# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DSB/M/133**
31 October 2002

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**Dispute Settlement Body**
**1 October 2002**

## MINUTES OF MEETING

Held in the Centre William Rappard
on 1 October 2002

*Chairman: Mr. Carlos Pérez del Castillo (Uruguay)*

Prior to the adoption of the agenda, the Chairman said that initially he had intended to make a statement under "Other Business" concerning amendments to Rules 1, 24 and 27 to the Working Procedures for Appellate Review. To this effect faxes had been sent to Heads of Delegations on 27 and 30 September 2002. Since then he had been contacted by several delegations and, on the basis of these discussions, he had decided that this issue would not be raised under "Other Business", but that it would be included on the agenda of a future DSB meeting. He noted that these discussions also seemed to suggest the need for an additional exchange of views among Members on this issue. Therefore, it was his intention to convene an informal DSB meeting, prior to the next regular DSB meeting, which would be open to all Members in order to hear their views on this matter.

Subjects discussed: Page

**1. Surveillance of implementation of recommendations adopted by the DSB**

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States

(b) United States – Anti-Dumping Act of 1916: Status report by the United States

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States

(d) United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan: Status report by the United States

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.7)

2. The Chairman drew attention to document WT/DS160/18/Add.7 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

3. The representative of the United States said that, in accordance with Article 21.6 of the DSU, the United States had provided an additional status report in this dispute on 19 September 2002. As noted in the report, the United States and the EC were seeking a positive and mutually acceptable resolution of the dispute. She said that the United States had continued to work hard to reach a mutually acceptable arrangement consistent with WTO rules. The US Administration was engaging with the US Congress on this matter with a view to resolving the dispute.

4. The representative of the European Communities said that the EC noted the statement made by the United States at the present meeting and hoped that the ongoing work of the US Administration with the US Congress would be accelerated in the near future. The EC also hoped that there would be positive prospects for action in the short run.

5. The representative of Australia said that his country's views on the implementation of the outcome of this dispute were well-known and were reflected in the minutes of previous DSB meetings. He, therefore, did not wish to reiterate them at the present meeting. However, these views still stood. He wished to note for the record that Australia had made a proposal in the DSU negotiations which related to its concerns in this area.

6. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.7 - WT/DS162/17/Add.7)

7. The Chairman drew attention to document WT/DS136/14/Add.7 – WT/DS162/17/Add.7 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

8. The representative of the United States said that her country had provided an additional status report in this dispute on 19 September 2002, in accordance with Article 21.6 of the DSU. She noted that, at the previous regular DSB meeting, the EC and Japan had raised concerns about pending litigation under the 1916 Act. However, as had been noted in the status report, bills repealing the 1916 Act had, in fact, been introduced in both the US House of Representatives (H.R. 3557) and the US Senate (S.2224). And, those bills would apply to all pending court cases. The United States would continue to work towards further progress in resolving this dispute with the EC and Japan.

9. The representative of the European Communities said that the serious concerns expressed by the EC at the previous regular DSB meeting remained unheard. The status report showed again no progress towards implementation, despite worrying developments in the United States. The proceedings brought against the EC companies in the Iowa Printing Press case had been resumed on 8 August 2002. These companies were now engaged in an extensive process of discovery. Furthermore, the EC wished to inform the DSB that new cases had been recently initiated against two other EC companies. As a direct consequence of the United States' failure to comply with the DSB's ruling, all these companies would bear substantial litigation costs to defend their cases in proceedings based on a legislation that had been clearly condemned. The implementation of the DSB's ruling in this case was straightforward. This persistent non-implementation sent a worrying signal on the readiness of the United States to modify domestic law to comply with its WTO obligations. The EC urged the US Administration to treat this issue in the most serious manner and to put all its political weight to secure the repeal of the 1916 Act without any further delay.

