RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/4
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DISPUTE SETTLEMENT BODY
25 April 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 29 March 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. Rules of procedure for Dispute Settlement Body
- Chapter V: Officers (WT/DSB/W/4)

The Chairman recalled that at its meeting on 10 February 1995, the Dispute Settlement Body (DSB) had adopted its Rules of Procedure contained in document PC/IPL/9 with the exception of provisions concerning observer status for international intergovernmental organizations and election of officers. It had been agreed that the DSB would revert to these matters once agreement on them had been reached. Following the consultations held on the question of officers a new draft text concerning this matter, contained in document W/DSB/W/4 was being submitted for consideration and approval by the DSB. He proposed that the DSB approve that text.

The Dispute Settlement Body so agreed.

The Chairman also said that after the successful conclusion of the ongoing consultations on the question of observership for international intergovernmental organizations the DSB would revert to this matter.

The Dispute Settlement Body took note of this information.

2. Standing Appellate Body
- Announcement by the Chairman regarding selection of members

The Chairman recalled that at its meeting on 10 February the DSB had agreed that suggestions of names for nominations to the Appellate Body be submitted to the Secretariat by 24 March 1995; this deadline had subsequently been extended until Easter. A list of suggested names for the Appellate Body was now available. Consistent with the principle that these were suggested names and not national candidatures, the list indicated only the names and nationalities of candidates. The reference to the nationalities of candidates did not mean that the respective suggestions had necessarily been made by the country indicated in brackets. The curricula vitae (CV's) of the persons proposed for the Appellate Body were available for consultation in the Council Division. He was satisfied that the list of suggested names for the Appellate Body was before the DSB within the agreed time-frame and hoped that the rest of the selection process would be handled just as expeditiously. He outlined a few key principles and major elements on which the selection process of candidates for the Appellate Body would be based. First and foremost the process of selection was not an election: i.e., the best people were to be sought. The Dispute Settlement Understanding (DSU) and PC/IPL/13 set out specific guidelines on the expertise and qualifications required of Appellate Body members and were clear that the selection process must focus on securing persons of the highest calibre capable of resolving "issues of law covered in the panel report and legal interpretations developed by the panel".[1]

He recalled that the Director-General, the Chairman of the DSB, the Chairman of the General Council and the Chairmen of the Goods, Services and TRIPs Councils would jointly propose appointments to the Appellate Body for consideration by the DSB. The "Group of Six" would be exercising this mandate strictly in accordance with the instructions provided in the guidelines contained in PC/IPL/13. Once delegations had studied the list of candidates for the Appellate Body and their CV's, they might have views which they would wish to have taken into account on the most appropriate appointees. It would be useful for the "Group of Six" to have such views at an early stage of the selection process. He, therefore, proposed that delegations wishing to do so should make their views known. To this effect, he and two or three other members of the "Group of Six" would make themselves available during the first ten days of May 1995 in order to meet with interested delegations. This process should begin from Wednesday 3 May 1995 which would provide a full week from the present meeting for delegations to study the list of suggested names and the CV's. In discussions with delegations he would focus on two specific questions: (i) which of the suggested names on the list - apart, of course, from individual delegations' own suggestions - they considered the most appropriate appointees to the Appellate Body; (ii) why against the guidelines set out in Article 17 of the DSU and PC/IPL/13 they consider these persons the most appropriate appointees to the Appellate Body? He considered that delegations which had suggested names believed that their candidates possessed the qualities identified in the above-mentioned guidelines. He, therefore, was interested in the views of individual delegations as to which other names on the list best lined up against the selection guidelines and why. The Secretariat would inform members of arrangements concerning these consultations in the next few days. Following these initial contacts with delegations the "Group of Six" would begin the process of formulating specific proposals for consideration by the DSB on appointments to the Appellate Body, and he would consult further on steps to be followed at later stages in the selection process. He reiterated that his objective was to submit the joint proposals by the "Group of Six" for consideration by the DSB at its meeting on 31 May 1995. He wished to have the cooperation of all delegations in order to ensure that the confidentiality of the process of selection of candidates for the Appellate Body was respected.

The representative of Brazil said that it was the time to complete the process of selection of candidates for the Appellate Body. The long list of candidates, circulated at the present meeting, indicated

[1] Article 17:6 of the DSU

the interest that many countries and individuals had in serving on the Appellate Body. As to the principles concerning the process of selection he agreed with the need to focus on the procedural steps outlined by the Chairman. In the selection process it was also important to maintain a reasonable degree of transparency and therefore it was necessary to have a wide access to the documentation and the CV's of candidates. With regard to the representative balance of the Appellate Body, its composition should not only reflect different geographic regions but also different legal systems. In any collective body, and especially in a body which was supposed to provide impartial assessments and the understanding of trade relations or trade disputes between different countries and where different systems prevailed, it was necessary that such diversity was reflected. He wished to have some clarification on how the "Group of Six" intended to ensure the appropriate distribution of the composition of the Appellate Body.

The representative of Japan expressed support for the approach in selecting the Appellate Body members as outlined by the Chairman. However, he enquired what kind of schedule was intended for the selection of the support staff to the Appellate Body. He stressed that Japan attached great importance to the independence of the support staff from the Secretariat and equally, if not more importantly, to its neutrality and credibility.

The representative of Norway expressed his country's support for the approach to the selection process outlined by the Chairman. He drew attention to the fact that on the list of names of candidates to the Appellate Body there were thirteen nominations from European Community members and that each name had a reference to both the Community and the individual country. He wished to know how this should be interpreted. If they represented the Community, whether this would mean that it had made twice as many suggestions for the Appellate Body which was supposed to be composed of seven members, or whether this would mean that the Community itself would prioritise among the thirteen, or whether this was just an indication that those countries were members of the European Community.

