WORLD TRADE ORGANIZATION

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Dispute Settlement Body
19 May 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 May 2004

Chairperson: Ms Amina Mohamed (Kenya)

Prior to the adoption of the agenda, the item concerning the adoption of the Panel Report in the case on "United States – Final Dumping Determination on Softwood Lumber from Canada" was removed from the agenda following the decision of the United States to appeal the Panel Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.26 – WT/DS162/17/Add.26)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.19)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.19)

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15/Add.7)

(e) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.4 – WT/DS234/24/Add.4)

1. The Chairperson 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". She proposed that the five sub-items to which she had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.26 – WT/DS162/17/Add.26)

2. The Chairperson drew attention to document WT/DS136/14/Add.26 – WT/DS162/17/Add.26, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

3. The representative of the United States said that his country had provided an additional status report in these disputes on 6 May 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Act was pending in both the US Senate and the US House of Representatives. On 29 January 2004, HR 1073, which would repeal the 1916 Act, had been reported favorably out of the Committee on the Judiciary of the US House of Representatives. The US administration was continuing to work with Congress to achieve further progress in resolving these disputes with the EC and Japan.

4. The representative of the European Communities said that in May 2003 two bills had been introduced in the US Senate, one to repeal the 1916 Anti-Dumping Act, the other one to repeal the Act and terminate the pending litigation. Unfortunately, to-date, the Senate had not even started to discuss any of those bills. In the House of Representatives, a bill had finally been voted out of the Committee for consideration by the whole House. Yet, this was four months ago and since then no further action had been undertaken. The persistent non-compliance by the United States set a precedent which was damaging to the credibility of the WTO as a whole. The EC called on the United States to finally comply with its international obligations. Otherwise, the EC would have no other choice, but to seek the DSB's authorization to suspend the application of its obligations under the GATT 1994 and the Anti-Dumping Agreement.

5. The representative of Japan said that his country remained gravely concerned as to whether and when the implementation by the United States in this proceeding would be secured. As Japan had repeatedly stated, prompt implementation of the DSB's recommendations and rulings was of

fundamental importance to the credibility of the WTO dispute settlement system. Japan was especially concerned that Japanese companies were still being forced to incur substantial damages, including significant legal costs in cases brought under the WTO-inconsistent Act. As Japan had previously stated, the implementation by the United States should also address this situation. Japan, once again, called on the US Congress to pass the legislation repealing the 1916 Act with proper retroactive effects. To this end, Japan urged the US administration to work much closer with Congress and to provide more detailed reports on the status of all the repealing bills of the 1916 Act. Japan had not yet made a final decision on the reactivation of the DSU Article 22 arbitration. Nevertheless, Japan reminded the United States of its right to suspend concessions or other obligations.

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

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.19)

7. The Chairperson drew attention to document WT/DS176/11/Add.19, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

8. The representative of the United States said that his country had provided a status report in this dispute on 6 May 2004, in accordance with Article 21.6 of the DSU. The US administration was continuing to work with the US Congress concerning appropriate statutory measures that would resolve this matter. In this connection, the United States wished to report that legislation had been introduced in the US House of Representatives on 28 April 2004, and in the US Senate on 29 April 2004, to amend Section 211 to address the recommendations and rulings of the DSB in this dispute. Legislation repealing Section 211 was already pending in both Houses of Congress.

9. The representative of the European Communities said that the United States had expressed on numerous occasions its attachment to effective and non-discriminatory protection of intellectual property rights. The House and Senate's bills for the "US – Cuba Trademark Protection Act" were a welcome reaffirmation of the US commitment to this objective. They offered a basis to resolve this dispute to the benefit of all by ensuring an effective protection of intellectual property rights both in Cuba and in the United States as well as removing a damaging special interest legislation. The EC expected that the US administration would support these bills as an appropriate solution to this dispute.

10. The representative of Cuba questioned how much longer her country as well as other Members would have to witness the indifference and contempt with which the United States treated its commitments under this dispute settlement mechanism. Cuba noted that there was no sign of readiness or willingness on the part of the United States to comply with the DSB's recommendations and, as usual, the US status report in a cunning and deceitful manner, merely indicated compliance with the requirement of surveillance of the implementation of these recommendations. As was known to and discussed by international public opinion, Section 211 had its roots in the manipulations of one company – Bacardi & Company Limited. This was not a US company, but its political and economic interests were linked to the US aggressive policy directed at the Cuban people, which was in violation of international law, including intellectual property agreements.

11. The company in question was involved in unlawful, aggressive and inhumane actions against Cuba and its people; i.e. Torricelli's Law, the interventionist and arbitrary Helms-Burton Act and the recent measures adopted by the US administration, the cowardly, cruel and inhumane nature of which had led to their rejection by both the Cuban people and the international community. The UN General Assembly had condemned the blockade policy against Cuba ever since 1992 and, in its last sessions,

179 countries had voted in favour of ending the embargo, with only three votes against it and two abstentions. Inspired and backed by a group with the desire to destroy the humane and fair work of the Cuban Revolution, bills designed to make cosmetic changes to Section 211 had recently been introduced in the US House of Representatives and Senate. Officially, their aim was to comply with WTO rules while, in reality, they would perpetuate spurious and unlawful actions in favour of a rum company to the detriment of the legitimate rights of a Cuban enterprise, rights which were acquired under US trademark legislation.

12. Cuba reiterated that the only legal, ethical, truthful and fair solution to this dispute was a complete and immediate repeal of Section 211, approved by the US Congress. Cuba had a vocation for and a long tradition of complying, on a non-discriminatory basis, with the international commitments it had undertaken under the intellectual property treaties, conventions and agreements. The institutions and private companies, including those of the United States, had benefited, and continued to benefit, from such compliance. For this very reason, Cuba had the right to demand an end to the manoeuvring in this dispute settlement process and to request that the United States comply fully with its obligations and that it refrain from hampering the legitimate trade interests of Members by means of legal stratagems, which were inconsistent with the non-discrimination and transparency obligations it had undertaken as a WTO Member. Recently, the US administration had been characterized by a policy of lies, deception, imposture, threats and coercion of the international community in order to enforce its decisions. If the United States maintained its stance of protecting the unlawful interests of a rum company and was not met with a firm but fair response, the TRIPS Agreement might as well be shelved, and the very same right being assumed by the United States could be assumed by other countries to the detriment of international legal order. Action should be taken to prevent the United States from destroying the WTO and from reducing the importance of international agreements to nothing more than just a piece of paper. At this stage, it was Cuba, a small, blockaded country, that suffered from violation of its legitimate rights; in future such a fate could befall others.

