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Dispute Settlement Body
25 March 1998

MINUTES OF MEETING

Held in the Centre William Rappard
on 25 March 1998

Chairman: Mr. Kamel Morjane (Tunisia)

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Prior to the adoption of the Agenda, the item concerning the Panel Report on "European Communities - Customs Classification of Certain Computer Equipment" was removed from the proposed agenda since the European Communities appealed the Report on 24 March 1998.

1. Surveillance of implementation of recommendations adopted by the DSB

- Canada - Certain measures concerning periodicals: Status report by Canada (WT/DS31/9)

The Chairman 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". He drew attention to document WT/DS31/9 which contained Canada's first status report regarding its progress in the implementation of the DSB's recommendations.

The representative of Canada said that her Government was pleased to present its first status report on the implementation of the DSB's recommendations with regard to the dispute on "Canada - Certain Measures Concerning Periodicals". Canada intended to meet its WTO obligations with respect to this dispute, as it had indicated to the DSB in August 1997.[1] The Department of Canadian Heritage was currently consulting with other federal government departments and the Canadian magazine industry, regarding the steps necessary to comply with the rulings. As outlined in the status report, several legislative changes would be required to achieve compliance. Canada was confident that all changes could be made by the implementation date of 30 October 1998. Changes were required to Tariff Item 9897.00.00 of the new 1998 Customs Tariff which contained the former provisions of Tariff Code 9958; i.e., the prohibition on the importation into Canada of periodicals that contained advertising directed at the Canadian market. Also required would be amendments to Part V.1 of the Excise Tax Act which imposed a tax on the value of all advertisements in split-run editions of magazines distributed in the Canadian market. With regard to the ruling on Canada's postal subsidy, her Government was currently reviewing changes to the Publications Assistance Program to ensure that it conformed to the DSB's recommendations. This review process would also ensure that changes would be made to the postal rates in order to eliminate the differential pricing policy. In accordance with the DSU procedures, Canada would provide regular updates with regard to its progress on this matter.

She recalled that in the Concluding Remarks of the Panel Report, the panelists had stressed "... that the ability of any Member to take measures to protect its cultural identity was not at issue in the present case."[2] In the Canadian context, where her country shared a common language and the world's longest undefended border with a neighbour ten times its size, it was Canada's unique challenge to protect its cultural identity, with no possibility of achieving the economies of scale available to producers of cultural products and services that reinforced the American identity. While many aspects of the Canadian problem were unique, her delegation believed that all Members had an interest in addressing the issue squarely. Canada was committed to policies and measures to strengthen the viability of its cultural industries, bearing in mind the need to ensure that its rights and obligations as a Member of the WTO were respected.

The representative of the United States thanked Canada for its status report. While this report contained a helpful description of Canada's domestic process, it did not provide the kind of information the DSB needed in order to effectively monitor implementation of the DSB's recommendations. It was now six months since the establishment of the reasonable period of time and eight months since the adoption of the Panel and the Appellate Body Reports. Thus more than half of the reasonable period of time had elapsed. However, the status report did not provide even a notional timetable on the various steps Canada would need to take in order to modify its 80 per cent excise tax on split-run periodicals. Furthermore, the report did not contain any information on the

[1] WT/DS31/8.

[2] WT/DS31/R, paragraph 5.45.

procedures that Canada intended to follow in order to modify the postal rates that had been the subject of the Panel and the Appellate Body. It did not provide any information on the substance of the changes that Canada intended to make with respect to any of the measures at issue. It did not indicate whether Canada had drafted proposed legislative or regulatory changes and the nature of those changes. Her delegation was therefore compelled to ask the following questions: (i) what progress had Canada made toward implementation within the eight months since the adoption of the Reports? and (ii) what could be expected, in terms of process and substance, in the remaining seven months? Her delegation believed that the United States and the DSB were entitled to have this information.

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

2. Canada - Measures affecting the importation of milk and the exportation of dairy products
- Request for the establishment of a panel by the United States (WT/DS103/4)

The Chairman recalled that the DSB had considered this matter at its meeting on 13 February 1998 and had agreed to revert to it. He then drew attention to the communication from the United States contained in document WT/DS103/4.