The representative of the European Communities said that the Community essentially had no objection to the approach suggested by the Chairman for the process of selection of candidates to the Appellate Body. The first and foremost was not so much the number of votes or a lobbying system which would take Members away from the choice of the best candidates but to ensure that the Appellate Body be comprised of persons whose qualities were unquestionable and corresponded to the selection criteria previously decided upon. Of course, those selected must come from countries which ratified the WTO Agreement. With regard to the question by Norway he said that the fact of being a member of the Community did not take away from the proposed candidates their nationalities. There was no hidden element in the presentation of these names. He confirmed that, as indicated previously, the choice of candidates would be done on the basis of the qualities of each candidates. Finally, he enquired whether the DSB itself or the General Council would adopt the final decision concerning the selection of members to the Appellate Body.

The representative of India said that all Members had the common interest and objective in ensuring the best possible composition of the Appellate Body on the basis of quality, knowledge and integrity. The procedure outlined by the Chairman appeared, *prima facie,* adequate. Given the great number of suggested names and the fact that Members would have to logically, consistently and rationally explain the basis of their suggestions to the "Group of Six" it might be necessary to obtain copies of the CV's of the candidates. Therefore, copies of CVs should be made available to interested delegations.

The representative of Mexico said that his delegation agreed to the proposed time-table with regard to the process of selection of candidates to the Appellate Body outlined by the Chairman and stressed the need to avoid that process to become politicized or a sort of voting which would not be effective in ensuring the most appropriate candidates. He wondered whether asking for views of

delegations on names of candidates, as suggested by the Chairman, was the best procedure since it might lead to a process whereby many names would be repeated many times. He suggested that it might be useful to enquire why such names were proposed. His delegation attached great importance to the representative balance both in terms of characteristics of the future members of the Appellate Body as well as qualities contained in paragraph 6 of PC/IPL/13. In this context, he highlighted the following factors: different geographical areas, levels of development and legal systems. In order to avoid an irrational selection method and to have a membership which was as efficient as possible it might be useful to have the exchange of views on possible methods of work in order to help the "Group of Six" to move as far away as possible from a procedure which might look like a vote. Perhaps at the appropriate time it would be possible to exchange views on purely procedural aspects of the process in order to avoid some of these risks. The fact was that all candidates had a nationality and this could sometimes provoke certain problems. He then referred to the question by the Community concerning the approval of the composition of the Appellate Body and said that his delegation's understanding was that the "Group of Six" would submit a proposal to the DSB but the decision was not in the hands of the "Group of Six" but rather in that of the DSB as a whole.

The representative of Uruguay said that the discussion at the present meeting highlighted the importance of the membership of the Appellate Body. This issue was delicate because the effectiveness of the commitment undertaken by all contracting parties in the WTO Agreement could be affected. Furthermore, such appointments were made for the first time which constituted a precedent on the methods of work and this could affect the future of this organization. His delegation welcomed the statements which reflected a high degree of precaution in order to maintain the objectivity, transparency, and purity of the selection process which was not a traditional exercise. This process was a strictly qualitative one where the best persons were sought in terms of their legal training and international trade expertise. Uruguay believed that the ideas outlined by the Chairman were sufficient to ensure transparency, objectivity of this process and was pleased that very precise and firm principles would guide the selection process.

The representative of Morocco drew attention to the fact that the Moroccan candidate whose name had been submitted one month ago was not on the list circulated at the present meeting. He therefore, asked the Secretariat to correct this error. He shared the views expressed by the Chairman concerning the need to ensure transparency, qualitative dimension of the process of selection, and the need to ensure that different legal systems were represented.

The Chairman thanked delegations for their statements and their support for the procedure that had been outlined in order to ensure that the selection process was objective. He assured Morocco that the omission pointed out by its representative would be corrected. With regard to the need to ensure a representative balance, he reiterated that the "Group of Six" would be conducting the selection process strictly in accordance with the provisions provided in the DSU and PC/IPL/13. He noted that the job positions for the support staff for the Appellate Body had been advertised and the Secretariat was currently in the process of examining individual applications. In this context, he stressed that one must ensure that the appointments of the support staff were handled with equal care as the selection of the Appellate Body members. He recalled that, as previously agreed, he would be involved in the process of selection of the support staff. He reiterated that the "Group of Six" would propose a slate of candidates for consideration by the DSB acting as the General Council. In other words there was no legal distinction between the General Council and the DSB. Therefore, the final decision would be taken by the Dispute Settlement Body. Due to the amount of paper involved it would be more practical to make the CV's available to delegations who wish to consult them in the Secretariat and, of course, to provide them with copies. As to the question raised by Mexico concerning the exchange of views on the working methods for the "Group of Six" he reiterated that in addition to the specific steps outlined at the present meeting for initial stages of the selection process he would be consulting on further steps to be taken in due course.

The Dispute Settlement Body took note of the statements.

3. Indicative list of governmental and non-governmental panels
- Announcement by the Chairman

The Chairman, speaking under "Other Business", said that a note on the administration of the indicative list of governmental and non-governmental panelists, prepared by the Secretariat as previously agreed at the informal consultations held on 24 March 1995 and the DSB meeting on 29 March 1995, was available in the room for consideration by delegations. After having studied this note, delegations, were invited to submit their comments to the Secretariat by 10 May 1995 so that this note, which was meant to be a guideline for delegations, could be issued as a document for consideration by the DSB at its next meeting on 31 May 1995.

The Dispute Settlement Body took note of this information.