WORLD TRADE ORGANIZATION

RESTRICTED

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Dispute Settlement Body
27 October and 3 November 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 27 October and 3 November 1999

Chairman: Mr. Kåre Bryn (Norway)

Prior to adoption of the Agenda, the Chairman proposed that the DSB agree to close its meeting adjourned on 24 September 1999.

The DSB so agreed.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) European Communities – Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.2)

(b) United States – Import prohibition of certain shrimp and shrimp products: Status report by the United States (WT/DS58/15/Add.2)

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 proposed that the two sub-items be considered separately.

(a) European Communities – Regime for the importation, sale and distribution of bananas: Status report by the European Communities

The Chairman drew attention to document WT/DS27/51/Add.2 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning its banana import regime.

The representative of the European Communities said that the discussions carried out by the EC with the various interested parties had demonstrated that there continued to be a wide divergence not only as to what solution would best suit their interests, but also as to the consistency of the EC's options with the WTO rules. The objective of the EC was to ensure that, to the extent possible, a new system would meet its international commitments and that no new international dispute would arise. No date had yet been proposed for a final decision for a new system to be put in place. However, if the existing disagreements among the main interested parties persisted there was little point in further delay. Furthermore, the EC was under pressure to decide rapidly on this matter. The EC acted in good faith and wished to settle this dispute as quickly as possible.

The representative of Ecuador said that, in accordance with Article 21.6 of the DSU, the EC was required to submit a status report in writing ten days prior to a DSB meeting. He noted that, in this case, the reports were very short and did not provide substantial information. On the basis of press reports, Ecuador had become aware of some information before that information had been provided by the EC. He regretted that sufficient details had not been given and questioned the EC's intentions. If the EC proposed a tariff-quota system, such tariff quotas should not be discriminatory and should reflect the increased demand for bananas in the EC, both as a result of the entry of new members and the increased consumption of bananas. A preferential regime for ACP bananas should be governed by the WTO waiver, bearing in mind that the current waiver would end in the next four months. Any new waiver should not be broader than the current one, and more details should be

provided on the terms under which it would be applied so as to prevent any further abuses. To this end, the EC should determine individual limits for access to tariff preferences for the ACP countries without establishing country quotas that would restrict access for bananas from Latin America. Country quotas or a basket in which the ACP countries extend their preference beyond their current rights would not be acceptable. If the EC had to establish more than one tariff quota, such quotas had to be open to bananas from all countries and not exclusively to one group of countries. Bound tariff commitments should be respected. There should be no discrimination between Members in the administration of quotas. If the EC decided to adopt a "first-come, first-served" licensing system, details should be provided as to whether or not licences would be automatic and whether they would be allocated in a WTO-consistent manner. One should avoid subjective criteria in allocating the quantities required by the market. If the EC proposed a transitional regime, the present distortions affecting Ecuador should not be maintained and a transition period should be short in order to preserve the principle of predictability for exporters. Ecuador was concerned that no date for entry into force of the new regime had yet been determined. The present regime contained distortions such as country quotas which continued to penalize exports of bananas from Ecuador. His country had repeatedly pointed out that the EC had to make changes to its banana regime. However, the EC had not done this. He questioned whether it was possible to ensure that a transitional regime would result in a desired outcome. He wondered whether the EC's non-compliance would be reviewed in the context of the new round of negotiations and what would be reported in connection with the implementation of Article 21.2 of the DSU on special and differential treatment in the context of an evaluation of the implementation of the Uruguay Round Agreements at the Third Ministerial Conference in Seattle.

The representative of the United States said that her country appreciated that the EC had been working hard in its consultations with the various interested parties. The United States had recently provided to the EC numerous suggestions for resolving this dispute in a WTO-consistent manner. To this end, on 25 October 1999, the US Trade Representative had suggested to the EC Trade Commissioner some alternatives for a tariff-rate quota and a single-tariff approach. While the United States recognized that the EC had difficulties in developing a WTO-consistent solution, it believed that the EC did not have to satisfy all of the Members involved in the dispute, or all of the domestic interests that had been protected by the regime. The EC's obligation was to comply with the WTO rulings. The United States look forward to discussing the range of WTO-consistent options with the EC in the near future.

