WORLD TRADE ORGANIZATION

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Dispute Settlement Body
18 October 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 October 2004

Chairperson: Ms. Amina Mohamed (Kenya)

Prior to the adoption of the agenda, the item concerning the Panel Report in the case on: "United States – Subsidies on Upland Cotton" was removed from the proposed agenda following the US decision to appeal the Report.

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.31 – WT/DS162/17/Add.31)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.24)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.24)

(d) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.9 – WT/DS234/24/Add.9)

1. The Chairperson 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". She proposed that the four sub-items to which she had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.31 – WT/DS162/17/Add.31)

2. The Chairperson drew attention to document WT/DS136/14/Add.31 – WT/DS162/17/Add.31, 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.

3. The representative of the United States said that her country had provided an additional status report in these disputes on 7 October 2004, in accordance with Article 21.6 of the DSU. Since then the US Congress had taken significant steps toward repealing the 1916 Anti-Dumping Act. A provision to repeal the 1916 Act was attached to the Miscellaneous Trade and Technical Corrections Act of 2004 (H.R. 1047). The US House of Representatives had approved H.R. 1047, on 8 October 2004, shortly after an agreement had been reached between House and Senate conferees. The bill was now awaiting final action in the US Senate. The Senate was currently in recess, but was expected to return to Washington in November 2004. The US administration would continue to work with Congress to achieve further progress in resolving these disputes with the EC and Japan.

4. The representative of the European Communities said that it was with satisfaction that the EC had learnt that the House of Representatives had recently passed a bill to repeal the 1916 Anti-Dumping Act. The EC hoped that the Senate and the US administration would now take the necessary final steps to effectively repeal the 1916 Anti-Dumping Act. If the 1916 Anti-Dumping Act were not repealed by the present Congress, this would be an extremely negative sign with regard to the commitment of the United States to respect its international obligations. Finally, the EC recalled that it might adopt, at anytime, a specific anti-dumping legislation applicable to US products, pursuant to its right to suspend the application to the United States of the obligations under the GATT 1994 and the Anti-Dumping Agreement.

5. The representative of Japan recalled that at the 27 September DSB meeting, his delegation had expressed disappointment that Japan was still awaiting the implementation by the United States of the DSB's recommendations and rulings four years after their adoption. At the present meeting, Japan could not but register its grave concern since the US obligation to do away with the WTO-inconsistent

law remained unfulfilled. Every time Japan made a statement about this prolonged non-implementation by the United States, it feared that the world at large cast doubt on the credibility of the WTO dispute settlement mechanism. At previous DSB meetings, Japan had noted with hope that positive results could be forthcoming after the US administration's expression of explicit support for the legislation repealing the 1916 Anti-Dumping Act in the 2004 "Report to the Leaders on the US – Japan Regulatory Reform and Competition Policy", and Ambassador Zoellick's letter to the leadership of the US House of Representatives. Like the EC, Japan also welcomed the fact that on 8 October, the House had passed the bill repealing 1916 Anti-Dumping Act. Japan strongly urged the US administration to re-double its efforts *vis-à-vis* the Congress, so that the necessary legislative action be secured during the second session of the 108th Congress. Japan requested the United States to keep reporting to the DSB on any further developments regarding the status of all the bills repealing the 1916 Anti-Dumping Act.

6. At the present meeting, Japan also wished to register its concern about the damages being incurred upon its companies as a result of the 1916 Anti-Dumping Act. As these damages were real and current, so was Japan's insistence that legislations repealing the 1916 Anti-Dumping Act be passed with retroactive effect. As previously mentioned by Japan, in May 2004, the Federal District Court had passed its judgment upholding the order imposing on a Japanese company a payment of damages amounting to US$30 million. It was regrettable that, thus far, the United States had failed to take any concrete steps to prevent these incidents from recurring, despite Japan's persistent call to do so. In this light, once again, Japan called upon the United States to make utmost effort in preventing any further damages to be inflicted on the Japanese companies.

