WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/56
12 May 1999

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Dispute Settlement Body
2 March 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 2 March 1999

Chairman: Mr. Nobutoshi Akao (Japan)

1. United States - Sections 301-310 of the Trade Act of 1974

(a) Request for the establishment of a panel by the European Communities (WT/DS152/11)

The Chairman recalled that the DSB had considered this matter at its meeting on 17 February and had agreed to revert to it. He drew attention to the communication from the EC contained in WT/DS152/11.

The representative of the European Communities said that the main points concerning this matter had already been outlined at the 17 February DSB meeting. At the present meeting, the EC was requesting the establishment of a panel for the second time. At the 17 February meeting, the United States had made comments to the effect that the EC was engaged in a diversionary issue in an attempt to take attention off other problems in the DSB. It had also stated that the EC's interest was to take advantage of automatic provisions of the DSU with regard to establishment of panels. However, this was not the case, since the US law in question involved real and substantive issues, which the EC believed included both mandatory and discretionary elements. In certain circumstances, the US legislation could be and had to be applied contrary to the DSU provisions. This very important issue had not been dealt with at the time of the Marrakesh Agreement, since it had been considered that as long as this legislation was applied consistently with the DSU provisions, there would be no problem. However, at present, it had become necessary to establish whether or not that legislation was fully consistent with the WTO Agreement. This was not a diversionary tactic. The EC had been provoked to deal with this matter due to the manner in which this legislation had been applied in the past few years. Some parts of the legislation involved only internal investigations in the United States. However, it was the application of the legislation in the past months that posed problems. He believed that those delegations, like the EC, that had expressed concerns about the tendency to take unilateral measures would recognize these problems.

The representative of the United States said that her country objected to the EC's motivation to request the establishment of a panel and to its allegations that the US law in question was inconsistent with the WTO obligations of the United States. At the 17 February DSB meeting, the United States had outlined the impropriety of the EC's motivations and had stated that the US law was consistent with its WTO obligations. She reiterated that the EC's motivation in seeking the establishment of a panel constituted diversion and retribution. The EC wished to divert attention away from its failure to implement the DSB's recommendations in the banana case. The EC's action constituted retribution against the United States for its attempts to exercise its rights under Article 22 of the DSU, given the EC's failure to implement the recommendations in the banana case.

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Retribution, which should never be a reason for seeking the establishment of a panel, was an inappropriate motivation to hide the requesting Member's failure to meet its WTO obligations.

She was confident that the panel proceedings would confirm, once and for all, that Sections 301-310 were fully consistent with the US obligations under all provisions of the DSU. Ironically, the result of the EC's failure to implement the DSB's recommendations in the banana case would confirm that the United States fulfilled its obligations. Notwithstanding her government's objections to the EC's request, her delegation was aware of the reverse consensus rule under Article 6.1 of the DSU with regard to establishment of panels, and would not stand in the way of those provisions. The United States would not consider using procedural tactics, such as calling for a quorum, blocking approval of the agenda, or requesting the suspension of this meeting to prevent the operation of the reverse consensus rule. The reverse consensus rules in Article 6.1 with regard to establishment of panels, Articles 16.4 and 17.14 of the DSU concerning adoption of panel and Appellate Body reports and Articles 22.6 and 22.7 of the DSU concerning DSB authorization of suspension of concessions were the cornerstones of the dispute settlement system. These reverse consensus provisions, in addition to the Appellate Body review and fixed time-frames for completion of proceedings, were the key characteristics distinguishing the new dispute settlement mechanism from the old GATT-system. These provisions were supposed to make the new dispute settlement system effective, compared to the old ineffective one. She hoped that all Members would recognize the importance of permitting these provisions to function as it had been intended; i.e. for the benefit of all Members seeking to use the DSU provisions to obtain a panel finding, as in the case of the EC's request, and equally for the benefit of Members seeking to induce compliance, as in the case of the US request for authorization of suspension of concessions in accordance with the arbitrators' decision pursuant to Article 22.7 of the DSU.

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

The representatives of Cameroon, Canada, Colombia, Dominica, Ecuador, India, Jamaica, Japan, Korea, Saint Lucia and Thailand reserved their third-party rights to participate in the Panel's proceedings.[1]

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[1] After the meeting Brazil, Costa Rica, Cuba, Dominican Republic, Israel and Hong Kong, China reserved their third-party rights to participate in the Panel's proceedings. Cameroon later notified the Secretariat of its withdrawal.