The representative of Mexico said that his country was concerned that the status report by the EC did not contain sufficient information. He noted that some press reports had provided more detailed information than the status report submitted at the present meeting. The EC had indicated that the discussions had continued. Mexico, as an interested party with a substantial interest in this dispute, had not been informed of any development since the September DSB meeting. The EC's assertions on the tariff quota system did not reflect Mexico's position which had been stated, in a transparent manner, at the September DSB meeting. Mexico hoped that the EC would put in place a WTO-consistent regime and recalled that it had the right to make recourse to Article 21.5 of the DSU with regard to the EC's banana regime. At this stage, Mexico hoped that the EC would assume its responsibility and expected news on further developments.

The representative of Honduras said that at the October 1997 DSB meeting, the EC had stated its intention to implement the decisions and recommendations adopted by the DSB. However, ten months had elapsed since the expiry of the reasonable period of time set by the arbitrator but no compliance had yet taken place. He did not have sufficient details concerning a new proposal which was to first implement a tariff-quota regime and then after five years a tariff-only regime. Honduras believed that the proposal would not enable the EC to bring its system into conformity with the WTO. The EC's intention was to reproduce the same protection that had been declared to be inconsistent with the WTO and would provide a level of protection higher than that under the Lomé waiver. Any

tariff quota should take into account the countries that had recently joined the EC and those that would join it in the future. A new tariff structure should not restrict access for Latin America, and the system of administration of licences should not alter the conditions of competition in favour of preferential suppliers since that would be inconsistent with the rules and disciplines of GATS and GATT. A single-tariff system to be introduced in a second phase would only postpone the problem. Some indications regarding a tariff that could result from renegotiations were disheartening. Honduras believed that a tariff system that would impose a prohibitive tariff on its bananas would have to be rejected. He was concerned about such an outcome prior to the Third Ministerial Conference. The credibility and effectiveness of the WTO and its dispute settlement system would be seriously undermined. He therefore urged that the EC implement the DSB's recommendations fully and expeditiously.

The representative of Guatemala said that the status report submitted by the EC had only referred to its efforts, but did not contain any substantive information. Recently, the EC had submitted to the Council of Ministers a series of proposals but Guatemala believed that the proposals would have the same impact on prices as the current regime and would preserve the licensing system that was favourable to ACP countries at the cost of Latin American countries. The approach of the EC was incorrect. It was therefore not surprising that the EC had reported on its difficulties in implementation while such difficulties did not stem from bringing its banana import regime into conformity. The fundamental principles underlying the WTO dispute settlement system were aimed at preventing any distortion of the purposes for which the system had been established. When the balance between the rights and obligations of the parties was upset, the dispute settlement system would help to restore that balance. Any other outcome would not be in line with the common intent of Members.

The representative of Colombia said that her country looked forward to a comprehensive and WTO-compatible proposal from the EC. Colombia could not accept a suggestion made by Ecuador concerning partial implementation of the recommendations adopted by the DSB. This approach would create new distortions and would not resolve the substantive problems with regard to implementation in this case.

The representative of the European Communities said that his delegation noted the statements made at the present meeting. He reiterated that he was not in a position to provide further information at this stage. There was no new proposal to which delegations had referred. The information provided by the EC was not incorrect but there was no new information to provide. Delegations urged the EC to act but there were still differences among Members. The suggestions made by the United States were under examination by the EC.

The representative of Panama said that the EC should have provided more details in its status report. Panama urged the EC to ensure that its banana import regime was in line with the interest of the parties concerned and hoped that this dispute would be resolved as soon as possible prior to the Third Ministerial Conference.

The representative of Ecuador wished to respond to Colombia's comment to the effect that it had attributed to Ecuador the suggestion of a partial solution for a new banana regime. He clarified that this information had come from the press associated with the EC.

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

(b) United States – Import prohibition of certain shrimp and shrimp products: Status report by the United States

The Chairman drew attention to document WT/DS58/15/Add.2 which contained the status report by the United States on its progress in the implementation of the DSB's recommendations with regard to its import prohibition of certain shrimp and shrimp products.