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

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.19)

14. The Chairperson drew attention to document WT/DS184/15/Add.19 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

15. The representative of the United States said that his country had provided a status report in this dispute on 6 May 2004, in accordance with Article 21.6 of the DSU. The US administration was continuing to work with the US Congress with respect to the recommendations and rulings of the DSB that had not been addressed by 23 November 2002.

16. The representative of Japan said that it was of great regret to his country that no bills had even been introduced to the US Congress before the expiry of the reasonable period of time in December 2003. Until now Japan had received no signs of progress that would follow up on the "specific legislative amendments" that had been pledged to by the US administration a year ago. Further delay in implementation would impair the credibility of the WTO dispute settlement mechanism. Japan urged the United States to promptly implement the DSB's recommendations and rulings in this proceeding, before the end of the newly extended reasonable period of time; i.e. 31 July 2004. Should the obligation to comply with the DSB's recommendations and rulings be disregarded once again, Japan wished to remind the United States of its right to the recourse set forth in the DSU provisions.

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

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15/Add.7)

18. The Chairperson drew attention to document WT/DS207/15/Add.7, which contained the status report by Chile on progress in the implementation of the DSB's recommendations in the case concerning price band system and safeguard measures relating to certain agricultural products.

19. The representative of Chile said that on 6 May 2004, his country had submitted a new status report in spite of the fact that there had been no progress within the meaning of Article 21.6 of the DSU since the end of December 2003, when the measures had been adopted by Chile to comply in both the form and substance with the recommendations and rulings of the DSB in this dispute.

20. The representative of Argentina said that given that there had been no progress within the meaning of Article 21.6 of the DSU since the previous status report, Argentina was obliged to reiterate that disagreement under the terms of Article 21.5 of the DSU continued to exist. In view of this disagreement, Argentina would request consultations with Chile within the framework of the Understanding signed on 24 December 2003 regarding procedures under Articles 21 and 22 of the DSU (WT/DS207/16) in order to seek a mutually agreed solution to this dispute.

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

(e) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.4 – WT/DS234/24/Add.4)

22. The Chairman drew attention to document WT/DS217/16/Add.4 – WT/DS234/24/Add.4 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Continued Dumping and Subsidy Offset Act of 2000.

23. The representative of the United States said that his country had provided a status report in this dispute on 6 May 2004, in accordance with Article 21.6 of the DSU. As noted in the report, on 19 June 2003, legislation to bring the Continued Dumping and Subsidy Offset Act (CDSOA) into conformity with the United States' WTO obligations had been introduced in the US Senate (S. 1299). On 10 March 2004, legislation repealing the CDSOA had been introduced in the US House of Representatives (H.R. 3933). In addition, on 2 February 2004, the US administration had, once again, proposed repeal of the CDSOA in its budget proposal for fiscal year 2005. The US administration was continuing to work with Congress to achieve further progress in resolving these disputes with the complaining parties.

24. The representative of the European Communities said that this was the fourth item on the agenda of the present meeting where the United States reported no progress in implementation. Even though one year would soon have elapsed since the introduction of the first bill, discussions had not even started on either of the two pending bills. While the EC was legitimately expecting indications of a serious effort towards implementation, statements indicating the opposite were being made as well as calls for renegotiation of the WTO rules. Such a disregard for a DSB ruling was inexcusable and extremely detrimental to the authority of the dispute settlement mechanism. The EC urged the United States, once again, to abide by its international obligations and to respect the rights of other Members by implementing without further delay the rulings and recommendations.

25. The representative of Japan said that his country had taken note of the status report by the United States which was practically the same as the one presented at the previous DSB regular

meeting. While the award of the Arbitrator was still pending, Japan strongly urged the US administration to do everything in its power to promptly implement the DSB's recommendations and rulings through repealing the CDSOA, so that it would be unnecessary for Japan and other complaining Members to resort to retaliatory measures.

26. The representative of Chile expressed his country's regret about the lack of progress by the United States with regard to compliance with the recommendations and rulings in this dispute, as in the three other cases before the DSB at the present meeting. Not only was the United States delaying the repeal of the Continued Dumping and Subsidy Offset Act of 2000, which had been declared to be inconsistent with the WTO-provisions, but it was also seeking to "legalize" it as part of the negotiations on rules. Chile did not question the sovereign right of each Member to distribute the proceeds of the application of anti-dumping or countervailing duties. However, Chile objected to what was prohibited by the WTO, namely, the application of a double remedy in cases of dumping or subsidization. This "double hit", as referred to by the US trade representative, directly affected Chile's exports and the level of nullification and impairment suffered by Chile continued to increase every day as a result of the Byrd Amendment. Chile, one again, called on the US administration and the US Congress to intensify their efforts to secure the earliest repeal of the Byrd Amendment.

27. The representative of Canada said that his country, once again, noted the status report of the United States and the US continued failure to comply with its WTO obligations with regard to the Byrd Amendment. The lack of any progress by the United States to bring itself into conformity with the recommendations and rulings of the DSB was an ongoing concern to Canada. Despite the various pronouncements by the US administration that the Byrd Amendment should be repealed, the illegal measure remained in force to the detriment of other WTO Members, including Canada. He recalled that an arbitrator would determine the level of retaliation that Canada and seven other Members could impose against the United States for its non-compliance in this dispute. Despite this, the Canadian objective remained the repeal of this WTO-inconsistent measure rather than retaliation. Canada, therefore, urged the United States to repeal the Byrd Amendment and to end this dispute.

28. The representative of India said that his country wished to thank the United States for yet another status report in this dispute. India regretted that no progress had been made to repeal the CDSOA and, once again, it wished to urge the United States to redouble its efforts to secure compliance of its obligations by repealing the CDSOA.

29. The representative of Brazil said that, like previous speakers, his country was also disappointed about the lack of implementation of the DSB's recommendations on the part of the United States. Brazil hoped that implementation would come before the retaliatory measures would be imposed.