The representative of the United States said that her delegation looked forward to the establishment of a panel to examine the consistency of Canada's special milk class pooling system and the tariff-rate quota on fluid milk with its WTO obligations. Through its special milk class pricing and other aspects of the supply and price management system, Canada provided subsidies on dairy products without regard to the ceiling on the quantity of subsidized exports agreed in the Agreement on Agriculture. Furthermore, Canada had closed its market to imported milk by administering the applicable tariff-rate quota to exclude all commercial shipments. The restrictions on export subsidies and quantitative restrictions in the Agreement on Agriculture were a fundamental part of the commitments undertaken in the Uruguay Round. The United States was concerned that a failure to adhere to those commitments threatened to lead to an erosion of the disciplines to the detriment of all Members.

The representative of Canada said that her delegation regretted that the United States had chosen to pursue this request for the establishment of a panel. During the consultations under the DSU and in other fora, her country had provided the United States with extensive information demonstrating that the measures at issue were fully consistent with Canada's rights and obligations under the WTO. Canada was confident that a panel would confirm its position on this matter. Canada agreed that this panel should have standard terms of reference pursuant to Article 7 of the DSU.

The DSB took note of the statements and agreed to establish a panel in accordance with Article 6 of the DSU with standard terms of reference.

The representatives of Australia and Japan reserved their third-party rights to participate in the Panel's proceedings.

3. Canada - Measures affecting dairy exports
- Request for the establishment of a panel by New Zealand (WT/DS113/4)

The Chairman drew attention to the communication from New Zealand contained in document WT/DS113/4.

The representative of New Zealand said that, as outlined in document WT/DS113/4, his country considered that the export subsidies on dairy products provided by Canada were in contravention with its export subsidy reduction commitments and other commitments under the Agreement on Agriculture and the GATT 1994. The dairy export subsidy scheme in question was commonly referred to as the special milk classes system. The scheme enabled Canada to subsidize dairy exports by making milk available to processors at reduced prices when it was to be used to manufacture products for exports. New Zealand considered that the special milk classes scheme was inconsistent with Canada's obligations under Articles 3, 8, 9 and 10 of the Agreement on Agriculture and Article X:1 of GATT 1994.

On 29 December 1997, New Zealand had requested consultations with Canada pursuant to Article 4 of the DSU, Article 19 of the Agreement on Agriculture and Article XXII:1 of GATT 1994 with regard to the special milk classes scheme. Consultations had been held on 28 January 1998, but had unfortunately not resulted in a resolution of the dispute. Therefore, New Zealand requested the establishment of a panel pursuant to Article 6 of the DSU and Article 19 of the Agreement on Agriculture, with standard terms of reference as stipulated in Article 7 of the DSU. He noted that the US request for a panel contained in WT/DS103/4 which had been considered by the DSB under item 2 of the agenda was related in part to this matter. He further noted that under the DSU provisions, a single panel should be established to examine such complaints whenever feasible. Therefore, in accordance with Article 9.1 of the DSU, New Zealand had no objection to having its complaint and that of the United States examined by the same panel, taking into account the rights of all Members concerned.

The representative of Canada regretted that New Zealand had decided to request the establishment of a panel on this matter. In its first round of consultations as well as in other fora, her country had provided New Zealand with extensive information demonstrating that the measures at issue were fully consistent with Canada's rights and obligations under the WTO. The issue raised by New Zealand was the same as one of the two issues for which a panel had just been established at the request of the United States. Canada was aware of the systemic interest of Members, as contained in Article 9 of the DSU with regard to the establishment of a single panel where more than one Member had requested a panel related to the same matter. Therefore, Canada would not block a consensus to establish a panel at the request of New Zealand at the present meeting and proposed that a single panel be established to examine the common issue raised by the United States and New Zealand as well as the other issue raised by the United States. Canada agreed that the panel should have standard terms of reference pursuant to Article 7 of the DSU.

The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

The representatives of Australia and Japan reserved their third-party rights to participate in the Panel's proceedings.[3]

[3] After the meeting the United States reserved its third-party rights to participate in the Panel's proceedings.