The representative of the United States said that as provided for under Article 21.6 of the DSU, the United States had submitted in writing its third status report on this matter. She reiterated that, as the status report made clear, that the US process was open and provided opportunities for input from all interested parties. The US implementation in this case had several distinct elements and included opportunities for input from the parties to the dispute. In its first report, the United States had informed the DSB that on 8 July 1999, the US State Department had issued revisions to its guidelines implementing its Shrimp/Turtle law. The revised guidelines, in accordance with the recommendations and rulings of the DSB were intended to: (i) introduce greater flexibility in considering the comparability of foreign programmes and the US programme; and (ii) elaborate a timetable and procedures for certification decisions, including an expedited timetable to apply in 1999 only. On the basis of the revised guidelines, the United States was pleased to report that in response to a request from Australia, it had approved imports from the Spencer Gulf Region of Southern Australia. Based on complete and well documented information presented by the Government of Australia and the State of Southern Australia, the State Department, in consultation with the US National Marine Fisheries Service, had found that the shrimp trawl fishery in the Spencer Gulf did not pose a threat of the incidental taking of sea turtles. The United States was making continuing progress in meeting its implementation commitment and appreciated the constructive input from the parties to the dispute throughout this process.

The representative of Malaysia said that his delegation noted the status report by the United States. Malaysia wished to reiterate the stand reflected in the statements made at the DSB meetings on 26 July as well as 22 and 24 September 1999, namely, that in order to give effect to the Appellate Body's decision, adopted by the DSB, the import prohibition had to be lifted immediately. Therefore, Malaysia regretted that the United States had not made any efforts to lift its import prohibition. At the present meeting, Malaysia urged the United States to immediately lift its import prohibition in order to be in compliance with the rulings and recommendations of the Appellate Body and to bring its measures into conformity with its obligations under GATT 1994. Furthermore, Malaysia wished to reserve its right to address this issue at the appropriate time and forum.

The representative of Thailand noted that there was no new element in the US report with respect to the legislative and regulatory aspects of the US implementation. Thailand also noted that the reasonable period of time for implementation in this case would expire in about one month. Her country was currently in the process of assessing the consistency of the implementing measures of the United States with the DSB's rulings and recommendations. This assessment would be completed in due time, and Thailand would take action on the basis of this assessment and in accordance with its rights and obligations under the WTO Agreement. She drew attention to the fact that in its second status report contained in WT/DS58/15/Add.1, the United States had stated that Thailand had requested further TEDs-related technical assistance from the United States. Her delegation had sought further information from its authorities on this point and had been informed that thus far no formal request for such assistance had been made by Thailand.

The representative of India said that his delegation noted the status report provided by the United States. India believed that the strict compliance with the DSB's recommendations and rulings implied lifting of the import prohibition and hoped that the United States would fully comply with the DSB's recommendations.

The representative of Australia thanked the United States for its latest status report, which recorded the fact that the United States had found that the shrimp trawl fishery in the Spencer Gulf of South Australia did not pose a threat to sea turtles, and had consequently agreed to accept imports from that region. As noted by Australia in previous DSB meetings, this had been one of the direct market access concerns that it had with the US import ban. Australia therefore welcomed this action by the United States which removed an impediment to its exports, which was entirely without environmental or other justification. However, Australia still had outstanding market access concerns that required resolution as well as systemic concerns with the unilateral and trade-restrictive approach involved in the US import ban. It should be made clear that Australia shared the concerns held by the United States and many other countries, about sea turtle conservation. Only last week, Australia had hosted a workshop of countries interested in the issues raised by sea turtle conservation in the Indian Ocean region. However, Australia continued to believe in the validity of pursuing such cooperative mechanisms to address these concerns, as opposed to more trade restrictive approaches. Australia would therefore continue to monitor closely the US actions in relation to implementation in this dispute.

