panel to examine this matter.

The Dispute Settlement Body agreed to establish a panel with standard terms of reference in accordance with the provisions of Article 6 of the DSU.

The representatives of the United States, Australia, Japan and Argentina reserved their third-party rights to participate in the panel. The representative of Japan said that his country had an interest in this case which related to the implementation of the Communities' commitments in agriculture undertaken in the Uruguay Round.

The Dispute Settlement Body took note of the statements.

3. European Communities - Trade Description of Scallops
   - Request by Peru for the Establishment of a Panel (WT/DS12/7)
   - Request by Chile for the Establishment of a Panel (WT/DS14/6)

The Chairman proposed that the above-mentioned requests be considered together since they pertained to the same matter.

The DSB so agreed.

The Chairman drew attention to the communication from Peru contained in document WT/DS12/7.

The representative of Peru said that on 18 July 1995 his country had requested consultations with the European Communities on the above-mentioned subject[1] in order to restore the competitive position of Peru's product, whose scientific name was "argopecten purpuratus", because the French provisions[2] unilaterally restricted the use of the trade description of "coquille Saint-Jacques" and "noix de coquille Saint-Jacques", thus affecting and belittling the Peruvian product both economically and commercially. Pursuant to that request, Peru and the Communities had held consultations on 10 August 1995 with a view to finding a satisfactory solution to this matter. Unfortunately the consultations had failed to resolve the problem. In accordance with Article XXIII of GATT 1994, Article 14 of the TBT Agreement and Articles 4 and 6 of the DSU, Peru requested the establishment of a panel at the present meeting. It requested that the panel consider and find that the French Order and the subsequent amendments thereto were: (i) inconsistent with Articles 2 and 12 of the TBT Agreement; (ii) inconsistent with Articles I and III of the GATT 1994; and (iii) nullifying and impairing benefits accruing to Peru under the WTO. Peru requested that a single panel be established in accordance with Article 9 of the DSU with the standard terms of reference set out in Article 7 of the DSU.

The Chairman then drew attention to the communication from Chile contained in document WT/DS14/6.

The representative of Chile said that his delegation requested that this item be included on the agenda because it considered that the consultations held with the European Communities had not produced a solution to the problem as stated in document WT/DS14/6. Thus far the steps and initiatives taken by Chile, and the consultations held on two occasions with the Communities, had failed to produce satisfactory results which would enable molluscs of the genus *Pectinidae*, to which the Chilean scallop *Agropecten Purpuratus* belonged, to be marketed in France without restrictions. Chile had made a constant effort to settle the issue without having to request the establishment of a panel. Given its substantial interest in the export of scallops to France, Chile had first joined the consultations requested by Canada held on 19 June 1995. On 24 July 1995 in a renewed effort to settle this matter, Chile had requested further consultations under Article XXII:1 of GATT 1994.[3] The European Communities had responded favourably to the request for consultations which were held on 10 August 1995. The purpose of the consultations had been to continue the search for a solution to the problem arising out of the regulation on trade description of Chilean scallops on the French market, which was nullifying and impairing benefits accruing to Chile under the WTO, and to examine the consistency of that regulation with the provisions of Articles 2:1, 2:2 and 12 of the TBT Agreement and Articles I and III

[1]The request for consultations is contained in WT/DS12/1.

[2]The French Order NOR MERP9300051 A of 22 March 1993 and subsequent amendments thereto laying down the official names and trade descriptions of pectinidae.

[3]The request for consultation is contained in WT/DS14/1.

of the GATT 1994. Unfortunately, as mentioned in document WT/DS14/6, the consultations had failed to settle the dispute within the time-limits provided for in the DSU and further consultations were not likely to be productive. In view of the fact that a panel had already been established on the same matter at the request of Canada, Chile had requested that a panel to examine its complaint be established at the present meeting. It also requested that the panel consider and find that the French Order and subsequent amendments thereto were: (i) inconsistent with Articles 2 and 12 of the TBT Agreement; (ii) inconsistent with Articles I and III of the GATT 1994; (iii) nullifying and impairing benefits accruing to Chile under the WTO pursuant to Article XXIII of the GATT 1994. It also requested that the panel be established with the standard terms of reference set out in Article 7 of the DSU, jointly with the panel requested by Peru, in accordance with Article 9 of the DSU, and if possible with the same panelists as those serving on the panel established at the request of Canada on the same matter.