30. The representative of Korea said that his country thanked the United States for its status report. Unfortunately, however, that report was practically the same as the previous ones, which meant that no progress was being made. As the EC had pointed out, it was regrettable that instead of implementing the recommendations and rulings of the DSB in this dispute, the United States seemed to wish to renegotiate the WTO rules, as the most recent US proposal in the Negotiating Group on Rules had indicated. Korea urged the United States to achieve prompt implementation of the DSB's rulings so that recourse to suspension of concessions would become unnecessary.

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

2. Implementation of the recommendations of the DSB

(a) European Communities – Conditions for the granting of tariff preferences to developing countries

(b) United States – Investigation of the International Trade Commission in softwood lumber from Canada

32. The Chairperson recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. She proposed that the two sub-items to which she had just referred be considered separately.

(a) European Communities – Conditions for the granting of tariff preferences to developing countries

33. The Chairperson recalled that at its meeting on 20 April 2004, the DSB had adopted the Appellate Body Report in the case on "European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries" and the Panel Report on the same matter, as modified by the Appellate Body Report. She then invited the European Communities to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

34. The representative of the European Communities recalled that on 20 April 2004, the DSB had adopted the recommendations and rulings in the case on "European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries". At that meeting, the EC had already indicated that it intended to fully implement the DSB's rulings. At the present meeting, the EC wished to confirm its intention to fully implement the recommendations and rulings of the DSB in this case in a manner consistent with the WTO obligations and it had already begun to evaluate options for doing so. The EC intended to modify the "Drugs Arrangements" of its GSP scheme to make it fully compatible with the DSB's rulings and recommendations. Due to the relative complexity of the issues involved and the need for a satisfactory implementation, the EC would need a reasonable period of time in which to implement. The EC stood ready and was willing to discuss an appropriate reasonable period of time for implementation with India, in accordance with Article 21.3(b) of the DSU.

35. The representative of India said that after the extraordinarily long statement made by his country at the time of adoption of the Reports in this matter at the 20 April DSB meeting, his delegation would make a very short statement at the present meeting. India welcomed the reconfirmation by the EC at the present meeting that it intended to implement the recommendations and rulings of the DSB in this dispute. Since the EC had indicated that it would require a reasonable period of time, assuming it was impracticable to comply immediately, India looked forward to meeting with the EC in the near future in order to reach an agreement on the reasonable period of time.

36. The DSB took note of the statements and of the information provided by the European Communities regarding its intentions in respect of implementation of the DSB's recommendations.

(b) United States – Investigation of the International Trade Commission in softwood lumber from Canada

37. The Chairperson recalled that at its meeting on 26 April 2004, the DSB had adopted the Panel Report in the case on "United States – Investigation of the International Trade Commission in Softwood Lumber from Canada". She then invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

38. The representative of the United States said that his country intended to implement the recommendations and rulings of the DSB in a manner that respected the United States' WTO obligations, and it had begun to evaluate options for doing so. The United States would need a reasonable period of time in which to implement. The United States stood ready to consult with Canada regarding a reasonable period of time.

39. The representative of Canada recalled that at the special meeting on 26 April 2004, the DSB had adopted the Panel Report in the case on " United States – Investigation of the International Trade Commission in Softwood Lumber from Canada". He recalled that a finding central to the US determination of threat of injury had been found to be inconsistent with US obligations under the Anti-Dumping Agreement and the SCM Agreement. The DSB had determined that the finding of a likely imminent substantial increase in imports of Canadian softwood lumber products was not one which would have been reached by an objective and unbiased investigating authority. The DSB had also ruled that, given that it was based on the very same finding, the causal analysis by the United States was inconsistent with the cited Agreements. Consequently, the DSB had recommended that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the SCM Agreement. Canada was pleased to note that the United States had declared its intention of implementing the recommendations and rulings of the DSB. Canada's objective was to reach an agreement with the United States on a reasonable period of time and it looked forward to discussing US intentions in detail in the very near future.

40. The DSB took note of the statements and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

3. Proposed amendments to the *Working Procedures for Appellate Review* (WT/AB/WP/8)

41. The Chairperson recalled that, as announced at the DSB meeting on 20 April 2004, this matter had been placed on the agenda of the present meeting pursuant to the "Additional Procedures for Consultations between the Chairperson of the DSB and WTO Members in relation to Amendments to the *Working Procedures for Appellate Review*" contained in document WT/DSB/31, in order to enable delegations to exchange views on certain amendments under consideration by the Appellate Body, as set out in document WT/AB/WP/8. She also recalled that at the 20 April DSB meeting, she had invited Members to provide written comments on the amendments by 26 May 2004. At the present meeting, she wished to inform delegations that, thus far, no written comments had been submitted on the amendments under consideration. She then invited delegations to provide their views on the amendments for the record.

42. The representative of the United States said that his country wished to thank the Chairperson and the Appellate Body for providing this consultation process in connection with the Appellate Body's proposed amendments to its working procedures. At the present meeting, the United States wished to share with the Chairperson and Members some of its observations about the proposed amendments. The United States would also welcome the opportunity to express its views on the proposed amendments at an additional, informal meeting of the DSB. The United States would expect to have additional comments at such an informal meeting. At this point, his delegation wished to express the following thoughts. First, the United States appreciated the need to update the procedures on setting the date of the oral hearing, and wondered if it would not also be useful as part

of this exercise to provide that the Appellate Body would consult, very briefly, with the parties to the appeal before finalizing the date for the oral hearing.

43. Second, in connection with the calculation of time-limits in the DSU, the United States appreciated the significant efforts that the Appellate Body and the Secretariat had made over the years to meet DSU time-frames, as well as the difficulties this had posed, particularly in December and August. While the Appellate Body's proposed approach of tolling deadlines during these periods was not unreasonable, the language of the DSU did not, as currently written, permit this. This was an item that could be taken up in the DSU negotiations, if Members wished to amend the time-frames.

44. Third, the United States also wished to comment on the proposed amendments concerning Notices of Appeal. These proposals had provided a useful opportunity to re-examine the role of these notices. Appellees had increasingly been seeking to challenge the sufficiency of the Notice of Appeal, based on the criteria set forth in the current working procedures, as well as the Appellate Body's subsequent explanations of those criteria. Given the current situation, as well as ambiguities in the current working procedures, the Appellate Body was proposing amendments which would add additional requirements, and in the interest of balance, would also require a parallel notice for cross appeals. The proposal would also add a process for amending the Notice, and would modify the briefing schedule to accommodate other changes. The United States appreciated that it was the intention of the Appellate Body to introduce greater predictability and fairness through its proposed amendments. However, it wondered if the net result of the proposed modifications would be to make the situation even more complicated and difficult, and take away from the time that could be devoted to considering the important issues on appeal on their merits. The United States wondered if it would not be possible to devise a different approach to address the same concerns that would reduce, rather than increase, procedural distractions. Perhaps such an approach could build upon some of the Appellate Body's ideas regarding the timetable for appeals.