The Chairman recalled that pursuant to Article 9 of the DSU "Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned". He therefore proposed that the complaint by the United States with regard to Canada's measures affecting the importation of milk and the exportation of dairy products contained in document WT/DS103/4 and the complaint by New Zealand with regard to Canada's measures affecting dairy exports contained in document WT/DS113/4 be examined by a single panel provided that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints would in no way be impaired.

The DSB so agreed.

4. Chile - Taxes on alcoholic beverages
   - Request for the establishment of a panel by the European Communities (WT/DS110/4)

The Chairman drew attention to the communication from the European Communities contained in WT/DS110/4.

The representative of the European Communities recalled that his delegation had already requested the establishment of a panel to examine Chile's tax regime on alcoholic beverages which had been in force for many years. This panel had been established at the DSB meeting on 18 November 1997. At that meeting, Chile had stated that on that date a new law had been signed with regard to its tax system. After the examination of the provisions on this new legislation, the Communities had concluded that like the previous legislation, the new legislation was not fully consistent with Chile's obligations under the GATT 1994. Therefore, the Communities had requested further consultations with Chile on the new legislation which had been held on 28 January 1998. However, the results had been inconclusive. Since the DSB had already established a panel on this matter but since its composition had not yet been finalized, he proposed that a single panel be established with standard terms of reference to examine the two complaints of the Communities: i.e., the previous complaint contained in document WT/DS87/5 and the present complaint contained in document WT/DS110/4.

The representative of Chile said that after the first request of the European Communities for the establishment of a panel with regard to Chile's tax regime on alcoholic beverages, her country had amended its legislation. In spite of this, the Communities had requested the establishment of a second panel to deal with the same matter. During the second round of consultations, her country had answered all the questions put to it. Chile regretted that these replies had failed to settle the dispute since, in its view, the new tax system was being applied exclusively on the basis of the alcohol content, regardless of origin or description of the beverages and was objective, non-discriminatory and fully consistent with Chile's WTO obligations. Chile accepted the establishment of a panel at the present meeting. Noting that a panel on this matter had already been established on 18 November 1997, to shorten the proceedings, Chile accepted the Communities' proposal that a panel with standard terms of reference be established to examine the two requests of the Communities.

The representative of Mexico recalled that his country had an interest in this matter and would proceed in accordance with its interest.

The representative of Peru said that his country had a substantive economic interest in this matter and wished to reserve its third-party rights to participate in the panel's proceedings. His delegation had also participated in the consultations held on this matter. Peru was an exporter of pisco to Chile and since the Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPS) would only enter into force in Chile and Peru in the year 2000, his delegation wished to reserve its rights to invoke Article 22.1 of the TRIPS Agreement and other provisions related thereto. Peru considered that pisco's denomination was Peruvian and as such gave Peru exclusive rights.

The representative of Chile said that the reference made by Peru with regard to the TRIPS Agreement was not covered by the terms of reference of the panel as contained in documents WT/DS87/5 and WT/DS110/4.

The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference. In accordance with the agreement by the parties to the dispute, the DSB also agreed that the Panel examine both complaints by the Communities contained in documents WT/DS87/5 and WT/DS110/4.

The representatives of Canada, Peru and the United States reserved their third-party rights to participate in the Panel's proceedings.

5. Philippines - Measures affecting pork and poultry
   - Notification of mutually agreed solution between the Philippines and the United States (WT/DS74/5 - WT/DS102/6)

The Chairman said that this item was on the agenda of the present meeting at the request of the United States.

The representative of the United States said that her country and the Philippines had reached a mutually satisfactory solution with regard to the United States' concerns over the administration by the Philippines of its WTO minimum access commitments for pork and poultry meat. On 12 March 1998, the United States and the Philippines had jointly notified the DSB that a mutually agreed solution had been found with regard to the matters raised in separate requests for consultations by the United States in April and November 1997. The notification circulated in document WT/DS74/5 - WT/DS102/6 contained details of the solution. In addition, the United States, in accordance with its standard procedures had made available, upon request, the text of the Memorandum of Understanding between the Philippines and the United States.

The representative of the European Communities recalled that his delegation had requested to be joined in consultations on this matter and had participated in the consultations held in October 1997. His delegation noted the information provided by the United States that a mutually agreed solution had been found. The Communities welcomed the solution and were currently examining its details. His delegation wished to reserve its rights to revert to this matter, if necessary, in due course.

