WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/179
20 January 2005

(05-0249)

Dispute Settlement Body
13 December 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 13 December 2004

Chairperson: Ms Amina Mohamed (Kenya)

1. European Communities – Export subsidies on sugar

(a) Procedural agreement between Australia, Brazil, Thailand and the European Communities regarding the time-period under Article 16.4 of the DSU (WT/DS265/24 – WT/DS266/24 – WT/DS283/5)

1. The Chairperson recalled that this item was on the agenda of the present meeting at the request of Australia, Brazil, Thailand and the European Communities. She drew attention to a communication contained in document WT/DS265/24 – WT/DS266/24 – WT/DS283/5, which had been circulated at the request of Australia, Brazil, Thailand and the European Communities. She then invited the representatives of the respective delegations to speak.

2. The representative of Australia thanked the Chairperson for convening the present meeting at the request of Australia, Brazil, Thailand and the European Communities. She recalled that the Panel Reports in the complaints brought by Australia, Brazil and Thailand in "European Communities – Export Subsidies on Sugar" (WT/DS265/R, WT/DS266/R and WT/DS283/R) had been circulated to Members on 15 October 2004. That meant that the end of the 60-day time-period under Article 16.4 of the DSU would be 14 December 2004. Australia welcomed the conclusions and recommendation of the Panel in this dispute and would be happy to see the Panel Reports adopted by the DSB. Australia noted, however, that the EC had publicly stated its intention to appeal these Panel Reports. She said that the four parties had reached a procedural agreement regarding the time-period under Article 16.4 of DSU, which had been circulated to Members in document WT/DS265/24 – WT/DS266/24 – WT/DS283/5. Australia confirmed that it remained agreeable to that procedure. Australia requested the DSB, at the present meeting, to agree to postpone the consideration of the Panel Reports in "European Communities – Export Subsidies on Sugar" and to the extension of the corresponding time-period in Article 16.4 of the DSU until 31 January 2005. That extension would be agreed on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of the Panel Reports were preserved, as if such adoption or appeal had been requested within the 60 days specified in Article 16.4 of the DSU.

3. The representative of Brazil recalled that on 1 December 2004, Australia, Brazil, Thailand and the European Communities, the parties to the "Sugar" dispute, had reached a procedural agreement regarding the time-period under Article 16.4 of the DSU. The procedural agreement had been circulated to Members on 3 December 2004 in document WT/DS265/24 – WT/DS266/24 – WT/DS283/5. The sixtieth day for adoption or appeal of the Reports in the present case would expire on 14 December. He said that Members engaged in disputes under the DSU were familiar with

inconveniences that could arise in procedures running over the months of August and December/January. In fact, the Appellate Body itself had also called the attention to that matter several times, most recently during discussions on possible amendments to the Working Procedures for Appellate Review (WT/AB/WP/W/9, pp.7-9). Brazil, therefore, together with the other parties to this dispute, requested that the DSB agree to postpone the consideration of the Panel Reports in "European Communities – Export Subsidies on Sugar" (WT/DS265/R, WT/DS266/R and WT/DS283/R) and to extend the corresponding time-period in Article 16.4 of the DSU until 31 January 2005. This was of course on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of the Panel Reports were preserved, as if such adoption or appeal had been done within the 60 days specified in Article 16.4 of the DSU. In other words, Brazil requested that the DSB agree to adopt the Panel Reports, on or before 31 January 2005, unless the DSB decided by consensus not to do so or a party notified the DSB of its decision to appeal.

4. The representative of Thailand said that, like Australia and Brazil, his country wished to confirm the procedural agreement that had been reached with all the parties to this dispute, as contained in the joint request to which the Chairperson had just referred. Thailand requested the DSB to agree to postpone the consideration of the Panel Reports in this dispute and to the extension of the corresponding time-period in Article 16.4 of the DSU until 31 January 2005.