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

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.24)

8. The Chairperson drew attention to document WT/DS176/11/Add.24, 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.

9. The representative of the United States said that her country had provided a status report in this dispute on 7 October 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation amending or repealing Section 211 was pending in the US Senate and the US House of Representatives, and the Senate had held hearings on this legislation in July. The US administration would continue to work with the US Congress concerning appropriate statutory measures that would resolve this matter.

10. The representative of the European Communities said that, once more, the US status report did not show any progress. The EC wished to stress again that two bills were pending in the US Congress to provide enhanced and effective protection of intellectual property rights both in Cuba and in the United States, and in that framework to repeal Section 211. The enactment of the "US – Cuba Trademark Protection Act" would not only remove a special interest legislation and resolve this dispute to the benefit of all. It would also show that the United States acted to provide effective and non-discriminatory protection of intellectual property rights, which it had been eager to promote worldwide. The EC expected that the US administration would support the "US – Cuba Trademark Protection Act" as an appropriate solution to this dispute.

11. The representative of Cuba said that with the apparent aim of complying with the DSB's recommendations, the United States had repeatedly informed Members, in its most recent status reports, of the existence of bills designed to amend Section 211 and had even notified this specifically

as follows: "Legislation amending Section 211 to clarify that it applies to all nationals was introduced in the US House of Representatives on 28 April 2004 (H.R. 4225) and in the US Senate on 29 April 2004 (S. 2373). Other bills that would, among other things, repeal Section 211 were introduced in the House on 17 June 2003 (H.R. 2494) and in the Senate on 9 December 2003 (S. 2002)." As repeatedly denounced by Cuba, the bill H.R. 4225 – introduced in the US Congress by Congressman Lamar Smith and co-sponsored by well-known anti-Cuban congressmen and senators opposed to the lifting of the blockade, and a version of which had been introduced in the Senate (S. 2373) by Senator Peter Domenici – had proposed merely cosmetic changes to Section 211, thereby maintaining the privileges conferred upon the Bacardi company under that Section. She recalled that transparent compliance with obligations was a prerequisite for demanding rights. Actions to the contrary would prove risky. The abrogation of Section 211 was clearly the only possible solution to this dispute in the interests of restoring the credibility, predictability and trust which must prevail in multilateral trade relations in the area of intellectual property. She noted that just over a month remained until the last of the deadlines granted to the United States to bring itself into compliance with the DSB's recommendations would expire. However, no decision to eliminate Section 211 had yet been taken and the DSB's recommendations still remained to be implemented. Cuba hoped that the United States would adopt the only fair and sound solution to this dispute, namely the repeal of Section 211.

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

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.24)

13. The Chairperson drew attention to document WT/DS184/15/Add.24, 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.

14. The representative of the United States said that her country had provided a status report in this dispute on 7 October 2004, in accordance with Article 21.6 of the DSU. The US administration would continue to work with the US Congress with respect to the recommendations and rulings of the DSB that had not been already addressed by the US authorities by 23 November 2002.

15. The representative of Japan said that the US status report, which had been circulated as WT/DS184/15/Add.24, added little in substance to the previous one. As Members were aware, a reasonable period of time for implementation in this dispute had been granted on the premise that the Member implementing the DSB's recommendations and rulings would make utmost efforts so as to secure the implementation within the shortest time possible. Yet the fact that the United States had not even introduced any legislation after a reasonable period of time for implementation had been extended twice, raised serious concern to Japan; to say the least. Japan wished to point out that it had agreed to the extension of the reasonable period of time only because it believed that, during the third reasonable period of time, the United States would finally fully implement the DSB's recommendations and rulings.