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

2. European Communities – Anti-dumping duties on imports of cotton-type bed-linen from India

(a) Request for the establishment of a panel by India (WT/DS141/3)

The Chairman recalled that the DSB had considered this matter at its September meeting, and had agreed to revert to it. He drew attention to the communication from India contained in document WT/DS141/3.

The representative of India said that his country was requesting a panel to examine anti-dumping duties imposed by the EC on imports of cotton-type bed-linen from India. He recalled that in September 1996, the EC had initiated anti-dumping proceedings against imports of cotton type bed-linen from India. Subsequently, on 12 June 1997, the EC had imposed provisional anti-dumping duties, and thereafter on 28 November 1997, definitive anti-dumping duties had been imposed. These measures had significant impact on India's exports of cotton-type bed-linen to the EC; they had nullified and/or impaired the benefits accruing to India under the GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994 (ADA). Consultations, which had been held on 18 September 1998 and 15 April 1999, had failed to settle the dispute. Therefore, India had requested the establishment of a panel to examine this matter. As its meeting on 22 and 24 September 1999, the DSB had considered India's request and had agreed to revert to it at its next regular meeting. At the present meeting, India was requesting the DSB to establish a panel with standard terms of reference to examine the matter in light of the provisions of the covered agreements referred to in its request.

The representative of the European Communities expressed his delegation's regret that in spite of the EC's efforts to explain its actions taken in the context of the anti-dumping proceedings, India had decided to request the establishment of a panel. Since this request was on the agenda for the second time, a panel would have to be established at the present meeting.

The DSB took note of the statement(s) 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 Egypt, Japan and United States, reserved their third-party rights to participate in the Panel's proceedings.

3. Colombia – Safeguard measure on imports of plain polyester filaments from Thailand

(a) Request for the establishment of a panel by Thailand (WT/DS181/1)

The Chairman recalled that at its meeting in September, the DSB had considered this matter and had agreed to revert to it. He drew attention to the communication from Thailand contained in WT/DS181/1. It was his understanding that the measure in question had expired and was therefore no longer in force. Under these special circumstances, he had consulted with Thailand and Colombia prior to the meeting and on this basis he wished to invite Thailand to make a statement.

The representative of Thailand said that his delegation wished to seek information from Colombia with regard to the measure in question, namely, the Resolution of the Higher Council of Foreign Trade of Colombia No. 0009/98 of 26 October 1998. He asked Colombia to respond to the following questions: "1. As of today, has the measure expired? 2. As of today, has the period of the application of the measure been extended? 3. In accordance with Colombia's laws and regulations, could the period of application of the measure be extended as from today, with or without a request from the Colombian private sector concerned?"

The representative of Colombia said that her delegation welcomed the consultation held on this issue prior to the meeting. The short reply to the first question was "yes" and to the other two "no". For the purposes of clarity and transparency, she wished to provide more explanation. With regard to the first question, Resolution 0009/98 had been adopted by the Higher Council for Foreign Trade on 26 October 1998 for a period of one year. Consequently, the safeguard measure had expired on 25 October 1999. With regard to the second question, as explained at the September DSB meeting, according to Colombia's legislation – cirulated in document G/SG/N/1/COL/2 – the extension of a safeguard measure was governed by Article 28 and was subject to three conditions: (i) the interested party had to make a request; (ii) such request had be submitted six months before the expiry of the term of the safeguard measure being applied; and (iii) an investigation by the competent authority had to show that the safeguard measure was necessary in order to prevent or remedy the serious injury to domestic industry and there had to be evidence that the domestic industry was adjusting. In this particular case, there was no request for extension, therefore, no possible extension was considered nor granted. With regard to the third question, she reiterated that Colombia's legislation provided a mechanism that allowed extension of a safeguard measure subject to a request by the interested party submitted six months before the expiry of the term of the safeguard measure being applied. In this case, the period expired at the end of April without any request for extension from the interested party. The time-limit had therefore ended and the measure had expired. In other words, Colombia's legislation did not contain any mechanism that allowed the measure to be extended as from now (Resolution 0009 of 26 October 1998).

The Chairman said that in the light of the statement made by Colombia, he wished to asked whether Thailand was prepared to withdraw its panel request.