The DSB took note of the statements.

6. European Communities - Regime for the importation, sale and distribution of bananas
   - Statement by the complaining parties and Panama

The representative of Ecuador speaking also on behalf of Guatemala, Honduras, Mexico, Panama and the United States, said that, once again, the six countries had to address the issue of implementation of the DSB's recommendations concerning the EC banana import regime. Since the last occasion on which this issue had been raised in the DSB, the Communities' actions had not given confidence that the proposal adopted by the Commission on 14 January 1998 would result in a WTO-consistent regime. He recalled that, at the DSB meeting on 13 February 1998, the six countries had

raised serious concerns with regard to this proposal. Many of these concerns had been outlined in a joint written statement, dated 5 February 1998. He requested that this joint statement be circulated to Members as a DSB document.[4] The six countries considered the Commission's proposal to be inconsistent with the WTO Agreement. They were concerned that this proposal was incomplete and did not provide the Commission's plan with regard to the licensing system which was one of the major elements of the Communities' regime, repeatedly found to be incompatible with the GATT 1994 and the GATS.

The six countries remained disappointed that the Commission had not consulted with them prior to the adoption of its proposal. The dispute settlement system could not function with regard to its objective of achieving a positive settlement of disputes without considering the views of the complaining parties. Since the DSB meeting on 13 February, no information from the Communities had indicated that a WTO-consistent proposal would be forthcoming in the near future. On the contrary, new assertions were being made to justify the maintenance of separate, discriminatory tariff-quotas. One such assertion was that the proposed discriminatory tariff quotas did not need to meet the requirements of Article XIII of GATT 1994 since they involved a tariff preference. However, this was in contradiction with Article XIII:5 of GATT 1994 and the points contained in paragraphs 7.79 to 7.82 of the Panel report.[5]

The six countries were concerned with the procedures requiring the Communities to collect import data from importers for the purpose of licence allocation in 1999. This data was based on criteria that had been found to be inconsistent with the Reports of the Panel: i.e., those for Category B operators and (a), (b) and (c) activity functions. They hoped that this did not indicate the Communities' intention not to comply with the DSB's recommendations by 1 January 1999. It was clear under Article 21.3 of the DSU that a reasonable period of time was granted for the purpose of implementation and not for delaying the settlement of the dispute. However, it was encouraging that a few weeks ago, the European Court of Justice had examined certain discriminatory requirements for export certificates in the Communities' banana regime and had found that these requirements violated the EC law. These discriminatory requirements had also been found by the Panel and the Appellate Body to be inconsistent with the GATT 1994 and the GATS. They noted the Commission's announcement that this provision would be immediately eliminated.

The six countries hoped that the Commission would act as expeditiously and appropriately with regard to WTO rulings as it was prepared to act in response to the decision by the European Court of Justice. Thus far, there was no evidence of this, nevertheless they were encouraged by statements of member States, which were also individual WTO Members, that they remained committed to ensure that the Communities would bring the banana import regime into conformity with their WTO obligations. The six countries urged member States to act on this commitment for the sake of the effective functioning and integrity of the dispute settlement system.

The representative of the European Communities said that this was the third occasion on which the six countries had raised this matter. At the DSB meeting on 13 February, he had indicated that the Communities believed that the conformity of the proposed amendments to their banana import regime with the WTO obligations would have to be considered at the end of the legislative process. This process was currently under way and upon the finalization of a new legislation interested parties could consider whether they were satisfied with the outcome. With regard to the comment concerning the statements made by member States, he did not know what Ecuador had referred to because no such statement had been made in the DSB. It was a common desire of the collective body, the Commission and member States to make necessary changes to the banana import

[4] Subsequently circulated in document WT/DSB/COM/4.

[5] WT/DS27/R/ECU.

regime in order to bring it into conformity with the WTO obligations. It was therefore not appropriate to refer to one element of that collective body.