16. Against such backdrop, Japan noted with surprise that in the context of a meeting of the Negotiating Group on Rules in September, the United States had expressed its objection to the interpretation developed by the Appellate Body in the case under consideration with regard to Article 9.4 of the Anti-Dumping Agreement, namely, on the question of calculation of "all others' rate". Apparently, the United States had also proposed changes to Article 9.4, while Members were still waiting for the legislation being introduced to the Congress to rectify the US law, which the Appellate Body had found to be inconsistent with Article 9.4 of Anti-Dumping Agreement. Legally speaking, Japan was fully aware that the WTO negotiations were not linked to the DSB surveillance

of implementation of recommendations and rulings regarding specific disputes. Accordingly, Japan trusted that such an objection to the Appellate Body's interpretation, or the proposal to amend the provision with respect to which the US measure had been found to be WTO-inconsistent, were in no way indicative of the US intention to comply fully with its WTO obligations. In this spirit of trust, Japan urged the United States, once again, to act in good faith by first and foremost rectifying the WTO-inconsistent law, at the earliest opportunity. If the United States fell short of fully-fledged implementation by the end of the reasonable period of time, Japan would have no option, but to make recourse to the DSU provisions.

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

(d) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.9 – WT/DS234/24/Add.9)

18. The Chairperson drew attention to document WT/DS217/16/Add.9 – WT/DS234/24/Add.9 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 Continued Dumping and Subsidy Offset Act of 2000.

19. The representative of the United States said that her country had provided a status report on 7 October 2004, in accordance with Article 21.6 of the DSU. As noted in the report, on 19 June 2003, legislation to bring the Continued Dumping and Subsidy Offset Act (CDSOA) into conformity with US WTO obligations had been introduced in the US Senate (S. 1299). On 10 March 2004, legislation repealing the CDSOA had been introduced in the US House of Representatives (H.R. 3933). In addition, on 2 February 2004, the US administration had, once again, proposed repeal of the CDSOA in its budget proposal for fiscal year 2005. The US administration would continue to work with Congress to achieve further progress in resolving these disputes with the complaining parties.

20. The representative of the European Communities said that, once again, the United States had not been in a position to report on any progress towards the implementation of the DSB's recommendation in this dispute. Actually, the most recent event in this dispute was that the United States had started a new round of illegal disbursements under the CDSOA on 1 October. The EC recalled that, following the Arbitrators' decision, it might now seek and obtain the authorization of the DSB to suspend the application of tariff concessions or other obligations to the United States, at any time. The EC hoped that this would not be necessary. But, if no progress was achieved within a reasonable period of time, the EC would exercise its rights. The EC called on the US administration to convey to the US Congress the importance for the US credibility in the WTO of respecting the rights of other Members without further delay.

21. The representative of Japan said that to Japan's dismay, the status report of the United States contained no progress at all since the 27 September DSB meeting. It had already been a great disappointment to the eight complaining parties as well as to the whole WTO membership that they had been obliged to have recourse to Article 22 of the DSU due to the US failure to implement the DSB's recommendations and rulings in this proceeding. Now that the decision of the Arbitrators, pursuant to Article 22.6 of the DSU, had been issued, the United States must reflect on the implications of that decision very seriously, and must secure the implementation of the DSB's recommendations and rulings by way of repealing the CDSOA without any further delay.

22. The representative of Canada said that his country, once again, noted the status report of the United States and was disappointed and concerned that the United States had failed to bring itself into compliance with the WTO rulings in this dispute. As noted during the previous DSB meeting, the WTO Arbitrators had ruled that Canada and seven other WTO Members could retaliate against the United States for its failure to repeal the WTO-inconsistent Byrd Amendment. To date, over

US$2.8 billion of Canadian softwood lumber duties had been collected and stand to be disbursed under the Byrd Amendment. The adverse impact of the Byrd Amendment on trade had been and continued to be a serious concern for Canada. Canada had no choice, but to continue to take the necessary steps to protect and defend its interests. It was time for the United States to end this dispute and comply with its WTO obligations by repealing the Byrd Amendment.