10. The representative of Japan said that, at the previous meeting, her delegation had pointed out that the date agreed among the parties on which "the arbitration proceeding may be reactivated at the request of either party" had passed a long time ago. Japan was aware that, as mentioned by the United States, the bill repealing the 1916 Act had been introduced to the US Congress. However, Japan was deeply concerned that the United States had not implemented the DSB's recommendations and rulings. While the bill was still in the US Congress, the suspended proceedings in the US domestic courts under 1916 Act had been reopened as of 8 August 2002, and the respondent Japanese companies were suffering serious and real financial consequences. Such a delay in implementation undermined the credibility of the dispute settlement system, which was one of the fundamental pillars of the WTO. Therefore, Japan strongly urged the United States to double its efforts to have the bill repealing the 1916 Act passed by the US Congress in the current session.

11. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11)

12. The Chairman drew attention to document WT/DS176/11 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

13. The representative of the United States said that her country had provided a status report in this dispute on 19 September 2002, in accordance with Article 21.6 of the DSU. As noted in that report, the EC and the United States had agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings would expire on 31 December 2002, or on the date on which the current session of the US Congress were to adjourn, whichever would be later, and in no event later than 3 January 2003. The US Administration was consulting with the US Congress concerning appropriate statutory measures, and continued to work with the US Congress on resolving the dispute.

14. The representative of the European Communities said that the EC wished to thank the United States for its status report and noted that the US administration was working with the US Congress on appropriate statutory measures to resolve this dispute. The EC hoped that a satisfactory solution would be reached within the period of time agreed with the United States.

15. The representative of Cuba said that her country's position was that the United States should comply with the DSB's recommendations and rulings within the reasonable period of time agreed with the EC. Since December 1998, Cuba had been denouncing in the WTO and, in other fora, the discriminatory nature of Section 211, which did not permit Cuban original right holders or their successors, i.e. foreign companies with interests in Cuba, the recognition and enjoyment on US territory of their rights in trademarks or trade names related to properties nationalized by the Government of Cuba. The basis of this law was the historical challenge by the United States to Cuba's nationalization process, which was deceptively described as confiscation. Therefore, on previous occasions, Cuba had expressed its satisfaction with the conclusions reached by the Appellate Body to the effect that Section 211 violated the principles of national treatment and most-favoured-nation treatment, which were fundamental underpinnings of the WTO. The determination that Section 211 violated these basic principles of the WTO was at the same time a confirmation of the United States' discriminatory treatment of Cuba. Consequently, the recommendation that the United States should abide by its commitments to these principles assumed in the WTO was also a call for the elimination of a hostile policy towards Cuba and confirmed Cuba's position that Section 211 should be repealed. The Appellate Body in its examination had demonstrated the incompatibility of Section 211 with the international commitments assumed by the United States on intellectual property. Cuba had always attached special importance to this area and had repeatedly demanded strict compliance with the rules of the TRIPS Agreement.

16. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(d) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15)

17. The Chairman drew attention to document WT/DS184/15 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

18. The representative of the United States said that her country provided a status report in this dispute on 19 September 2002, in accordance with Article 21.6 of the DSU. As noted in that report, the US Department of Commerce had published a proposed change to its "arm's-length" test that was intended to implement the DSB's recommendations and rulings. The United States intended to apply any final test to the products involved in the hot-rolled steel investigation underlying this dispute. Any such a test would also be applied in future anti-dumping proceedings. At that time, the United States would intend also to implement the other recommendations and rulings of the DSB with respect to the respondents in the hot-rolled steel investigation. With respect to the statutory aspects of this dispute, the US Administration continued to consult with the US Congress concerning appropriate statutory measures and to work with the US Congress towards resolving the dispute.

19. The representative of Japan noted that the reasonable period of time in this case would expire on 23 November 2002. Japan was gravely concerned as to whether by then the United States would complete its implementation, including statutory amendments which were consistent with the WTO Agreement. The US status report contained in WT/DS184/15 and dated 20 September 2002 refered to the progress in implementation concerning the US Department of Commerce and the US Congress, but not the International Trade Commission (ITC). Since the ITC's application of the US law had been found to be WTO-inconsistent, Japan wished to request the United States to provide information

regarding the implementing status concerning the ITC. Japan would continue to carefully monitor all the aspects of the United States' implementation of the DSB's recommendations and rulings.