45. He noted that the DSU only provided that a Member wishing to appeal had to notify the DSB that it intended to do so. There were no other requirements for these notifications, and, apart from the requirement in the DSU that appeals be limited to issues of law and legal interpretations in the panel report, the DSU did not limit the scope of appeal. Accordingly, the United States would be willing to work with the Appellate Body and Members to find a way to simplify the process and allow the Appellate Body and the parties to devote more of the very limited time to the issues on appeal and spend less on procedural distractions. In conclusion, the United States looked forward to further discussion of these issues among Members, and to dialogue with the Appellate Body through this process.

46. The representative of the European Communities said that the EC had thoroughly examined the amendments proposed by the Appellate Body and considered that, in principle, they represented improvements to the Appellate Body's working procedures. Moreover, the EC highly valued the opportunity given to Members to comment on the regular updating of the Appellate Body's working procedures. The EC would provide detailed comments in writing, including on the draft text annexed to document WT/AB/WP/8, before 26 May 2004, as requested. With regard to the Appellate Body's proposal on the content of the Notice of Appeal, the EC noted that a clear list of what should be included in the text of the Notice would be useful and would be in line with the purpose of Rule 20 on commencement of an appeal. Moreover, the EC supported the Appellate Body's view that the Notice of Appeal did not only trigger an appeal, but also enabled the appellee to exercise fully its right of defence. Similarly, the EC considered that the Appellate Body's proposal on the creation of a Notice of Other Appeal was based on sound motives and should be confirmed.

47. The third proposal of the Appellate Body concerning procedures for amending Notices of Appeal was the most delicate. The EC realized through its own experience in the case on "EC – Sardines" that the working procedures did not provide for amending a Notice of Appeal. In the past, appellants had adopted the procedure of withdrawing the original Notice and filing a new one

immediately thereafter. The Appellate Body had affirmed that Rule 30(1) permitted conditional withdrawals, unless the condition imposed undermined the fair, prompt and effective resolution of trade disputes, or unless the Member attaching the condition was not engaging in dispute settlement procedures in good faith in an effort to resolve the dispute. Thus, it was not clear how the proposed rule would relate to Rule 30(1) and the Appellate Body's above-mentioned jurisprudence on conditional withdrawals. The EC presumed that in cases of requests for amendment and conditional withdrawals, the Appellate Body would apply the same standard, i.e., reject new or modified Notices of Appeal in cases where it considered this to be an exercise of abusive litigation techniques. Thereupon, in order to formulate its opinion correctly, the EC would be grateful if the Appellate Body could provide some additional clarification on the effect that the proposed rule would have on the Appellate Body's decisions on Rule 30(1).

48. The EC then referred to the Appellate Body's proposal on Rule 18(5) and said that the EC agreed with the content and rationale of the proposed amendment. As a matter of fact, one could consider that a general rule along the same lines could also be introduced in panel proceedings. Likewise, the EC entirely agreed with the Appellate Body's suggestion to modify Rule 27(1) to reflect the consistent practice. Finally, he wished to refer to the question of "holidays". The Appellate Body was right in noting that, in the past, there had been cases in which a Notice of Appeal had been lodged, then withdrawn and then filed again at a later date just to avoid having the 90-day period to end at the core of summer/winter vacations. Therefore, a period of recess at those times would appear appropriate.

49. The representative of Argentina thanked the Appellate Body for circulating its proposed amendments to the *Working Procedures for Appellate Review*, together with the corresponding explanations contained in WT/AB/WP/8. Bearing in mind the request made by the Appellate Body in Section VII of its communication and the inclusion of this item on the agenda of the present meeting, Argentina wished to make the following comments. With regard to Notices of Appeal, Argentina considered that the reasons given by the Appellate Body in proposing a change in the content of Notices of Appeal were valid, as this could serve to standardize requirements concerning identification of the nature of the appeal and the allegations of errors raised. It would, therefore, better preserve the defence rights of the other parties to the proceedings. However, Argentina was concerned that an increase in the complexity of the requirements applicable to the Notice of Appeal – which currently reflected a degree of laxity in terms of form – could raise the level of litigiousness at an early stage of appeal. This might encourage Members to raise objections merely to gain time on the grounds of lack of clarity in the Notices. It would, therefore, be desirable to strike a balance between the requirement for greater precision in the description of alleged errors and the need to avoid the possibility for dilatory arguments to be raised.

50. With regard to Notices of Other Appeal, Argentina supported the arguments put forward by the Appellate Body since at present only the appellant was obliged to file a Notice of Appeal. Inasmuch as this obligation did not apply to the other appellants, i.e., those that filed a cross-appeal, the appellant would be placed at a disadvantage *vis-à-vis* the other appellants. He noted that the amendment in question did not appear to be a substantive one. It merely established an obligation to file the Notice in question three days before the date on which the other appellant's submission had been filed. Furthermore, this short period would be reduced to a single day in disputes involving prohibited subsidies.

51. Concerning the proposal on amendments to Notices of Appeal, Argentina recognized the importance of this possibility in streamlining a procedure that, in practice, involved the filing of different documents, while at the same time served to preserve the Notice of Appeal in one single document, which defined the scope of the appeal. With regard to the proposal relating to the deadline for correcting errors, in Argentina's view the word "clerical", as currently used in the English version of the working procedures, had a more limited scope than the word "minor", which had been proposed. Accordingly, Argentina considered the proposed amendment to be somewhat more than a

semantic one, as it would permit corrections of not only typographical errors, but also minor errors of a different nature. However, the proposed amendment had the merit of establishing an indicative list of errors that might be considered "minor". Argentina recognized the need for this amendment as a practical measure.