The representative of the European Communities said that the substance of this matter would be discussed in a different forum and that the Communities agreed that a single panel be established at the present meeting. The Communities also agreed that, to the extent possible, the same panelists who were currently serving on the panel established at the request of Canada, examine the complaints by Peru and Chile.

The Chairman proposed that the Dispute Settlement Body take note of the statements and agree with the requests by Peru and Chile for the establishment of a single panel. This single panel should be established in accordance with Article 9.1 of the DSU and with the standard terms of reference as provided for in Article 7 of the DSU which will cover the two complaints. It should be understood that this single panel as stipulated in Article 9.2 of the DSU "shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints, are in no way impaired".

The DSB so agreed.

The representatives of the United States, Australia, Iceland, Japan and Canada reserved their third-party rights to participate in the panel's proceedings. The representative of Canada supported the statements made by Chile and the European Communities that Article 9.3 of the DSU should be applied to the greatest extent possible in light of the fact that a panel regarding this same issue had already been established.

The representative of Peru expressed his country's gratitude to the European Communities for having agreed to the establishment of a panel at the present meeting. However, he wished to clarify the reason for requesting the establishment of the panel. Peru's request referred both to the violation complaint in relation to the inconsistency of the French measures with Article 2 and 12 of the TBT Agreement, and the inconsistency with Article I and III of the GATT 1994 as well as with the subsidiary non-violation complaint in terms of Article XXIII:1(b) of the GATT 1994, insofar as the French measures nullified and impaired the competitive benefits which Peru expected to obtain as a result of the tariffs set by the French Government on the pectinidae. Peru believed that the consultations held with the European Communities covered this subsidiary non-violation complaint related to the nullification and impairment of the benefits obtained by Peru pursuant to the WTO.

The representative of European Communities said that the establishment of a panel was accepted on the basis of the document which was circulated for the present meeting (WT/DS12/7). It could not be accepted that after the establishment of a panel the terms of reference be changed from what was stated in the above-mentioned document.

The Chairman confirmed that the request for the establishment of a panel by Peru contained in document WT/DS12/7 was the basis upon which the request could be accepted by the DSB.

The Dispute Settlement Body took note of the statements.

4. European Communities - Duties on Imports of Grains
- Request by the United States for the Establishment of a Panel (WT/DS13/2)

The Chairman drew attention to the communication from the United States contained in document WT/DS13/2.

The representative of the United States said that his country was very concerned about the reference price system adopted by the European Communities and could not understand how this could be consistent with the European Communities' tariff bindings. While the United States continued to hope to reach a mutually satisfactory settlement to this matter, it had no choice at this point but to request the establishment of a panel in order to preserve its rights under the WTO. In light of the action taken under Agenda Item 2 of the present meeting, the United States thought it would be the most efficient use of the WTO's resources to have its panel request also granted at the present meeting. The United States recognized that the DSU called for the consolidation of panels reviewing the same matter and would have no objection to such a consolidation in this instance.

The representative of the European Communities said that his delegation noted the statement made by the United States. The Communities believed that the consultations with the United States on this matter were well under way and had every chance of reaching a successful result. Under these circumstances since this matter was on the DSB agenda for the first time the Communities thought it might be better not to take a decision on the establishment of a panel at the present meeting.

The Chairman noted that the United States had the right to request a further meeting to discuss this matter. However, since the next meeting of the DSB would be held on 1 November 1995, the United States could request that this item be included on the agenda of that meeting.

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

5. Australia - Measures Affecting Importation of Salmon.
- Request for Consultations by Canada (WT/DS18/1)

The representative of Canada, speaking under "Other Business" said that her country wished to inform the Members that on 5 October 1995 Canada had requested Article XXIII consultations with Australia regarding the prohibition of the importation of salmon from Canada. Canada had requested the Chairman of the DSB to circulate its communication to the DSB, the Council for Trade in Goods and the Committee on Sanitary and Phytosanitary Measures. The request contained in document WT/DS18/1 was being circulated to Members.

The Dispute Settlement Body took note of the statement.