WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/82
26 June 2000

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Dispute Settlement Body
25 May 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 25 May 2000

Chairman: Mr Stuart Harbinson (Hong Kong, China)

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1. Appointment of an Appellate Body member

1. The Chairman recalled that at its meeting on 7 April 2000, the DSB had authorized the previous Selection Committee composed of the 1999 Chairs of the General Council, the DSB and the Councils for Trade in Goods, Services and TRIPS as well as the Director-General, to continue its work in relation to the selection of an additional candidate to fill the vacancy left by the late Mr. Christopher Beeby. At that meeting it had also been agreed that the deadline for submission of candidates would be 5 May 2000. Two candidates had been nominated by the time of the deadline. The Selection Committee had conducted thorough interviews with both candidates and had made itself available, once more, to hear the views of Members. He drew attention to a fax from the Council Division, dated 19 May 2000, which had conveyed the Selection Committee's recommendations on the appointment to replace the late Mr. Beeby. The text of the fax read as follows:

> "The Chairman of the Selection Committee established by the DSB, Ambassador Kåre Bryn, wishes to notify Members of the following conclusion which has been reached by the Committee:
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> "The Selection Committee was established by the DSB with a view to making recommendation on an appointment to replace the late Mr. Beeby. The Selection Committee conducted thorough interviews with the two candidates nominated, and made itself available to hear the views of Members. Throughout the process, the Committee had constantly in their minds the guidelines, rules and procedures in the DSU and WT/DSB/1 governing the selection and appointment of Appellate Body members. The Committee also had regard to the (then) Chairman of the DSB's statement in November 1995 to the effect that composition of the Appellate Body could vary over time, that no rights should be derived from the initial composition, and that initial appointments did not compromise the scope for different regional or national compositions in future (WT/DSB/M/9). The Committee has now reached a firm recommendation that the following person be appointed:

Professor Yasuhei Taniguchi

"The Committee is of the view that this outstanding individual is highly qualified for appointment to the Appellate Body. In the light of the foregoing, the Chairman of the DSB proposes that, at a special meeting on 25 May 2000, the DSB decide to appoint Professor Taniguchi as a member of the Appellate Body for the remainder of the late Mr. Beeby's term: i.e. up to and including 10 December 2003."

2. The Chairman proposed that first the DSB take a decision on the above-mentioned recommendation and then delegations would be invited to make comments. Accordingly, he proposed that, as recommended by the Selection Committee, the DSB decide to appoint Professor Taniguchi as a member of the Appellate Body for the remainder of the late Mr. Beeby's term, that was up to and including 10 December 2003.

3. The DSB so agreed.

4. The representative of Japan expressed his country's gratitude to Members for accepting the recommendation by the Selection Committee to appoint Professor Taniguchi as a member of the Appellate Body to replace the late Mr. Beeby. He thanked the Selection Committee for, once again, conducting its task in a fair and efficient manner. Although only two candidates had been nominated both of them were highly qualified and competent. It had, therefore, been difficult for the Selection Committee to make its decision. Japan was glad that its candidate had been selected as an Appellate Body member. At the same time Members would continue to benefit from the insight and cooperation of Dr. D. Georgiev (Bulgaria) who had made a valuable contribution to the evolution of the dispute settlement mechanism over the past few years. He thanked those Members who had supported the candidacy of Professor Taniguchi. He believed that the best way for Professor Taniguchi to show his sense of appreciation for the support received from Members was to discharge his duties with the maximum fairness, sincerity and passion. He was confident that Professor Taniguchi would live up to the trust placed in him and would make a valuable contribution to the dispute settlement system.

5. The representative of Australia said that his country welcomed the appointment of Professor Taniguchi as a member of the Appellate Body and congratulated the Selection Committee for, once again, conducting a very fair and efficient selection process. He noted that Australia had supported the candidate on the principles of merit and broad representation of the WTO as enshrined in Article 17.3 of the DSU. His country did not wish the Appellate Body membership to become part of a rigid arrangement based on national or regional seats.

6. The representative of the United States said that her delegation welcomed the choice made by the Selection Committee. A considerable amount of time had been devoted by the Selection Committee in order to select a candidate. Her delegation congratulated the new member of the Appellate Body who would have to face many challenges and welcomed his tenure. The United States thanked Bulgaria for putting forward its candidate. Since there had been two excellent candidates it had been difficult for the Selection Committee to make a choice. Her delegation welcomed the new member of the Appellate Body who had an excellent reputation and was well regarded in the area of international law.

