As held

In the World Trade Organisation

DS322

United States – Measures Relating to Zeroing and Sunset Reviews (Recourse to DSU Article 21.5 by Japan)

Oral Statement by Norway as Third Party

Third Party Session

Geneva
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STATEMENT BY NORWAY

1. Norway would like to thank the members of the Panel for the opportunity to make a statement at this meeting, and for opening up this part of the third party session to a public viewing.

Mr. Chairman, Members of the Panel,

2. This dispute raises a myriad of interesting and important questions. As a third party, Norway does not take upon itself to address all these questions. We have already in our written submission discussed in some detail the scope of the Panel's jurisdiction. We will not repeat those arguments here today, just add that we support the claim made by Japan in its supplemental submission regarding the periodic review issued after the establishment of the Panel. It is Norway's view – for the reasons set out by Japan – that also this measure must be within the scope of the Panel's jurisdiction and therefore part of these proceedings.

3. Today we will confine ourselves to some comments on what we see to be the core of this case. Even if it raises several questions, the key issue of the case is really quite simple: It is about compliance with WTO obligations.

4. All WTO Members have agreed to a dispute settlement system where "prompt compliance with recommendations and rulings of the DSB" is viewed as "essential in order to ensure effective resolution of disputes to the benefit of all members". Under the DSU each and every Member is obliged to comply with rulings and recommendations of the DSB immediately, unless such immediate compliance is impracticable, in which case one will be allowed a reasonable period of time (RPT) for compliance. However, from the expiry of the RPT, any WTO-inconsistent measure must be withdrawn, modified or replaced so as to ensure compliance with WTO obligations.

5. The United States did not in this case ensure compliance by the end of the RPT. In Norway's view, this follows clearly from the facts and evidence presented. The only implementing action that has been put in place by the United States is the elimination of the use of zeroing procedures in weighted average-to-weighted average comparisons in original investigations. The United States has not, however, stopped using zeroing procedures in any of the other situations covered by the DSB ruling in the original dispute.

6. Specifically, Japan challenges nine periodic reviews. Five of the reviews were found to be WTO-inconsistent in the original proceedings. These five reviews still provide the basis for collecting definitive anti-dumping duties after the end of the RPT, and thereby continue to have legal effects. The United States should – as an implementing measure – have recalculated the dumping determination in those reviews without the use of zeroing methodologies. The United States did not do so, and has therefore omitted to bring about compliance with the recommendations and rulings of the DSB in a timely fashion. The omission to recalculate also means that the Unites States still violates Articles 2.4 and 9.3 of the Anti-dumping Agreement as well as Article VI:2 of GATT 1994.

7. The United States claims that Japan when challenging the five periodic reviews, is requesting "retrospective" relief. In Norway's view, this is not the case. No one has requested the United States to withdraw, modify or replace anything during the RPT. However, as just submitted, from the end point of the RPT the United States should have ensured WTO-conformity with regard to all measures that were found to be WTO-inconsistent in the original dispute. What Japan is asking, is compliance with the DSB recommendations and rulings from the end point of the RPT. The United States is requested to respect its WTO obligations and make sure that the anti-dumping duties collected after the RPT are based on WTO-consistent importer-specific assessment rates. This cannot be characterized as anything but "prospective" relief.

8. Turning now to the remaining four periodic reviews. These were issued subsequent to the original dispute, but must, nevertheless, be considered as "measures taken to comply" as they relate to the same anti-dumping orders and continue the contested anti-dumping measures. When calculating the dumping margin in the four reviews, the United States used zeroing methodologies in defiance of previous rulings by the Appellate Body. On this basis, there should be no doubt that the periodic reviews at issue are inconsistent with Articles 2.4 and 9.3 of the Anti-dumping Agreement, as well as GATT Articles VI:1 and VI:2.

Mr. Chairman,

9. As stated in the beginning, this case is about compliance. In the original dispute the DSB ruled that the United States should bring the measures at issue into conformity with its WTO obligations. The United States has not done so – except with regard to one single situation.

10. The lack of real and good faith implementation by the United States is regrettable. It has turned dispute settlement with regard to zeroing into a never-ending story. Norway respectfully requests the Panel to make the necessary findings so as to not allow this to continue.

Thank you.