20. The representative of the European Communities said that the EC wished to reiterate its position for a speedy and orderly implementation of the conclusions and recommendations of the Panel and Appellate Body Reports in this case.

21. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

**2. United States – Final countervailing duty determination with respect to certain softwood lumber from Canada**

(a) Request for the establishment of a panel by Canada (WT/DS257/3)

22. The Chairman recalled that the DSB had considered this matter at its meeting on 30 August 2002 and had agreed to revert to it. He drew attention to the communication from Canada contained in document WT/DS257/3.

23. The representative of Canada recalled that on 3 May 2002 his country had requested consultations with the United States regarding the final countervailing duty determination made by the US Department of Commerce on 21 March 2002 with respect to certain softwood lumber from Canada. Consultations had been held on 18 June 2002. Unfortunately, these consultations had failed to resolve the dispute. On 29 July 2002, Canada had made a first request for the establishment of a panel to examine this matter. That request had subsequently been withdrawn and on 30 August 2002, Canada had made a new first request for a panel. This had been rejected by the United States and, therefore, at the present meeting, Canada was making a second request for the establishment of a panel. As set out in its request, Canada considered that the final countervailing duty determination violated the obligations of the United States under the SCM Agreement, particular the following four elements: (i) the investigation had been initiated on a basis that made the objective and meaningful determination of the degree of industry support impossible; (ii) the final determination impermissibly treated the Canadian stumpage practice as a financial contribution in the form of a "provision of goods"; (iii) the final determination found a "benefit" through an illegal comparison with benchmarks outside of the market under investigation; and (iv) the final determination inflated the alleged subsidy rate by a number of means not permitted under the SCM Agreement. Furthermore, Canada also considered that the United States had violated its obligations under the SCM Agreement and the GATT 1994 with respect to the provision of expedited and company-specific administrative reviews. Consequently, and in accordance with the relevant provisions of the DSU, the GATT 1994 and the SCM Agreement, Canada was requesting the establishment of a panel to consider these matters.

24. The representative of the United States said that her country was disappointed that Canada had chosen to move ahead with its panel request. As a substantive matter, the United States believed that Canada's claims lacked merit. As previously noted, the United States also had concerns with Canada's panel request. The US representative, therefore, wished to touch briefly on two primary concerns: (i) Canada's failure to consult on some of the measures it raised in its panel request; and (ii) Canada's repeated burdening of the system with hypothetical disputes. First, the United States noted that Canada had raised new measures in its panel request on which consultations had not been held. Specifically, Canada's panel request for the first time identified issues relating to the Commerce Department's initiation of expedited reviews as an inconsistent "measure". Given that Canada's consultation request did not mention the initiation of these reviews, that Canada and the United States had not in fact discussed these measures during the consultations, and that the US Commerce Department had not even initiated the expedited reviews for almost a full month after the consultations had been held, there was simply no legal basis for Canada's request to establish a panel on this matter. Second, the United States wanted to reiterate its strong systemic concern with

Canada's repeated burdening of the system with hypothetical disputes. The current request, for example, included a claim relating to a "proposed methodology" for expedited reviews that the US Commerce Department had yet to complete.

25. 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.

26. The representatives of the European Communities, India and Japan reserved their third-party rights to participate in the Panel's proceedings.

### 3. United States – Equalizing excise tax imposed by Florida on processed orange and grapefruit products

(a) Request for the establishment of a panel by Brazil (WT/DS250/2)

27. The Chairman recalled that the DSB had considered this matter at its meeting on 30 August 2002 and had agreed to revert to it. He then drew attention to the communication from Brazil contained in document WT/DS250/2.

28. The representative of Brazil said that this was the second time that his country was requesting the establishment of a panel concerning the imposition by the State of Florida of an excise tax on the processing of "citrus products" – principally, juice – made from oranges and grapefruit grown outside the United States. He noted that Brazil's panel request had been circulated on 19 August 2002 in document WT/DS250/2. Brazil raised its concerns that this tax unfairly burdened Brazilian exports of frozen concentrated orange juice to the United States, in violation of the requirements of GATT 1994, in particular Articles III:1, III:2 and III:4, which resulted in the nullification or impairment of benefits accruing to Brazil under GATT 1994. Therefore, Brazil was requesting that a panel be established at the present meeting, with standard terms of reference as set out in Article 7 of the DSU. As had already been stated at the 30 August DSB meeting, Brazil regretted that this issue had come to this point and hoped that continued consultations, even as the panel moved forward, could lead to a constructive and mutually acceptable solution.