The representative of Thailand thanked the delegation of Colombia for its information and the Chairman for holding the consultation prior to the meeting which proved to be very useful. In light of the statement made by Colombia, Thailand wished to withdraw its request for a panel from the Agenda.

The DSB took note of the statements and agreed that Thailand's request for a panel be withdrawn from the Agenda.

4. United States – Safeguard measure on imports of fresh, chilled or frozen lamb from New Zealand

(a) Request for the establishment of a panel by New Zealand (WT/DS177/4)

5. United States – Safeguard measure on imports of lamb meat from Australia

(a) Request for the establishment of a panel from Australia (WT/DS178/5)

The Chairman proposed that the DSB take up items 4 and 5 together since they pertained to the same matter. He first drew attention to the communication from New Zealand contained in document WT/DS177/4.

The representative of New Zealand said that as outlined in document WT/DS177/4, his country considered that the safeguard measure imposed by the United States on imports of fresh, chilled and frozen lamb was in contravention with the WTO commitments of the United States under the Agreement on Safeguards and the GATT 1994. The safeguard measure introduced by the United States on lamb imports as from 22 July 1999, imposed a substantial tariff on all imports of lamb from New Zealand, and a prohibitive tariff on all such imports above the prescribed quota level set at 1998 trading levels. New Zealand considered that the safeguard measure in question was inconsistent with the US obligations under Articles 2, 3, 4, 5, 11 and 12 of the Agreement on Safeguards and Articles I, II, and XIX of GATT 1994. On 16 July 1999, New Zealand had requested consultations with the United States. These consultations which had been held on 26 August 1999, had not resulted in a resolution of the dispute. Consultations had also been held under the Agreement on Safeguards but had not resolved the dispute either. Accordingly, New Zealand was requesting the establishment of a panel with standard terms of reference. He noted that Australia's request for a panel (WT/DS178/5), which was also before the DSB at the present meeting, related in part to the same matter as New Zealand's request. He further noted that the DSU provided that a single panel should be established with regard to such complaints wherever feasible. Therefore in accordance with Article 9.1 of the DSU, New Zealand had no objection to having its complaint and that of Australia examined together by the same panel, taking into account the rights of all the parties concerned.

The Chairman drew attention to the communication from Australia contained in document WT/DS178/5. In this connection, he noted that the document to which he had just referred, contained a typographical error, namely reference to Article 6 of the Agreement on Safeguards was included therein, instead of Article 8. He said that a corrigendum would be issued to this effect as specified in Australia's request.

The representative of Australia thanked the Chairman for noting the amendment to the typographical error. He recalled that on 22 July 1999, the United States had imposed a tariff quota on imports of fresh, frozen or chilled lamb meat from Australia and some other countries. The duration of this measure was for a period of over three years. The measure was unjustified under WTO rules and had impaired an important trade interest of Australia, as the largest supplier of lamb meat to the United States. Australia's claims had been set out in its request for a panel. Australia considered that the United States had breached a range of provisions of the Agreement on Safeguards and the GATT 1994. Australia's concerns included, but were not limited to, the following: (i) Australia considered that the US International Trade Commission and the US Government had failed to fulfil the necessary requirements for the imposition of a measure under the Agreement on Safeguards; (ii) moreover, Australia considered that the United Sates had failed to meet the requirements of the Agreement on Safeguards in its determination of the measure imposed; (iii) both the in-quota and out-of-quota tariffs under the tariff-rate quota imposed were inconsistent with the tariff bindings of the United States. The United States had also breached the non-discrimination obligations of GATT 1994 and the Agreement on Safeguards in the application of its safeguard action; and (iv) the

United States had failed to meet its obligations regarding the maintenance of a substantially equivalent level of concessions and other obligations under GATT 1994 between it and Australia, as well as its obligations in respect of consultations, notification and publication. Consultations had been held under Article 12 of the Agreement on Safeguards. Subsequently consultations under the DSU had been requested on 23 July 1999 and had been held on 26 August 1999. However, these consultations had failed to settle the dispute. Accordingly, Australia had no option but to ask the DSB to establish a panel.