5. The representative of the European Communities recalled that the Panel had circulated its final Reports in this dispute on 15 October 2004. The 60-day period within which the DSB was obliged to decide on the adoption of panel reports that were not appealed (Article 16.4 of the DSU) would expire on 14 December 2004. In order to take account of the end of year period, and to avoid inconveniencing the appeal procedure, the parties to the dispute had agreed that the 60-day time-period, as applicable to these disputes, would be extended until 31 January 2005. The parties had also reached an understanding that the agreement of the DSB to that extension would be sought at the present meeting. Furthermore, the extension had been agreed between the parties on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of the Panel Reports were preserved, as if such adoption or appeal had been requested within 60 days specified in Article 16.4 of the DSU. This was without prejudice to the question of whether these rights would not be preserved without such extension. The EC would be grateful if the DSB could accede to the joint request of the parties to agree to the extension of the 60-day time-period.

6. The representative of Norway said that his country had noted the procedural agreement between Australia, Brazil, Thailand and the European Communities, as set out in the document referred to by the Chairperson. In that document the parties had suggested to the DSB to delay the very clear time-limit set out in Article 16.4 of the DSU in order to avoid a situation where the parties had to deliver their submissions during the holiday period. Article 16.4 of the DSU stated that "Within 60 days after the date of circulation of a panel report .....the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report." Norway had noted the procedural agreement between the parties to the dispute and wished to underline the following issues. First, earlier in 2004, Members had considered a proposal by the Appellate Body for a so-called "court holiday" during the month of August and the Christmas holiday where the Appellate Body would have been allowed to extend the 90-day period by three weeks where the above mentioned holiday were to take place during the appeal. In Norway's view, the approach of the Appellate Body, albeit drafted differently, would have been a better solution for such cases as it would not disturb the fundamental principle laid down in Article 16.4 of the DSU. Second, in this particular case, Norway would have preferred that the parties had adhered to the clear rule in Article 16.4 of the DSU and made an agreement with the Appellate Body as set out in Rule16(2) of the Working Procedures for Appellate Review, which provided that a different timetable could be agreed in "exceptional circumstances". Third and most important, while Norway could go along in this particular case and because it was the DSB itself that would take a decision at the present meeting, Norway considered that this case should not, in any

way, create a precedent for future cases. In Norway's view, the rule in Article 16.4 of the DSU was of systemic importance in order to safeguard a system that secured a proper adoption of panel reports, or an appeal, within a strict time-limit. The adoption of that rule was one of the most important developments in the DSU that had resulted from the Uruguay Round negotiations. Its functioning ensuring that reports of panels were adopted must not be disturbed.

7. The representative of the United States said that his country was pleased that the present meeting was able to consider the procedural agreement that the parties had put forward. As Members were aware, the United States was supportive of the principle that parties to a dispute should be able to resolve procedural problems amongst themselves for the good of themselves, of the dispute and of the system. The United States had also had an opportunity to take a look at the procedural agreement and to discuss the issues with the parties concerned. The United States was generally supportive of the solution that the parties to the dispute had reached in the dispute under consideration and looked forward to the DSB taking an appropriate decision at the present meeting.

8. The Chairperson proposed that the DSB take note of the request in WT/DS265/24 – WT/DS266/24 – WT/DS283/5 and agree that it will adopt the Panel Reports, upon request, on or before 31 January 2005, unless the DSB decides by consensus not to do so or a party notifies the DSB of its decision to appeal.

9. The DSB so agreed.

10. The representative of Australia said that she wished to take the floor purely to inform delegations that, in the light of the decision just taken by the DSB, Australia, Brazil and Thailand, the complaining parties to the dispute, would be taking steps to cancel the DSB meeting that had been scheduled for 14 December 2004 in order to adopt the Panel Reports in the "Sugar" case.

11. The Chairperson confirmed that, as had just been indicated by Australia, a special DSB meeting scheduled for 14 December 2004 would be cancelled. She said that a fax confirming this would be sent by the Secretariat.

12. The DSB took note of the statements.