He questioned the need for a statement on this matter to be circulated to Members as requested by Ecuador. He asked the Secretariat whether this was a normal procedure since such a statement would oblige the Communities to provide a written reply. In his understanding, the DSB could not be requested to judge the implementation process nor whether such a process was in conformity. In accordance with the DSU provisions the Communities would make a progress report in due time. If after the legislation was passed but the measures taken were considered to be inconsistent, there was a recourse to DSU procedures which the complaining parties could take. However, the DSB was not in a position to decide on this matter. With regard to a recent decision by the European Court of Justice, he said that the Commission could act rapidly because this was a matter of management. He noted that this decision applied to the current regime and had no relevance to the proposed regime which would be introduced on 1 January 1999 because export certificates would not be part thereof.

The representative of Colombia said that his country, as one of the main exporters of bananas to the Communities, had actively participated in the Panel and the Appellate Body proceedings and would closely follow the manner in which the Communities would implement the DSB's recommendations. Colombia had noted the statement made by Ecuador as well as the statements made on other occasions by the complaining parties and the Communities. At this stage in the implementation process, it was difficult to present views concerning the new regime since only an internal proposal of the Commission to member States was available. Under the DSU procedures, the issue of implementation of the recommendations and rulings should be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time. Prior to each DSB meeting, the Communities would have to provide the DSB with a status report on their progress in the implementation of the recommendations. Colombia considered that this would be an appropriate occasion to express views on the substance of the matter. With regard to the recent decision by the European Court of Justice, he stressed that this decision was not related to the WTO rules or to the validity of mechanisms such as export certificates. It had merely examined, in light of EC law, the question of export certificates as a requirement for operators A and C to obtain import licences while exempting operators B from such a requirement and had found that the exemption of operators B constituted a discrimination against other importers.

The DSB took note of the statements.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/76)

The Chairman drew attention to document WT/DSB/W/76 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/76.

The representative of the United States said that her country had no objection with regard to the inclusion on the indicative list of any of the individuals contained in document WT/DSB/W/76. However, her delegation considered that it would be appropriate to make a statement of general principle at the present meeting. The United States believed that the Secretariat drew its credibility in no small part from the assumption of its impartiality. Because this impartiality should be encouraged and maintained for the good of the system, the United States believed that it would not be appropriate for the staff of the Secretariat or others employed by the WTO, or under a contract to provide services to the WTO, to serve as panelists in dispute settlement cases. Therefore, if there was reason to believe that an individual was employed by the WTO, the United States would normally object to that person

serving on a panel established to examine a dispute involving the United States. Similarly, in those cases where parties to a dispute could not agree on a panel composition, the United States would urge the Director-General not to select such individuals to serve on dispute settlement panels. For the good of the system, the United States hoped that other Members would adhere to a like policy in selecting panelists under the DSU.

The DSB took note of the statements and approved the names contained in document WT/DSB/W/76.

8. Review of the Dispute Settlement Understanding
- Statement by the Chairman

The Chairman, speaking under "Other Business", recalled that in accordance with the Ministerial Decision on the Application and Review of the Understanding on the Rules and Procedures Governing the Settlement of Disputes, the Ministerial Conference was required to complete in 1998 a full review of dispute settlement rules and procedures under the WTO, and to take a decision on the occasion of its first meeting after the completion of the review on whether to continue, modify or terminate such dispute settlement rules and procedures. The previous Chairman of the DSB, Mr. W. Armstrong had held informal consultations with Members on the procedural aspects of the review and had reported to the DSB on the results of these consultations at its meeting on 13 February 1998. This report had been circulated in document WT/DSB/W/74.

In order to fulfil the task of reviewing the DSU, the Chairman proposed to continue work in two stages:(a) in the first preliminary stage, from now until the May 1998 Ministerial Conference, delegations would be invited to submit in writing to the Chairman of the DSB informal suggestions with regard to the issues to be taken up in the context of the DSU review. These suggestions would be circulated to Members as informal documents: (ii) in the second stage, after the May 1998 Ministerial Conference, an informal meeting of the DSB would be convened to take stock of the suggestions received and to discuss how to proceed further. If this proposal was acceptable, he would invite delegations to submit to him informal suggestions as indicated above.

The representative of Mexico said that his delegation had no objections with regard to the Chairman's proposal. However, there were some procedural issues related to the process initiated by Mr. W. Armstrong which still needed clarification and he hoped that the Chairman would take this into account.