29. The representative of the United States said that as had been stated when this panel request was before the DSB for the first time, the United States believed that Florida's equalizing excise tax was consistent with its WTO obligations. The United States also wished to reiterate that, as a procedural matter, Brazil's consultations request was on a different measure than the one in its panel request. A court had struck down aspects of the Florida law at issue and the State of Florida had amended the challenged provision after Brazil's consultations request. As Brazil conceded in its panel request, the amended law had entered into effect on 1 July 2002. Therefore, there was no basis for Brazil's panel request, which asked for a panel on a measure on which Brazil had not requested consultations. Nonetheless, the United States was ready to discuss with Brazil any concerns that it might have, and believed that further dialogue should result in a mutually satisfactory solution to this matter.

30. 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.

31. The representatives of the European Communities, Mexico and Paraguay reserved their third-party rights to participate in the Panel's proceedings.

**4. Egypt – Definitive anti-dumping measures on steel rebar from Turkey**

(a) Report of the Panel (WT/DS211/R)

32. The Chairman recalled that at its meeting on 20 June 2001, the DSB had established a panel to examine the complaint by Turkey pertaining to this matter. The Report of the Panel contained in WT/DS211/R had been circulated on 8 August 2002 as an unrestricted document. He said that the Panel Report was now before the DSB for adoption at the request of Turkey. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

33. The representative of Turkey said that his country welcomed the adoption of the Panel Report in the case before the DSB. However, Turkey did not fully agree with all of the Panel's conclusions, in particular with regard to the applicability of Article 6.8 for three of the Turkish exporters; Article 2.2.1.1 and 2.2.2 concerning interest income offset in calculating cost of production and constructed normal value; and Article 2.4 concerning incurred credit cost adjustments. Turkey believed that Egypt would take the necessary measures to ensure the implementation of the recommendations made by the Panel, and for that reason did not intend to take the case to the Appellate Body. The Panel had recommended that Egypt should bring its anti-dumping measures on imports of steel rebar from Turkey into conformity with the Anti-Dumping Agreement. In this respect, the Panel had concluded specifically that Egypt had acted inconsistently with its obligations under Article 3.4 and Article 6.8 and paragraph 6 of Annex II with regard to two Turkish exporters. Article 21.1 of the DSU stated that prompt compliance was essential to ensure effective resolution of disputes to the benefit of all Members. Moreover, the fundamental aim of the DSB was to secure a positive solution, preferably one which was acceptable to the parties. It was Turkey's understanding that prompt removal of the dumping measures imposed on its exporters was the way in which Egypt could faithfully implement the DSB's recommendations in this case. Despite the sincere efforts of both parties, it had not been possible to reach a mutually satisfactory solution during the consultations. Nevertheless, Turkey hoped that the problem would be solved this time. Turkey would monitor closely the developments and implementation of the DSB's recommendations. Turkey hoped that the parties to the dispute would be in a position to notify the DSB of a mutually satisfactory solution in the near future after prompt action had been taken by Egypt to complete the implementation process.

34. The representative of Egypt said that first he wished to thank the Panel and the Secretariat for the Report. His country agreed with the Panel's findings and would take the necessary actions to implement the recommendations contained therein in a timely fashion. In particular, at the next DSB meeting, Egypt would elaborate on how it intended to comply with the DSB's recommendations and rulings by bringing its definitive anti-dumping measures on imports of steel rebar from Turkey into conformity with the relevant provisions of the Anti-Dumping Agreement. Should Egypt find that it would be impracticable to comply immediately with the DSB's recommendations and rulings, it would do so within a reasonable period of time as provided for in Article 21.3 of the DSU.

35. The DSB took note of the statements and adopted the Panel Report contained in WT/DS211/R.

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