WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/218
15 September 2006

(06-4403)

Dispute Settlement Body
31 July 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 July 2006

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

1. Appointment of an Appellate Body member

1. The Chairman recalled that at its meeting on 17 February 2006, the DSB had agreed to launch the process of selecting an Appellate Body member to succeed the late Mr. John Lockhart for the remainder of his term. At that meeting the DSB had also agreed that the deadline for nominations of candidates would be 31 March 2006. Subsequently, at its meeting on 10 April, the DSB had agreed to extend the deadline for nominations until 30 April 2006. He further recalled that at the 17 February meeting, the DSB had established the Selection Committee composed of the Chairs of the General Council, the Goods Council, the Services Council and the TRIPS Council; the Director-General and the Chairman of the DSB. The Selection Committee had been entrusted with the task of carrying out the selection process with a view to making a recommendation on appointment to the Appellate Body, in accordance with the procedures set out in document WT/DSB/1. The Selection Committee had approached this matter with great care and had based its work on the guidelines and rules and procedures contained in the DSU and WT/DSB/1 with a view to finalizing the selection process as soon as possible. The Selection Committee had conducted thorough interviews with the eight candidates nominated and had made itself available to hear the views of Members on candidates. He noted that 49 delegations had provided their views to the Selection Committee either orally or in writing. The task of the Selection Committee had been challenging given the excellence of all eight candidates and, on behalf of the Selection Committee, he wished to extend full appreciation and gratitude to all candidates as well as to thank their respective governments. As delegations were aware, on 20 July 2006, following its deliberation on all candidates, the Selection Committee had reached a recommendation that Mr. David Unterhalter be appointed as a member of the Appellate Body to fill the vacancy left by the late Mr. John Lockhart. The Committee's recommendation had immediately been communicated to all delegations by fax on the same day. The airgram convening a special DSB meeting to consider this matter had subsequently been issued on 21 July 2006. In light of the recommendation of the Selection Committee, he proposed to proceed in the following way: first he would propose that the DSB take a decision on the recommendation of the Selection Committee and, immediately after, he would open the floor to delegations who would wish to make statements for the record. He said that he hoped that this way of proceeding would be agreeable to all delegations.

2. The DSB so agreed.

3. The Chairman proposed that, as recommended by the Selection Committee, the DSB decide to appoint Mr. David Unterhalter as a member of the Appellate Body for the remainder of the late Mr. John Lockhart's term of office, namely up to 11 December 2009.

4. The DSB so decided.

5. The Chairman thanked delegations and invited them to make statements for the record if they so wished.

6. The representative of Mexico said that his country attached great importance to the dispute settlement mechanism and believed that the Appellate Body was a key institution within that mechanism. He recalled that when a vacancy had become available after the regrettable death of Mr. John Lockhart, it had seemed to Mexico that the best way to pay tribute to him would be to put forward the candidacy of one of Mexico's nationals with vast experience in WTO law: Mr. Alejandro de la Peña. Mexico had supported him throughout the selection process and wished to thank him for agreeing to come forward. Mexico also wished to extend its gratitude to the other candidates. He noted that the process benefited from the diversity of profiles of candidates and had been the most competitive in the Appellate Body's history. Though Mexico was disappointed that the Selection Committee had not recommended Mexico's candidate, it recognized the professional approach with which the Selection Committee had performed its task and welcomed its recommendation in favour of Mr. David Unterhalter of South Africa. Mexico had always insisted that all Appellate Body members should strictly comply with the requirements of Article 17.3 of the DSU. His delegation had had the opportunity to interact with Mr. Unterhalter in some of the cases in which Mexico had participated either as a party or a third party, and believed that Mr. Unterhalter met the requirements of Article 17.3 of the DSU. Thus, Mexico had nothing but praise for him. Mexico believed that the system would be reinforced by a competitive and transparent selection process and was confident that Mr. Unterhalter would add to the value of and would strengthen the proceedings of the Appellate Body.

7. The representative of Australia said that the Appellate Body had been described by many as the "Jewel in the Crown" of the WTO. It was a body quite unique in international law and one which had, within a little more than ten years, maintained excellent standards, both in terms of its efficiency and the quality of its reports. The excellent work of the Appellate Body could to a large degree be attributed to the qualities, skills and experiences of the individuals serving upon it. Accordingly, it was of the utmost importance for Members to ensure that vacancies on the Appellate Body were filled by persons of the highest calibre, through a rigorous merit-based selection process. This required that Members made the effort to put forward qualified candidates and to assist the broader membership in assessing those candidates. It also required the Selection Committee, the Secretariat and WTO Members to make time available, even during busy negotiating periods, to conduct meetings and interviews with candidates. Not least of all, it required candidates to make themselves available, and often travel considerable distances, to take part in such meetings and interviews. His delegation wished to place on the record its appreciation of the way in which the Selection Committee had conducted this process. Australia also recorded its appreciation of all the candidates who had been put forward and their Member governments, in ensuring that there was an excellent field. And of course, he could not allow this occasion to pass without thanking those Members who had given favourable consideration to the Australian candidate, Professor Andrew Rogers. The recommendation of the Selection Committee was that Mr. David Unterhalter be appointed to the Appellate Body. Australia fully and unequivocally supported that recommendation. Australia joined others in congratulating Mr. Unterhalter and looked forward in due course to welcoming him to Geneva.

8. The representative of South Africa said that first her country wished to thank the Selection Committee for the very professional, transparent and efficient manner in which it had conducted the interviews and consultations on the vacancy in the Appellate Body. Second, South Africa wished to pay tribute to the other candidates' professionalism and the high quality of their candidatures. All the other candidates had strong capabilities and experience and reflected a genuine interest to strengthen the multilateral trading system. South Africa was very proud that its candidate, Mr. David Unterhalter, had been appointed to the Appellate Body. Her country was proud because South Africa was a young democracy and David was a child of this new democracy, reflecting its culture of tolerance, the rule of law and social justice. Her country was also proud because in a short time it had

been able to produce a person of the calibre of David, with the skills set, competence and dedication, to make a contribution to one of the new South Africa's passions, the strengthening of the multilateral rules-based trading system. David also represented the commitment to impartiality and integrity and her country was confident that he would serve all WTO Members equally well as they confronted many complex challenges of the trading system in the years ahead.

9. The representative of China said that his country wished to take this opportunity to thank the Selection Committee for its energy and time in making this recommendation. Although the WTO negotiations had proceeded slowly, the recommendation of the Selection Committee had been reached very quickly, which might be a good display that the WTO was still efficient in relation to some issues. China wished to thank all candidates for their active participation, especially for their dedication to the multilateral trading system, and the professionalisms they had shown in the process. As one of the seven Members nominating candidates, China wished to express congratulations to Mr. David Unterhalter for his appointment as a new member of the Appellate Body. In the meantime, China would continue to pay attention and to support an effective WTO dispute settlement mechanism, which benefited all Members.

10. The representative of Japan said that his country wished to thank the Selection Committee for its hard work and an open, fair and transparent selection process. Japan also wished to thank the seven Members that had put forward excellent and qualified candidates. Japan welcomed the appointment of Mr. David Unterhalter, who had rich experience as a panelist. Japan hoped that Mr. Unterhalter, making use of that experience, would contribute to the Appellate Body's work, considering the Rules of Conduct, in particular independence and impartiality. Japan looked forward to working with Mr. Unterhalter in a very near future.

11. The Chairman said that, on behalf of the Selection Committee, he wished to thank delegations for the sentiments expressed to the Selection Committee and thanked the DSB for endorsing the recommendation of the Selection Committee.

12. The DSB took note of the statements.