The Chairman said that his proposal was a simple plan of action of a procedural nature. He ensured Mexico that the work initiated by his predecessor would be taken into account.

The representative of the European Communities said that his delegation had no objections with regard to the Chairman's proposal, which in the view of the Communities seemed appropriate. It was his understanding that the Chairman's proposal for delegations to submit informal suggestions in a very near future did not imply that this process would end when an informal meeting would be held to take stock of the suggestions received. In his view, this should be an open-ended process which would permit delegations to submit new ideas.

The Chairman confirmed that this process would remain open-ended and that his intention was to begin the work as soon as possible in order to be able to complete the DSU review in time.

The representative of Korea said that his delegation had no objections with regard to the Chairman's proposal. He recalled that during the informal consultations on procedural aspects of the

DSU review some delegations had suggested that the Secretariat prepare a list of issues of relevance to the DSU review. He asked whether this had been considered by the Secretariat.

The Chairman said that in his understanding Korea wished to have a list of issues prepared by the Secretariat for consideration at the informal meeting to be held in June. He believed that such a list could be prepared in parallel with his proposal. He would consult with Members in order to have their views on this matter.

The representative of the United States said that her delegation had no objections with regard to the Chairman's proposal. She wished to clarify whether the informal suggestions by Members would be circulated separately as raised by individual Members, or as a collective document. She recalled that her delegation had indicated that it was not necessary to make a list of issues raised in the past since some of those issue were no longer relevant.

The Chairman said that suggestions provided by Members would be automatically circulated as separate documents indicating the Member that submitted suggestions.

The representative of Japan said that his delegation supported the Chairman's proposal. The Secretariat could prepare a compilation of the informal suggestions by delegations as well as other issues which, based on its experience, could be relevant to the DSU review. His delegation looked forward to the circulation of the documents prior to the informal consultations to be held after the Ministerial Conference.

The representative of Venezuela supported the proposal made by the Chairman. His delegation believed that this proposal would enable delegations to continue the efforts initiated by the previous Chairman regarding the procedural aspects of the DSU review. He noted that Venezuela had already provided its written suggestions to the Secretariat for circulation to Members.

The Chairman confirmed that Venezuela had already provided its contribution which was now in the process of translation and which would soon be circulated to Members.

The representative of Canada said that her delegation had no objections with regard to the Chairman's proposal. She understood that the Chairman in making this proposal wished to avoid holding informal consultations between now and the Ministerial Conference given the number of meeting to be held during this period of time with regard to the preparation of the Conference. However, it would be useful to hold one preliminary consultation with the view to reaching an understanding on how to proceed and what documents would be prepared in order to take up this work properly following the Ministerial Conference.

The Chairman said that he would do his utmost to hold informal consultations on this matter prior to the Ministerial Conference.

The representative of the Philippines, speaking on behalf of the ASEAN countries, said that they supported the Chairman's proposal. However, the ASEAN countries did not support the idea that the Secretariat prepare a list of issues, on its own responsibility, regarding the DSU review which was the sole responsibility of Members. They believed that it was important to preserve the impartiality and integrity of the Secretariat.

The Chairman said that since there was no consensus on this issue, he would consult with delegations in order to determine the nature of the contribution to be made by the Secretariat.

The representative of United States said that during consultations with different delegations, the Chairman should check if there were issues that had been raised in the past which they no longer wished to be considered.

The representative of Jamaica said that his delegation supported the Chairman's proposal. He noted that different views had been expressed by delegations. It was not necessary to take a final decision with regard to individual views expressed at the present meeting. He recalled that during the consultations held by the previous Chairman no agreement had been reached with regard to a number of points. He was not sure whether a listing of issues by the Secretariat was one of those points on which no consensus had been reached. He noted that the ASEAN countries had indicated that they did not wish the Secretariat to prepare a list of issues on the grounds that this might affect its impartiality and integrity. He considered that in putting forward a number of issues, the Secretariat could do so in consultation with the Chairman or through the Director-General or a Deputy Director-General. Certain Members might have noticed some procedural aspects which could be improved which if brought to light could be supported by other Members.