52. With regard to the proposals for amending the time-limits for hearings and the calculation of the 60 and 90 day time-limits stipulated in Article 17.5 of the DSU, it was Argentina's understanding that these proposals responded to practical requirements and thus supported them. Argentina considered that it would be desirable to reflect on the systematic practice of the Appellate Body by establishing a longer time-limit (35-45 days) for the hearing with the parties than the one currently provided for, given the intense pressure under which the AB Division, Secretariat officials and the parties to a dispute were required to work. Argentina regarded as realistic the proposal not to include the Christmas and August holiday periods in the calculation of the 60 and 90 day time-periods specified in Article 17.5 of the DSU. It also noted the possibility that the AB Division, after consultation with the participants and third participants, make appropriate modifications to the appeal schedule on a case-by-case basis. In this connection, Argentina would point to the need to consider the same treatment towards the Southern Hemisphere Members. Finally, he said that it was Argentina's intention to submit comments in writing, as requested.

53. The representative of Canada said that his country would make written comments in due course. At this stage, Canada wished to make an observation in respect of certain comments that had been made at the present meeting. In its first report, the Appellate Body had found that the WTO Agreement was not to be interpreted in clinical isolation from public international law. That included the DSU and the general principles of public international law that applied to judicial and quasi-judicial dispute settlement mechanisms. For example, procedural fairness and due process were not found anywhere in the DSU and yet it would be difficult to imagine any delegation, relying on a wholly literal interpretation of the DSU to suggest that these principles did not apply to panel proceedings. Another principle that governed all tribunals was the importance of avoidance of trial "by ambush". The proposals of the Appellate Body gave effect to this principle by amplifying the notification requirements skeletally set out in the DSU, without in any way, going outside the parameters of the DSU. In this sense, the clarification provided by the Appellate Body of the existing rules regarding notices of appeal was to be welcomed. Canada would, of course, provide more ample explanation of its position in due course.

54. The representative of Brazil thanked the Appellate Body for highlighting the current problems and for proposing solutions with regard to appeal procedures. Brazil appreciated the fact that the Appellate Body had invited Members to put forward their views on these issues. At the present meeting, Brazil wished to make some general and specific comments. With regard to the Notice of Appeal, he noted that it was not a "legal institute" known to many Civil Law countries. In Brazil, for example, there was no requirement that a Notice of Appeal be filed and the appeal procedure began with the filing of an appeal submission. It was his understanding that also in some Common Law countries, courts generally only required a notice of the decision to be appealed, and that it was not required that such notice be detailed. Brazil recognized that, currently, the notice of appeal served the useful purpose of summarizing the appeal for the benefit of both the Appellate Body and the parties. In its communication, the Appellate Body assumed that the Notice of Appeal not only triggered the appeal, but that it also outlined the nature of the appeal. In this context, one could also envisage a rule according to which an appellant's submission would be issued simultaneously with the Notice of Appeal. Alternatively, the Notice of Appeal could simply be inserted into a submission as the first part of the appellant's submission, even in the form that was currently used. From the perspective of a practising lawyer, the basic element lawyers had to know, as soon as possible, in drafting a submission were the legal arguments, which would come in the appeal submission, not the legal issues. The legal issues were known already by the parties involved in the dispute.

55. According to the Appellate Body, a Notice of Appeal, in fact, would be the equivalent of the request for the establishment of a panel. Brazil wondered whether this was appropriate. With regard to the proposal by the Appellate Body concerning Rule 22(d), Brazil wondered whether the term "description of the alleged errors" would not give rise to further squabbling about the scope of such description. It was not clear how detailed such description would have to be. He wondered whether this could prompt parties to raise preliminary issues such as those often raised under Article 6.2 of the DSU during the panel process. It was Brazil's understanding that the intention of the Appellate Body was to consolidate its new working procedures. Under current practice, in Notices of Appeal references were made to legal errors, to legal provisions of the covered agreements or to paragraphs of the panel report, in order to enable the other parties to clearly understand the issues under appeal. He agreed that Members wished Notices of Appeal to be as clear as possible. While the Appellate Body, however, in its explanatory text, intended to "encourage the appellant to identify specific paragraphs of the panel report", the proposed text in Rule 20 provided that the notice of appeal "shall include" an "indicative list of the paragraphs of the panel report". It was not clear whether this was an encouragement or an obligation. Furthermore, if the list were merely indicative, what would be the consequence of not including some paragraphs in the Notice of Appeal?

56. Brazil supported the change proposed by the Appellate Body on the issue of clerical errors and the date for the oral hearing. With relation to the new requirements of a Notice of Other Appeal, Brazil agreed with the arguments made by the Appellate Body. With relation to the amendment of the Notice of Appeal, Brazil understood the concerns and practical problems that the Appellate Body was trying to address. Something that did not seem feasible, however, was the proposal that all third participants in the dispute be permitted to comment on the justification for amendments. This would be complicated in cases in which there were too many third participants. If all these participants were entitled to comment on the proposed amendments, this could take a long time. It was also not clear how these amendments would affect the time-periods of the appeal process since no deadlines had been set for these amendments.

57. With regard to the calculation of the 90-day limit, Brazil shared the views put forward by the Appellate Body and agreed with the suggestion to allow for periods during which time would not run for purposes of calculating the end of the 90-day period for appeals. However, since this change was in conflict with the 90-day period established in Article 17.5 of the DSU, Brazil wondered whether this could be done by means of a simple change in the working procedures. Finally, he noted that it would also be interesting to consider the possibility of introducing the same approach in panel proceedings. In this regard, it would be interesting to consider the possibility of establishing certain periods in the year when the time for panel procedures would not run. He believed that this issue could be discussed in the ongoing DSU negotiations.

58. The representative of Japan thanked the Appellate Body for its communication. This matter was still under discussion in Tokyo and Japan intended to submit written comments by the deadline of 26 May. Therefore, at the present meeting, his delegation would only make preliminary comments. Japan's first over-arching consideration was the need for balance between the desirability of making the procedure as predictable and fair as possible and the undesirability of making the procedure too cumbersome and lengthy. As stated by some delegations, certain suggestions contained in the Appellate Body's communication might require changes to the DSU provisions. For example, changing time-frames beyond the 90-day period might be in conflict with the DSU language.

59. On the specific point in the content of the Notice of Appeal, Japan recognized the need to further clarify the procedure in order to allow for more efficient deliberation by the Appellate Body. However, it expressed some doubt as to whether there was a need for making obligatory all three elements that were suggested in the Appellate Body's communication; namely, (i) a description of the alleged errors; (ii) a list of the legal provisions of the covered agreements under which the panel report was contested; and in particular (iii) an indicative list of panel report paragraphs. Japan expressed doubts as to whether it was wise to make this obligatory content in a Notice of Appeal.

