RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/34

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Dispute Settlement Body
12 June 1997

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 June 1997

Chairman: Mr. Wade Armstrong (New Zealand)

Prior to the adoption of the agenda, the item entitled: "European Communities - Regime for the Importation, Sale and Distribution of Bananas - Reports of the Panel" was withdrawn from the proposed agenda since on 11 June 1997, the Communities notified the DSB of their decision to appeal these Reports (WT/DS27/9).

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1. Indonesia - Certain measures affecting the automobile industry
- Request for the establishment of a panel by Japan (WT/DS55/6 - WT/DS64/4)
- Request for the establishment of a panel by the European Communities (WT/DS54/6)

The Chairman proposed that the DSB consider these two sub-items separately. First, he drew attention to the communication from Japan contained in WT/DS55/6 - WT/DS64/4. He recalled that the DSB had considered this matter at its meeting on 30 April 1997 and had agreed to revert to it.

The representative of Japan said that his Government had notified its request for the establishment of a panel on 17 April 1997, which had been considered by the DSB at its meeting on 30 April. Subsequently, Japan and Indonesia had continued consultations but had not been able to settle this dispute. Therefore, Japan had decided to reiterate its request for the establishment of a panel. It intended to continue holding bilateral consultations with Indonesia in order to find a mutually satisfactory solution at an early stage in accordance with the spirit of Article 3.7 of the DSU which stated that "… a solution mutually acceptable to the parties to the dispute and consistent with the covered agreements is clearly preferred". Japan hoped that this objective was understood and shared by Indonesia.

The DSB took note of the statement and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.[1]

The Chairman drew attention to the communication from the European Communities contained in WT/DS54/6. He recalled that the DSB had considered this matter at its meeting on 23 May 1997 and had agreed to revert to it.

The representative of the European Communities said that his delegation had first submitted the request for the establishment of a panel at the DSB meeting on 23 May 1997, but Indonesia had been unable to accept the request. The principal reason for this request was that the Communities considered that the measures in question were inconsistent with Indonesia's obligations under GATT 1994, the Agreement on Trade-Related Investment Measures (TRIMs) as well as the Agreement on Subsidies and Countervailing Measures (SCM). These measures included in particular the granting of import duty relief for parts and components for motor vehicles contingent on local content requirements, luxury tax exemption for certain motor vehicles contingent on local content requirements, and exemption from import duties and luxury tax for motor vehicles produced by certain companies, which had been granted the status of pioneer companies. The request for the establishment of a panel followed two rounds of consultations in late 1996, as well as a number of informal contacts with the aim of finding a mutually satisfactory solution. Indonesia had failed to put forward satisfactory proposals which could bring these measures into conformity with the WTO Agreement. The Communities, therefore, considered that it was necessary to make a second request to the DSB to establish a panel.

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

The representative of Japan reserved his Government's third-party rights to participate in the Panel proceedings.[2]

The Chairman recalled that the Communities had also requested the DSB to initiate the procedures provided for in Annex V of the SCM Agreement. In accordance with these procedures the DSB was required to designate a representative to serve the function of facilitating the information-gathering process needed by the parties and the panel. In order to meet the Communities' request, he had been consulting with the parties to the dispute on this matter. He proposed that the DSB appoint this representative at the present meeting which would enable him to initiate the information-gathering process immediately, so that the parties would have the relevant information before them prior to making their first submissions. On the basis of the consultations, he proposed that the DSB designate Mr. S. Harbinson, the representative of Hong Kong to perform this task.

The DSB so agreed.

The Chairman thanked Mr. Harbinson for his willingness to undertake this task. He drew attention to the fact that under Annex V of the SCM Agreement the information-gathering process had to be completed within 60 days. In view of the shortness of this deadline, he asked that, within the next few days each party provide Mr. Harbinson in writing with any questions that they wish to address to the other party. This would enable Mr. Harbinson to prepare and transmit requests for information to each party with a minimum of delay. He requested Mr. Harbinson, in cooperation with the parties, to determine such deadlines and other working procedures necessary for completion of this task.

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[1]After the meeting India, Korea and the United States reserved their third-party rights to participate in the Panel proceedings.

[2]Idem.

The DSB took note of the statement.

The Chairman then drew to the attention of Members that, pursuant to Article 9 of the DSU, "… where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints". In the light of this provision he proposed that the complaints by Japan and the European Communities be examined by a single panel in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints were in no way impaired.

The DSB so agreed.

The representative of Jamaica enquired whether a single panel with standard terms of reference precluded any other approach in terms of recourse to the procedures of the SCM Agreement and its time-table.

The Chairman believed that a single panel did not preclude any other approach in terms of recourse to the procedures of the SCM Agreement in relation to the complaint raised by the European Communities.

The DSB took note of the statements.

2. Confidentiality of panel and Appellate Body reports

The representative of Norway, speaking under "Other Business", expressed concern over the leaking of panel and Appellate Body reports which had become a rule rather than an exception. He believed that this matter be considered by the DSB since much time had been devoted to negotiate the guidelines on circulation and derestriction of WTO documents.[3] The question of derestriction of panel and Appellate Body reports had been particularly sensitive during these negotiations. He raised this issue for systemic reasons since his country, with some other Members, had sought as much transparency as possible in the area of dispute settlement. While his delegation did not have any concrete proposal for action, it wished to underline that the gravity of the situation was further undermined by the fact that the reports were being leaked at their interim review stage.

He recalled that during the negotiations on circulation and derestriction of panel reports the issue of timing had been discussed i.e., whether these reports should be derestricted immediately after circulation to parties to a dispute or after circulation to Members, or whether they should be derestricted after a certain lapse of time. Since the reports were now being leaked at the interim review stage, which might be particularly inconvenient for panels, the time of derestriction had become irrelevant. He suggested that this problem might be considered in the context of the review of the DSU to be undertaken in 1998, pursuant to the Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

The representative of Jamaica said that Norway had raised a very important issue. He enquired whether Norway's concern was that the selective manner of leaking reports had prejudiced the fairness of the adjudication for parties involved.

The representative of Norway said that his delegation had no particular opinion with regard to the possible impact of leaking reports on the fairness of panel or Appellate Body proceedings. But

[3]WT/L/160/Rev.1.

it would not be unreasonable to expect that these leaks might have a negative impact on the work of panels and the Appellate Body. Thus, it was possible that a panel which adjusted its conclusion as a result of comments by parties at the interim review stage, might fear that these changes would be seen as responding, not to comments from parties, but rather to pressure from external sources. This was speculation, but nevertheless it was an issue which required some attention.

The representative of Mexico said that the issue raised by Norway was very timely. His delegation was dissatisfied with the leakage of information referred to by Norway. Despite of the efforts made to improve transparency in the area of dispute settlement, Members were not complying with what they had agreed to. Mexico attached great importance to compliance by all Members with the agreed procedures and it would bear this issue in mind at the time of the review of the DSU. Mexico's position during the review would depend on its appreciation of compliance by Members with the agreed procedures.

The Chairman noted that two delegations had referred to the opportunity which the review of the DSU would provide to consider important issues which required attention.

The DSB took note of the statements.