23. The representative of Chile said that given that the United States had had nothing new to report for several months, neither did Chile have anything to add at the present meeting, except to reiterate that it hoped to see prompt compliance by the United States. Failing that, Chile would have to make use of its rights of last resort.

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

2. Canada – Measures relating to exports of wheat and treatment of imported grain

(a) Implementation of the recommendations of the DSB

25. The Chairperson recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. She recalled that at its meeting on 27 September 2004, the DSB had adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report, in the case on: "Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain". She then invited Canada to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

26. The representative of Canada said that his country was naturally disappointed with the findings of the Panel that certain measures relating to the transport and handling of grain in Canada were not consistent with the WTO Agreement. Nevertheless, Canada fully intended to implement the rulings of the DSB in that respect. The US challenge related to legislative and regulatory measures; and so, implementation would require both legislative and regulatory changes. Canada would need a reasonable period of time to implement these changes and looked forward to discussing with the United States such a reasonable period of time.

27. The representative of the United States said that her country welcomed the statement of Canada that it intended to implement the recommendations and rulings of the DSB in this dispute. The United States hoped that Canada would remove its WTO-inconsistent measures promptly. The United States noted that measures that were both consistent with Canada's national treatment obligation and would meet Canada's stated policy objectives were clearly available. The United States looked forward to hearing more about Canada's plans in this regard.

28. The DSB took note of the statements, and of the information provided by Canada regarding its intentions in respect of implementation of the DSB's recommendations in this case.

3. United States – Section110(5) of the US Copyright Act

(a) Statement by the European Communities

29. The representative of the European Communities, speaking under "Other Business", said that for one year now, the DSB had not received any status report from the United States concerning the

implementation of the DSB's recommendations and rulings in the dispute "United States – Section 110(5) of the Copyright Act" (WT/DS160). The European Communities was not aware of any legislative initiative or otherwise any steps taken by the United States to bring its legislation in conformity with the TRIPS Agreement. The EC very much regretted this long-standing situation of lack of compliance by the United States with its obligation under the TRIPS Agreement. However, the EC trusted that the US administration would make every effort to put an end to this worrying situation through an amendment of the relevant provisions of the US Copyright Act. The EC wished to ask the United States to start providing status reports to the DSB concerning any progress in the implementation of the DSB's recommendations and rulings in the above-mentioned dispute.

30. The representative of the United States said that the parties to the dispute had concluded a mutually satisfactory temporary arrangement regarding this matter in June 2003 (WT/DS160/23). The temporary arrangement covered the period through 21 December 2004. The United States intended to consult with the EC with a view towards reaching a resolution of this matter. The United States could confirm that, as previously agreed with the EC, the United States would resume providing status reports on this matter at the next DSB meeting.

31. The DSB took note of the statements.

4. Amendments to the *Working Procedures for Appellate Review*

(a) Statement by the Chairperson

32. The Chairperson, speaking under "Other Business", drew Member's attention to a communication from the Appellate Body concerning amendments to the *Working Procedures for Appellate Review*. She said that that communication, which had been circulated on 7 October 2004 in document WT/AB/WP/W/9 was available in the meeting room at the present meeting. As indicated in that communication, having taken into account the comments made by delegations on the proposed amendments, set out in document WT/AB/WP/8, and having completed consultations with the Director-General and the Chairperson of the DSB, pursuant to Article 17.9 of the DSU, the Appellate Body had prepared the final version of these amendments. In that context, she thanked Members for the interest shown in this matter and for their detailed comments, which she had transmitted to the Appellate Body. It was her understanding that the Appellate Body had considered all of these comments and had taken them into account in preparing the final version of the amendments. As specified in that communication, these amendments would enter into effect for appeals initiated after 1 January 2005. Appeals initiated before that date would be unaffected by the new rules. The Appellate Body would circulate a revised, consolidated version of the *Working Procedures* immediately after they had come into effect.

33. The DSB took note of the statement.