Japan's concern stemmed from the possibility that the appellant might not be able to come up with all the paragraphs contained in the panel report that were relevant to allegations – even with the qualifier "indicative" – within the limited length of time available to the appellant. Also, on the question of description of the alleged errors, Japan was not sure about the degree of detail to which the description of the alleged errors should be elaborated. In this regard, he noted that in the Appellate Body Report in the Shrimp case (WT/DS58/AB/R; para.95) there was a sentence which provided that the Notice of Appeal was not expected to contain the reasons why the appellant regarded those findings or interpretations as erroneous. This needed to be kept in mind.

60. On the next issue of a Notice of Other Appeal, Japan could generally support the idea that a procedure for submitting the Notice of Other Appeal should be introduced. If, however, the intention of the Appellate Body was to treat the original Notice of Appeal and the Other Notice of Appeal on legally equal terms, one would then be confronted with the question how Articles 16.4 and 17.5 of the DSU would work in relation to these two notices. For example, Article 16.4 of the DSU set a deadline of 60 days. He questioned how one would treat this Notice of Other Appeal in relation to the 60-day deadline since, in the past, many Notices of Other Appeals had been lodged after this 60-day period. Therefore, there might be a need to consider how these two Notices of Appeal should be differentiated.

61. He then referred to the time schedules suggested in the Appellate Body's communication. Japan believed that it was reasonable to file the Notice of Other Appeal after the original Notice of Appeal, and in advance of the due date for the other appellant's submission. However, shortening the time-periods allowed for the filling of the appellants' submission from 10 days to 7 days was rather difficult for Japan to accept. This was based on past experiences, namely, that decisions to appeal had often been made at the last minute and the time allowed for preparation of submissions was always tight. Of course, this would have an effect on the overall time-frame of the Appellate Body's process. Therefore, one needed to discuss this element in the context of the overall time schedule. Japan welcomed the suggestion made by the United States that it would be useful to have some informal discussions on these issues after the present meeting. With regard to the issue of amending Notices of Appeal, Japan noted the care with which the issue had been approached, but wondered where in the current language of the DSU one could find the legal basis for the AB division to rule on amending of Notices of Appeal since such amendments directly related to the rights of Members. These types of questions could be discussed in an informal meeting.

62. The representative of India said that his country welcomed the opportunity to comment on the proposals of the Appellate Body to make changes to its working procedures, in accordance with the decision adopted by the DSB on 19 December 2002, and thanked the Chairperson and the Appellate Body for giving Members the opportunity to do so. These were elaborate proposals that needed careful study by Members. India would like to make some preliminary remarks on the proposals, and take the opportunity to hear the views of other Members at the present meeting. India would provide its considered views later in writing. India supported the statements made by the United States and Japan that the matter be first informally discussed among Members and with the Appellate Body. At this stage, he wished to make just three preliminary remarks.

63. First, on a Notice of Other Appeal, it was unclear whether it was conceptually necessary to have a Notice of Other Appeal and whether its absence prejudiced appellants while they defended themselves against the other appeal. The past cases gave little guidance on this conceptual question. Further, in the case that the time-lines proposed in the amendment were adopted, the other appellant might at times get only one day between the time of filing its Notice and its submission – not only in the situation of subsidy cases as described by Argentina, but also whenever there was a weekend in between the two deadlines – while the appellant might continue to get more time for its appellee's submission.

64. Second, on amending Notices of Appeal, the Appellate Body was considering making any appellant's or other appellant's ability to amend its Notice of Appeal contingent upon the receipt of leave from the Division hearing the appeal on cause shown. Due cause would depend upon the circumstances of each case. The Appellate Body expected to take into account the following: (i) the nature and extent of the proposed amendment; (ii) due process; (iii) the timing of the request to amend the Notice of Appeal; and (iv) any reasons why the proposed amended Notice was not or could not have been filed on its original due date. Yet, the text of the proposed amendment converted this into interests of fairness and orderly procedure. It was not clear whether the concerns identified by the Appellate Body were actually appropriately reflected in the proposed amendment.

65. Third, on calculation of the 60 and 90 day time-limits, it was not clear whether the possible risks in the proposed amendment to the time-lines during holiday periods had been factored into the text, such as a situation where the appellant could get almost three weeks instead of the usual ten days for its appellant submission, clearly to the disadvantage of the appellee. Further, and more important, the time-lines would go beyond what was specified in the DSU. Although nobody wished to work during holidays, and there was evidence of some genuine difficulties in the actual time taken in appellate proceedings, the possible adverse implications, in terms of fairness and due process of the proceedings, needed to be carefully considered.

66. The representative of Thailand wished to join previous speakers in thanking the Appellate Body for its proposed amendments to the *Working Procedures for Appellate Review*. However, given the fact that his delegation had not yet received instructions from its capital on this communication, Thailand supported the suggestion by the United States, which had been endorsed by Japan and India, that an informal meeting be held to discuss these issues. Thailand fully understood that comments on the amendments were expected to be conveyed to the Appellate Body by 1 June, but hoped that the Appellate Body would understand that more time was needed for further discussions on the issues which were of importance to all Members.

67. The representative of Colombia thanked the Chairperson for including this item on the agenda of the present meeting. Colombia attached great importance to this matter and, therefore, thanked the Appellate Body for its initiative to amend the working procedures. Colombia was in the process of carefully evaluating each of the suggested amendments. For that reason, at the present meeting, it could not provide definitive views on each of the points raised. However, Colombia had doubts about some of the suggestions, for example, the need to address these matters in the context of the working procedures, without first having Members deal with them. Like Japan, Colombia preferred that the operational aspects of topics such as amendments to Notices of Appeal be dealt with by the Appellate Body only after Members had adopted relevant decisions. Colombia also wondered whether the system would benefit from implementation of the proposed amendment to Notices of Appeal. The explanatory section concerning specific improvements referred to the possible reasons for accepting an amendment to a Notice of Appeal and clearly stated that to grant an unfettered right was undesirable. The elements mentioned for consideration included the nature and extent of the proposed amendment, due process and the timing of the request. However, these elements had not been included in the actual wording of the provisions, which merely granted broad authority to be exercised upon cause shown by the appellant. Finally, Colombia had an interest in further exploring these issues and would welcome informal discussions on this matter, as proposed by Japan, India and the United States.