The representative of the United States said that after a unanimous determination by the International Trade Commission that the domestic lamb meat industry was threatened with serious injury, the United States had decided to take action to the extent necessary to prevent the threatened injury and facilitate the domestic industry's adjustment to import competition. The US safeguard measure consisted of a tariff-rate quota set at 1998 import levels, and increased duties. Both the tariff-rate quota and the import duties had been progressively liberalized over time. Accordingly, the US safeguard measure satisfied all relevant provisions of the Agreement on Safeguards. Before implementing a remedy to aid its domestic industry, the United States had examined all relevant information available to it. The US decision-making process was both fair and transparent, and took into account information provided by all interested parties. Moreover, extensive consultations had been held with both Australia and New Zealand, substantial suppliers of lamb meat to the US market. On a number of occasions, the United States had decided to alter some aspects of the measure based on reasonable concerns raised by both Australia and New Zealand. The United States had made every effort, with full participation of Australia and New Zealand, to ensure that the US safeguard measure was designed and applied to address the needs of its domestic industry, while simultaneously ensuring that its trading partners had continued access to the US market. The United States believed that its action was fully consistent with its WTO obligations. The United States could not agree with the claim that the Agreement on Safeguards constrained a Member from acting when the domestic industry was "merely" threatened with serious injury. Such an interpretation was contrary to the explicit terms of Article 5.1 of the Agreement on Safeguards, which permitted action "only to the extent necessary to *prevent* or remedy serious injury". The notion that "mere" threat cases did not merit vigorous action was incorrect. Accordingly, the United States could not agree to the establishment of a panel at the present meeting. If Australia and New Zealand decided to pursue this dispute, the United States was prepared to vigorously defend its safeguard measure.

The DSB took note of the statements and agreed to revert to this matter.

6. Thailand – Anti-dumping duties on angles, shapes and sections of iron or non-alloy steel and H-beams from Poland

(a) Request for the establishment of a panel by Poland (WT/DS122/2)

The Chairman drew attention to the communication from Poland contained in document WT/DS122/2.

The representative of Poland said that on 30 August 1996 Thailand had initiated an anti-dumping investigation concerning imports of angles, shapes and sections of iron or non-alloy steel and H-beams from Poland. As a result of the investigation, on 27 December 1996 Thailand had started to apply provisional anti-dumping duties ranging from 25.9 to 51.99 per cent for the products under investigation. Subsequently, on 26 May 1997, Thailand had imposed final anti-dumping duties of 27.78 per cent on these products. On 6 April 1998, Poland had requested consultations with Thailand. These consultations, which had been held on 29 May 1998, had not led to a mutually satisfactory solution. In Poland's view, the anti-dumping investigation had not been conducted in accordance with the relevant provisions of the Agreement on Implementation of Article VI of GATT

1994, namely Articles 2, 3, 5 and 6 thereof, as well as Article VI of GATT 1994. At the present meeting, Poland was requesting that the DSB establish a panel with standard terms of reference in order to examine this matter.

The representative of Thailand expressed her country's regret that Poland had decided to proceed with its request for the establishment of a panel. Thailand could not agree with the positions taken by Poland and remained convinced that the measure in question was consistent with the WTO Agreement. Only one round of consultation had been held between Poland and Thailand. Thailand agreed with Poland that that round of consultations had been useful and had allowed a better understanding of the positions of the respective parties. She noted that 17 months had elapsed since this consultation had ended. Since then, a number of new facts and developments had taken place. Therefore Thailand believed that there was sufficient ground for the two parties to hold further consultations on this matter, and urged Poland to do so before pursuing its request for a panel. Thailand was not in a position to agree to a panel at the present meeting.

The DSB took note of the statements and agreed to revert to this matter.

7. United States – Anti-dumping measures on stainless steel plate in coils and stainless steel sheet and strip from Korea

(a) Request for the establishment of a panel by Korea (WT/DS179/2)

The Chairman drew attention to the communication from Korea contained in document WT/DS179/2.