7. The representative of Bulgaria said that his country congratulated Japan on the appointment of Professor Taniguchi as a member of the Appellate Body, as well as Professor Georges M. Abi-Saab (Egypt) and Mr. Arumugamangalam V. Ganesan (India). He believed that they would make a valuable contribution to the work of the Appellate Body. He expressed gratitude to those delegations who had supported Bulgaria's candidate in the course of the present and the previous selection process. He wished to make a few general observations on the process of selection of Appellate Body

members. Article 17.3 of the DSU required that: "Appellate Body membership shall be broadly representative of membership in the WTO". In Bulgaria's view since economies in transition were recognized by the WTO Agreement as a separate category of countries, it was highly appropriate to include members from those countries in the Appellate Body. In order to ensure greater consistency with the requirement for broad representation of the WTO membership it would also be preferable to provide for rotation and to appoint members to the Appellate Body from countries other than those of outgoing members. Small countries like Bulgaria were not the main users of the dispute settlement mechanism. Nevertheless, they had a strong interest in the system as the principal guarantee for the rules-based multilateral trading system. It was of vital importance for small and trade dependent economies that world trade be based on rules. At the same time, because small countries were not the main users of the dispute settlement system, members from such countries could make a useful contribution in terms of ensuring impartiality in the work of the Appellate Body.

8. With respect to the professional criteria for Appellate Body members, the DSU provided that the "Appellate Body shall comprise persons of recognized authority and demonstrated expertise in law, international trade and the covered agreements generally". Unlike the appointment of other office holders, for which no special requirements for the candidates were foreseen in the WTO Agreement, with regard to the selection process for Appellate Body members, the DSU established certain legally binding criteria, both representational and professional. In order to maintain the credibility of the multilateral trading system and the confidence in the WTO, it was essential that the rules relating to the composition and functioning of the WTO, which was entrusted with guaranteeing the rules-based character of the system, be taken seriously. The Appellate Body members should fulfil all personal criteria, enumerated in Article 17.3 of the DSU, which required expertise not only in law, but also in international trade and the covered agreements. And, not or, as every Appellate Body member, in each appeal, had the responsibility for the entire report signed by him and not only for some aspects thereof.

9. In terms of improving the procedure, the selection process should first address the requirements of Article 17.3 of the DSU and only then consider the level of support for the candidates, expressed by Members. This seemed appropriate since there might be delegations, which would prefer to hear the recommendation of the Selection Committee based on the qualities of the candidates and the representational requirements, before making up their minds whom to support. Should the Selection Committee not base its recommendation on the criteria of Article 17.3 alone, the position of such countries would not be taken into account on an equal basis. From the point of view of the requirements of the DSU, the recent selections of Appellate Body members were discouraging. The WTO had had a good opportunity to demonstrate that it operated on the basis of rules and that it was an Organization for all participants in international trade including small countries and countries in transition. Regrettably, this opportunity had not been used. It remained to be hoped that such opportunities would not be missed in the future. The successful development of the multilateral trading system depended on the responsible choices to be made in the WTO.

10. The representative of the European Communities said that his delegations was pleased that the Selection Committee had taken a quick and effective decision. The EC welcomed the appointment of Professor. Taniguchi who had the required qualities and thanked Bulgaria for submitting its candidate. It was important to have a choice. He noted the statement made by Bulgaria regarding the procedures. However, the EC considered that the selection procedures were correct and that the requirements of Article 17.3 of the DSU had been followed. The concept of broad representation did not mean that each and every geographical group could be represented. That was not possible and it had to be interpreted in some broader way. He considered that the current process should serve as a model of how to arrive at decisions quickly, effectively and speedily for other selection procedures such as the selection of a future Director-General.

11. The Chairman said that there had been a general feeling that the Selection Committee had had before it two highly qualified candidates and expressed appreciation to both of them as well as to their sponsoring Governments. He congratulated Professor Taniguchi on his appointment as a member of the Appellate Body.

12. The DSB took note of the statements.

2. Progress report on informal consultations on the question of harmonization of the terms of office of Appellate Body members and selection processes for future appointments to the Appellate Body

13. The Chairman said that he wished to make a short report on one matter to do with the Appellate Body arising from consideration of the appointments of Messrs. Abi-Saab and Ganesan at 7 April DSB meeting. He recalled that, as reflected in the minutes of that meeting, he had been requested by a number of delegations to hold informal consultations on the harmonization of the terms of office of Appellate Body members and selection processes for future appointments to the Appellate Body. Informal consultations had got underway and, on 17 May 2000, an open-ended informal meeting had been held. While those consultations had not been conclusive, they had revealed a high degree of support for a "two group" approach to considering future appointments to Appellate Body. In other words, to consider the appointments in one group of three members and in one group of four members. It had also been noted that the group of three should the next to be addressed. The appointments of the three members concerned were due to expire co-terminously in December 2001. A range of options to consider the group of four at a later stage had been canvassed. Members wished to reflect further on this matter and more informal consultations would be held in due course.

14. The DSB took note of the statement.