68. The representative of Norway thanked the Chairperson for providing Members with an opportunity to discuss the communication from the Appellate Body. At the present meeting, Norway only wished to make preliminary comments, which might develop as other delegations make their comments at the present meeting or at an informal meeting, if such a meeting were to be held. Norway believed that this was a useful suggestion and would wish to participate in any such a meeting. Norway welcomed the proposals related to Notices of Appeal, which included also the possibility of Notice of Other Appeal. As to the amendment of Notices, Norway understood the

potential of abuse referred to by a number of other speakers, but considered that the safeguards included in the proposal were adequate. With regard to the correction of minor errors, his delegation wondered if, as stated by Argentina, the change from clerical errors to minor errors was indeed a little bit more than just a simple change. Norway wondered whether it was really necessary to change the word "clerical" to "minor". In that regard, it noticed that Rule 18 would no longer apply to submissions only but also to other documents. Norway considered that it would be useful to have some more explanations on those proposed changes. With regard to the calculation of time-periods and the creation of recess, Norway had sympathy for the proposal. However, it had some concerns regarding both the drafting of this proposal as well as its relationship with Articles 17.5 and 16.4 of the DSU. Norway noted that the proposal broadly extended all time-frames in the DSU, something that the Appellate Body could not do and, therefore, a redraft would be advisable to make sure that it was strictly limited to the appeal proceedings. One would have to see this proposal in the context of the DSU review, as it would have implications for the overall time-frames.

69. The representative of Australia said that, along with others, she also wished to thank the Appellate Body for having forwarded this paper and the Chairperson for giving Members the opportunity to comment. Australia would be forwarding more detailed comments in due course, as requested. Australia's initial reactions to the proposals were as follows. First, the greater detail in the Notice of Appeal was a sensible proposal aimed at enhancing clarity and consistency that Australia could support, as long this was not too burdensome for appellants. On the amendments to Notices of Appeal, Australia agreed that rules which allowed minor amendments in the nature of "elaborating on or adding to" a notice of appeal could be useful, subject to the caveat that the Appellate Body had outlined in its paper, such as taking into account factors of due process, extent and the nature of the proposed amendments.

70. On correction of minor errors, Australia had no problem with changing the term "clerical", but "minor" might be a problem, as it was a subjective term involving a degree of interpretation. A more precise formulation could be something like "technical, grammatical or typographical errors". Also Australia would prefer an upper time-limit within which corrections should be made. She noted that the Appellate Body had removed the reference to the time-limit. Finally, on the timetable to take into account summer and Christmas holidays, Australia agreed in principle, except that in specific cases such as those involving safeguard disputes, additional delays were likely to result in disadvantages to parties. For this reason, Australia suggested leaving the question of excluding or not the two periods to the discretion of the Appellate Body, rather than making prescriptive rules. On next steps, Australia agreed with the United States that it would be a good idea to have further informal consultations. Australia also asked as to the intentions of the Appellate Body in terms of what it would do after having received the written comments from Members.

71. The representative of Malaysia thanked the Appellate Body for its efforts in seeking to improve the working procedures for appellate review. Malaysia believed that any proposal to facilitate the appeal process would be useful for all Members. Malaysia welcomed informal consultations on these issues, as proposed by the United States. An informal discussion would enable Members to further understand the rationale behind these proposals. At the present meeting, Malaysia wished to provide some preliminary comments. First, on Notices of Appeal, Malaysia noted that if a Notice of Appeal were to contain more details, this would require more accuracy. In cases where the decision to appeal was made at a very late stage, the need to provide detailed Notices of Appeal would put pressure on delegations with limited resources. Malaysia was concerned that, unless a country had a large team of lawyers, one might inevitably make some errors in Notices of Appeal, which in turn might require further amendments to the Notice of Appeal. However, she noted that amending Notices of Appeal might not be an easy process. Second, one had to reflect on the issue of reducing the time-period for the appellant's submission to accommodate the purposes of the Notice of Other Appeal. The requirement to provide a submission in such a short period of time could also put pressure on those Members with limited resources. Third, Malaysia wondered how one could deal

with situations in which revised procedures affected the substantive provisions of the DSU. Therefore, it welcomed further consultations on this issue.

72. The representative of Hong Kong, China thanked the Appellate Body for circulating its proposed amendments to the Working Procedures and thanked the Chairperson for the inclusion of this item on the agenda of the present meeting to enable Members to discuss these proposals. Hong Kong, China wished to join the United States and other delegations in calling for informal consultations so that the proposals could be discussed further. At this stage, her delegation wished to share with other Members some preliminary comments on these proposals. On the issue of proposed amendments of the contents of Notices of Appeal and the proposals for Notices of Other Appeal, Hong Kong, China was, generally, supportive of the proposals to further clarify the procedures and to provide details of the contents of Notices of Appeal. Hong Kong, China noted that this was going to impact on the timetable for an appellant's submission. Hong Kong, China wished to flag its concern about whether this might affect the appellant or prejudice the appellant's ability to prepare its submission within a reasonable period. It might be that in practice this would not be a problem, because appellants normally started preparing their submissions at a time when the interim panel report was made available.

73. On the question of amending Notices of Appeal, Hong Kong, China was supportive of the concept of allowing amendments to Notices of Appeal, especially when there was a practical need for flexibility in the procedures. However, it would like to avoid allowing open-ended amendments of Notices of Appeal for practical reasons and also for fairness to an appellee. It seemed that the current proposal whereby the Appellate Body would have the power to decide whether or not to authorize amendments – taking into account interest of fairness, orderly procedures and requirements to circulate the Appellate Body report within the set time-frame – was not adequate and specificity in the procedures would be required. Hong Kong, China wished to invite Members to consider providing further detailed rules, such as setting a deadline for requesting amendments to Notices of Appeal. For example, at the moment under the proposal, it was not clear whether the Notice of Appeal could be amended only prior to submission of the appellant's submission or after that and whether a deadline should be imposed so that all requests for amendments should be made within a certain number of days after the original notice of appeal had been served. She asked the following questions: what if the appellant were to repeatedly request amendments to its notices of appeal – should the number of times that one could request amendments to notices of appeal be limited? In this regard, it would also be desirable to specify what would happen after a request to amend notices of appeal were granted. She also wished to know the procedures to be followed in the submission of documents.