The representative of Korea said that on 30 July 1999 Korea had requested consultations with the United States with regard to US definitive anti-dumping duties on stainless steel plate in coils and stainless steel sheet and strip in coils from Korea. His country considered that the United States had made several errors in its anti-dumping determinations, which had resulted in erroneous findings and deficient conclusions and had led to the imposition, calculation and collection of anti-dumping margins which were incompatible with the United States' obligations under Articles 2, 6, and 12 of the Anti-Dumping Agreement (ADA) and Article VI of GATT 1994. Korea believed that the United States had not acted in conformity with those Articles, with regard to, *inter alia*, (i) its treatment of certain sales made to a bankrupt company; (ii) its calculation of the two distinct exchange rate periods for export sales; and (iii) its currency conversion for certain normal value sales made in US dollars. First, the United States had treated as "bad debt" sales to a customer that had gone bankrupt and had not paid the Korean exporter. The United States had then treated the bad debt as a "direct selling expense" and had deducted it from the calculation of the US export price. That deduction was improper because the fact that the Korean exporter had not been paid for certain sales was not a difference in the "conditions and terms" of these sales and had not been demonstrated to affect "price comparability" within the meaning of Article 2.4 of the ADA. Second, the United States had divided the period of investigation into two sub-periods, and had calculated separate weighted average normal values and export prices for each sub-period. That method was inconsistent with Article 2.4.2 of the ADA, which provided for a comparison of a single weighted average normal value and export price for the full period of investigation. Third, the United States had treated certain sales in the Korean domestic market, which were priced in US dollars as sales in the Korean won. The United States had then used the converted won values as the domestic sales price, and had converted that price into US dollars at a different exchange rate. The conversion of prices from dollars to won and then to dollars, was unnecessary and had distorted the basis of the price comparison. Such conversion was therefore inconsistent with Article 2.4 of the ADA. On 17 September 1999, consultations had been held with the United States in an attempt to reach a mutually satisfactory solution. Unfortunately, these consultations had failed to settle the matter and there were no

indications to the effect that further consultations were likely to be productive. Therefore, Korea was requesting the establishment of panel with standard terms of reference.

The representative of the United States said that her country was not in a position to consent to the establishment of a panel at the present meeting. The decision of the Department of Commerce (DOC) to include in the margin calculation sales to a US customer that had subsequently gone bankrupt was consistent with the standard set forth in Article 2.4 of the ADA. As the DOC had explained in its Final Determinations there was nothing unusual about the terms and conditions of sales at the time they had been made, and including the sales did not distort the dumping calculation. Moreover, these sales represented a significant portion of Pohang Iron and Steel Company's (POSCO) sales of stainless steel plate in coils during the period of the investigation. The DOC's exchange rate methodology was consistent with its published practice, and in accordance with the language of Article 2.4.1 of the ADA. In the light of the substantial depreciation of the Korean won in November and December 1997, the DOC had modified its currency conversion policy in response to the arguments by POSCO, by rejecting methodologies proposed by other parties, which could have resulted in a significantly higher margin. POSCO' s invoice for the sales at issue showed the amount due both in US dollars and in the Korean won. However, the agreement between the parties was for payment in won, and POSCO had received payment in won. When making price comparisons, the DOC had converted the won amount received by POSCO using the exchange rate in effect on the date of sale. This was consistent with Article 2.4.1 of the ADA. The DOC had found that the dollar values on the invoices did not correspond to the won values based on the exchange rate in effect on the date of sale. Thus, using the dollar value on the invoices would be tantamount to using an exchange rate other than the rate in effect on the date of sale. Her country believed that the DOC's determinations fully complied with the obligations of the United States under the GATT 1994 and the ADA. The United States would vigorously defend the DOC's determinations, if Korea decided to pursue its request for a panel.

The DSB took note of the statements and agreed to revert to this matter.

