RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/23
31 October 1996

(96-4586)

DISPUTE SETTLEMENT BODY
3 October 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 3 October 1996

Chairman: Mr. Celso Lafer (Brazil)

Subject discussed:

1. Japan - Measures affecting consumer photographic film and paper
   - Request by the United States for the establishment of a panel (WT/DS44/2)

The Chairman drew attention to the communication from the United States contained in WT/DS44/2.

The representative of the United States recalled that on 13 June 1996, the United States had requested consultations with Japan with regard to the latter's specific laws, regulations, and requirements affecting the distribution, offering for sale, and internal sale of imported consumer photographic film and paper. Japan had established and maintained a series of interrelated measures over the past three decades that had thwarted imports of photographic film and paper. Through a variety of measures, it had carefully guided the establishment of a distribution system to which no foreign manufacturer could gain meaningful access. Although it had effectively blocked foreign access to consumers through the primary distribution channel, Japan had taken additional steps to ensure that foreign film manufacturers could not gain access through alternative channels. These steps included imposing cumbersome and non-transparent restrictions on the growth of large retail stores, which were more likely to carry imported products. It had also imposed non-transparent restrictions on the use of premiums and advertising: tools typically used by foreign firms to break into a new market. The United States believed that these measures had nullified or impaired benefits accruing to it within the meaning of Article XXIII:1(a) of GATT 1994, as a result of failure by Japan to carry out its obligations under Articles III and X of GATT 1994. In addition, the application of these measures nullified or impaired, within the meaning of Article XXIII:1(b) of GATT 1994, the tariff concessions that Japan had made on consumer photographic film and paper in successive rounds of tariff negotiations.

On 11 July 1996, the United States had held consultations with Japan aimed at resolving this dispute, but they had not produced a mutually agreed solution. As a result, the United States requested the establishment of a panel. With the strong evidence presented in this case, the United States was confident that the panel would gain a clear understanding of Japan's extensive efforts to circumvent its GATT obligations.

The representative of the United States further said that this case had generated a lot of interest and publicity, and possibly even some misunderstandings about its scope and content. From the standpoint of the United States, this GATT case concerned the measures taken by the Japanese Government. The GATT case presented to the WTO would address the Japanese Government's measures that discriminated against imported film and paper. The United States was seeking to address the barriers

to imported film that were attributable to private anti-competitive practices through the consultations requested under the 1960 Decision on Restrictive Business Practices[1]. The issues raised by this case should be of real concern to Members not only because they revealed discriminatory barriers faced by foreign firms in the Japanese film and photographic paper market, but also because they were indicative of the exclusionary policies the Japanese Government had implemented.

The representative of Japan said that his Government was willing to engage in further consultations with a view to reaching a mutually agreed solution to this dispute if the complaining party so wished. Japan believed that the United States had not yet exhausted all possibilities for a solution through the consultations. While the United States in its request had listed various laws, regulations and measures in Japan, it had not clearly indicated neither in the request for consultations nor in the course of consultations: (i)which specific measures violated which specific obligations under the GATT 1994; and (ii) on what grounds the United States asserted such violation. Japan believed that this was contrary to the requirements under paragraphs 4 and 5 of Article 4 of the DSU. Furthermore, Japan did not consider that the United States had duly identified the "specific measures at issue", as required in paragraph 2 of Article 6 of the DSU. Besides, most of the measures which the United States had cited were obsolete. It was not clear what the United States was seeking as "a positive solution to a dispute" pursuant to paragraph 7 of Article 3 of the DSU. The United States' approach had not only posed problems in terms of the dispute settlement procedures in this specific case, but had also serious implications on the future functioning of the dispute settlement mechanism. Therefore, Japan was not in a position to agree to the establishment of a panel at the present meeting.

The representative of the United States said that his delegation regretted Japan's decision to delay the establishment of a panel. The United States wished to resolve this matter as quickly as possible and therefore considered Japan's position as unfortunate. Pursuant to Article 6 of the DSU, the United States noted the fact that the panel to examine this dispute would be established when its request would be included on the agenda of the DSB meeting to be held on 16 October. He also noted that prior to the present meeting the representative of Japan had provided a written response, several weeks after the request for consultations on restrictive business practices had been made[2]. In addition, Japan had made its own request for consultations under the 1960 Decision on Restrictive Business Practices[3]. Although Japan had the right to make such a request, the United States was concerned whether this was a use of the dispute settlement mechanism for tactical reasons to deflate attention from serious concerns raised by the United States with regard to business practices in the Japanese market. This type of a tactical manoeuvre was of particular concern given that Japan had not responded to the United States' request for consultations made under the same Decision over three and a half months ago.

The representative of Japan said that his delegation had no intention to delay the procedures. Japan was fully prepared to continue consultations in a very serious manner. The United States' reason for raising this question was not clear in the light of the provisions of the DSU. Japan's request for consultations with regard to restrictive business practices was not a tactical manoeuvre. There were many similarities in both markets. Therefore, if the United States had raised this matter, Japan was entitled to raise it as well. He further said that his Government was convinced that all the measures raised by the United States with regard to Japan's practices were fully consistent with its obligations under the GATT 1994. The United States claims were contrary to the facts. His Government had never taken any action with either the intention or the effect of excluding imports of the consumer photographic film and paper. Japan's photographic film and paper markets were fully open. The United

[1]BISD 9S/28

[2]WT/L/154

[3]WT/L/180

States' allegations on each of Japan's measures had been based on misrepresentation of the facts. For example, one of Japan's Government measures, referred to by the United States, had stated that the use of rebates should be limited to the minimum. The United States considered this as a proof that Japan was encouraging the use of rebates. It had not demonstrated what positive solution was being sought neither during the consultations process nor in its request for consultations. It had asserted that several Japanese measures had together contributed to the existing market structure which had resulted in the discrimination against the imported products. The claims of the United States were both vague and broad. To allow such an issue to be brought before the DSB in this manner could have broad implications for dispute settlement in the future. In addition, the basic problem raised by the United States pertained to private business practices and therefore should be settled under Japan's anti-monopoly law. Initially, the United States had tried to take action under Section 301 of the US Trade Act of 1974 and had referred to various governmental measures including those taken 20 years ago which no longer existed, in order to make it an issue in the WTO.

The representative of the European Communities said that his delegation had noted Japan's statement and its response to the United States' request for consultations on restrictive business practices. He recalled that the Communities had requested to be joined in these consultations[4] and therefore looked forward to receiving a confirmation by Japan that the Communities' request would be accommodated.

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

[4]WT/L/158