74. On the issue of correction of minor errors, in principle Hong Kong, China accepted that the current restriction of correction of clerical errors might be a bit inflexible. However, it seemed from the Appellate Body's proposal that a non-exhaustive list of what would normally be considered clerical errors would have to be set out – an illustration of what minor errors should include. It seemed that this clearly pointed to minor errors including not only clerical errors, but something else. If it included something else, then Hong Kong, China believed one should try to define what that something else would be. In this regard, some further guidance as to what was considered minor would be necessary. For example, the extent to which these errors affected the substance of the arguments or submissions should be provided. Alternatively a non-exhaustive negative list of what would not be considered minor corrections might also be helpful. As to the removal of the three-day correction rule, although allowing errors to be corrected within three days, as at present, might be rather inflexible, there should be a time-limit for correcting clerical or minor errors, so as to make sure that this flexibility was not abused. On the calculation of the time-periods, taking into account the long holiday periods, Hong Kong, China, in principle, was sympathetic to the idea. However, it noted that, as suggested by some other delegations, there was a need to consider this in light of Article 17.5 of the DSU. Finally, with regard to the proposal regarding the oral hearing, Hong Kong, China had no problem with it, which seemed to aim at reflecting a practical reality.

75. The representative of Chile thanked the Chairperson for the opportunity given to Members to provide their views on this matter. Chile had not yet had a chance to examine all the proposals. Some proposals appeared to be systemic in nature, particularly those which did not seem to have a legal basis under the DSU, Chile supported the US suggestion, as endorsed by other Members, that informal consultations should be held to exchange views and to discuss further the proposed amendments. It would be interesting to hear the views of Members and the Appellate Body as to what was the objective and the purpose of the Notice of Appeal. An informal discussion could thus shed some light on the issues which would have to be discussed not in this forum, but in the framework of the DSU negotiations.

76. The representative of China welcomed the amendments proposed by the Appellate Body. Indeed, China shared many of the concerns that had been raised by previous speakers. In particular, China shared the concerns raised by Brazil with regard to the content of the Notice of Appeal. It also welcomed the suggestion to hold an informal discussion to further examine this matter.

77. The representative of Korea welcomed the communication from the Appellate Body, which reflected its genuine effort to update the Working Procedures for Appellate Review on the basis of its experience during the past nine years. Korea had not yet completed its examination of this communication, as the proposal by the Appellate Body contained a number of issues. Moreover, the proposal also had some implications for the on-going DSU negotiations. At this stage, as a preliminary comment, Korea was of the view that the thrust of the Appellate Body's communication represented improvements in the Working Procedures. In particular, Korea was in favour of enhancing procedural fairness and consistency. On the other hand, some elements, such as the introduction of new procedures for the amendment of the Notice of Appeal had the potential of adding to the complexity in the Appellate Body's proceedings. One had to keep in mind that the timetable for appellate review was much tighter than for panel proceedings. Korea would present more considered views in due course. Finally, Korea supported the suggestion that had been made by the United States to hold an informal meeting to discuss the issues contained in the Appellate Body's communication and looked forward to participating in such consultations.

78. The representative of Israel thanked the Appellate Body and the AB Secretariat for their work towards improving their working procedures with a view to reflecting several years of practical experience. Israel saw this as a very positive exercise. Her delegation was currently examining the proposed amendments. However on a preliminary basis, Israel shared some of the concerns expressed by previous speakers, notably, with regard to the shortening of certain time-frames and the possibility of increasing the burden for parties, as well as the relationship of the proposals to certain provisions of the DSU. Israel agreed with other Members that an informal consultation to discuss in detail the proposed amendments should be held and wished to participate in it.

79. The representative of New Zealand said that his delegation had not intended to take the floor, but having now had the benefit of a number of Members' views and quite divergent views on some of the issues, such as the Notice of Appeal, it would appreciate a chance to reflect on those views further and would support the suggestion that an informal meeting be convened to discuss further the proposed amendments. He added that – having sat through the past seven years of DSU negotiations – if the original Working Procedures had had to be fully negotiated, there still might not be any Working Procedures, and yet these procedures had served Members well. He urged delegations to bring a spirit of flexibility to this exercise.

80. The Chairperson invited the representative of the Appellate Body's Secretariat to respond to the question raised by Australia.

81. The representative of the Appellate Body's Secretariat said that the Appellate Body intended to consider the comments received from Members and would reflect on how those comments should be taken into account in the amendments under consideration. Thereafter, the Appellate Body would

consult further with the Chairperson of the DSB and the Director-General, in accordance with Article 17.9 of the DSU.

82. The Chairperson said that she hoped that the Appellate Body would be pleased with the level of attention that its proposals had received and the interest that they had generated in the DSB. She proposed that the DSB take note of the statements made. Furthermore, in accordance with the "Additional Procedures for Consultations between the Chairperson of the DSB and the WTO Members in relation to amendments to the *Working Procedures for Appellate Review*" contained in document WT/DSB/31, she said that she would convey to the Appellate Body the views expressed by Members at the present meeting on the amendments under consideration and would request the Appellate Body to take them into account.

83. The DSB took note of the statements and agreed to the course of action proposed by the Chairperson.

84. The Chairperson then noted that a proposal had been made by the United States, which was supported by a number of delegations, to hold an informal open-ended meeting, in order to provide Members with an opportunity to have an informal exchange of views on the proposed amendments. She proposed that this meeting be held on 7 June and would ask the Secretariat to send a fax to delegations to confirm this. In this regard, she noted that the Appellate Body had asked her to provide Members' views on the amendments by 1 June. However, in light of the request for an informal meeting, it would not be possible to meet this deadline. She had consulted with the Appellate Body in this regard and had been asked to convey to Members that the Appellate Body was pleased to extend the deadline to 15 June. She, therefore, asked that written comments be provided by 11 June, which would then be promptly conveyed to the Appellate Body.

85. The representative of Thailand asked if an informal meeting could be held on another date since a meeting of the Negotiating Group on Rules was already scheduled for 7 and 8 June.

86. The Chairperson said that she would consult with the Secretariat on this matter after which she would send out a fax confirming the date of the informal open-ended meeting.

87. The DSB took note of the statements.

4. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/257)

88. The Chairperson drew attention to document WT/DSB/W/257, which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. Unless there was any objection, she proposed that the DSB approve the names contained in document WT/DSB/W/257.

89. The DSB so agreed.