He did not know whether the Appellate Body was considered to be part of the Secretariat. In his view, the Appellate Body was part of the WTO system and despite its independence could be required to submit its views if requested by Members. He hoped that when it was considered useful to elicit an indicative list of past issues from WTO staff members this would specifically include the Appellate Body. The Appellate Body had not yet been properly understood with regard to its operation, including the issue of how it interpreted certain provisions of the WTO and its drafting history. There were many issues which should be raised but not with the intention to weaken or discredit anyone's reputation or integrity. He believed that the work of the DSB, the procedures and the culture developed in the WTO were so important that a wider rather than narrower approach was required. He hoped that the views which had been raised in the past DSB meetings would not be disregarded. He recalled that Jamaica had expressed its views on a particular matter and had requested consultations which had not been held. He asked the Secretariat to review the minutes of the DSB in order to identify such issues. However, Members could also chose do their own research. He requested that a job number be indicated on documents containing Members' suggestions.

With regard to the statement made by the United States on a general principle concerning the nominations for the indicative list of governmental and non-governmental panelists, he said that one could review the objective of this list, consider how many panelists had been drawn from that list and understand how they were appointed. He believed that more transparency and openness was required in this area. He therefore requested the Secretariat to prepare a note indicating the panels to which panelists had been drawn from the indicative list as well as from other sources.

The Chairman noted the points raised by Jamaica and said that he believed that it was up to Members to determine what should be expected from the Secretariat or the Appellate Body. With regard to the proposal concerning the indicative list, he said that this matter could be considered at the subsequent meeting of the DSB.

The representative of Mexico said that his delegation believed that the process of the DSU review should begin as soon as possible. Therefore, Mexico supported the Chairman's proposal that Members submit their written suggestions to the Secretariat as soon as possible. The Secretariat could prepare a compilation of these suggestions without going beyond their content. His delegation supported the Chairman's proposal to hold an informal meeting on substantive aspects of the DSU review after the Ministerial Conference.

He referred to the proposal made by Canada that it might be necessary to hold an informal consultation prior to the Ministerial Conference with the view to clarifying certain procedural aspects of the DSU review in order to facilitate future work. In the view of his delegation there were two

important procedural aspects. One was the possibility of considering the issues which still remained outstanding from the process initiated by the previous Chairman. The other one was to seek a general guidance with regard to the content of the suggestions to be submitted by Members. This could include the commitment to provide explanations why certain provisions of the DSU required improvements. He believed that this issue could be considered in small informal meetings.

The representative of Hong Kong, China, said that his delegation had some views with regard to the DSU review, including how best the Secretariat could contribute without breaching its impartiality. He did not wish to present these views at the present meeting since he was assured that the Chairman would hold informal consultations and his delegation would have the opportunity to raise this matter during such consultations.

The representative of Australia said that her delegation supported the Chairman's proposal that an informal exchange of views should begin prior to the Ministerial Conference in order to facilitate the preparation for the post-Ministerial substantive review. Australia believed that it would be useful to have the Secretariat's contribution. There was no reason that any contribution by the Secretariat would be contrary to the fact that the DSU review was Member-driven. Australia also had some suggestions as how this could occur without being in conflict. Given the demands on the time of all delegations regarding the preparations for the Ministerial Conference, Australia supported the proposal made by Canada that one informal consultation open to all DSB members be held in order to clarify what was expected and to bring all delegations onto a similar footing in submitting their ideas.

The representative of Hungary said that in the view of his delegation, during the operation of the dispute settlement mechanism, Members had already identified a few problematic points in the course of the debates. Therefore, the Secretariat could prepare a list of issues raised in the past which would not be in conflict with the Member-driven approach. Following the circulation of the list of issues, delegations could include additional points. This would help to avoid a situation where the same problems were identified by different delegations. His delegation supported the proposal made by Canada that one informal consultation open to all DSB members be held.

The Chairman thanked for the support expressed by Members regarding his proposal. He noted that on some points raised by delegations there was a certain amount of agreement. He would do his best to hold an informal consultation as soon as possible, as proposed by Canada He noted the statements made by some delegations that the Secretariat prepare a compilation of informal suggestions

The DSB took note of the statements.

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