8. Canada – Measures affecting the importation of milk and the exportation of dairy products

(a) Report of the Appellate Body (WT/DS103/AB/R – WT/DS113/AB/R) and Report of the Panel (WT/DS103/R – WT/DS113/R)

The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS103/8 - WT/DS113/8 transmitting the Appellate Body Report on "Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products", which had been circulated in document WT/DS103/AB/R - WT/DS113/AB/R in accordance with Article 17.5 of the DSU. He reminded delegations that in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in WT/L/160/Rev.1, both Reports had been circulated as unrestricted documents. Article 17.4 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

The representative of the United States said that the Reports which were of very high quality, demonstrated that the Panel and Appellate Body had considered the issues with care and precision. The United States thanked the members of the Panel and Appellate Body as well as the Secretariat for their work. The United States supported adoption of these Reports which for the first time addressed the export subsidy provisions of the Agreement on Agriculture. The Reports demonstrated that those

subsidy disciplines were meaningful and had to be respected. As such they constituted a milestone in the WTO on this important topic. At the present meeting, she only wished to refer to a few significant aspects of those Reports. The Appellate Body and the Panel had confirmed that the export subsidy provisions in the Agreement could not be read in a manner that would permit Members to circumvent the subsidy disciplines in Article 9 of the Agreement. The Reports provided those provisions with the meaning that reflected the Members' intent to bring disciplines to export subsidies and, by doing so, to hasten the end of the economic distortions long plaguing trade in agricultural products. Thus, the Reports in this dispute represented a point of departure for continued reform in this area. Their legal analysis also underscored that governments could not avoid the export subsidy disciplines by entrusting authority to quasi-governmental entities. When governments delegated powers to such entities and such entities performed governmental functions, their actions were no less governmental than had the government itself undertaken the acts. The United States believed that, by clarifying export subsidy obligations and the nature of governmental action, the work of the Panel and Appellate Body in this dispute would serve to reduce the need for resort to dispute settlement proceedings in the future. She noted that pursuant to Article 21.3 of the DSU, Canada had an obligation to inform the DSB of its intentions with respect to implementation in the next 30 days. The United States was interested in engaging in constructive discussions with Canada on prompt implementation.

The representative of New Zealand said that his country welcomed the adoption of both the Panel Report and the Appellate Body Report on this matter. New Zealand believed that the Panel and the Appellate Body had made a very useful contribution to the interpretation of WTO disciplines, particularly those relating to agricultural export subsidies. This was the first time that the export subsidy disciplines of the Agreement on Agriculture had been substantively interpreted by a panel or the Appellate Body. The robustness of the legal arguments brought to bear in the Reports would guide the interpretation and implementation of the Agreement and the use of export subsidies in agriculture well into the future. New Zealand was satisfied that the Appellate Body had confirmed the main thrust of the legal argumentation presented by New Zealand before the Panel, namely, that the Canadian export subsidies in question were inconsistent with the provisions of the Agriculture Agreement. New Zealand had argued that Canada's dairy export subsidy scheme, commonly referred to as the "special milk classes" scheme, enabled Canada to subsidise dairy exports by making milk available to processors at reduced prices when it was to be used to manufacture products for export. The Panel had concluded that Canada provided export subsidies within the meaning of Article 9.1(c) of the Agreement on Agriculture at levels which exceeded its export subsidy reduction commitments. The Panel's robust analysis of Article 9.1(c), subsequently upheld by the Appellate Body, provided a useful clarification of the scope of the export subsidy disciplines under that provision. It was important to note that the Appellate Body's findings on the ordinary meaning of the term "payments", which included payments made in forms other than money, including revenue foregone. The Report provided a useful explanation of the manner in which "payments" were to be interpreted in the context of export subsidies. New Zealand also welcomed the Appellate Body's confirmation of the Panel's finding, both in respect of Article 9.1(a) and 9.1(c), regarding the extent of Canadian governmental involvement in the special milk classes scheme. The Appellate Body had provided some useful guidance regarding the interpretation of the term "government agencies" and the involvement of governments in financed schemes and had agreed with New Zealand's argumentation that all of the agencies involved, including Canada's provincial milk marketing boards, were government agencies for the purposes of Article 9.1(a). While the Appellate Body had reserved its judgment on the question of whether the supply of discount-priced milk under the special classes scheme constitutes an export subsidy under Article 9.1(a) of the Agreement on Agriculture, New Zealand considered that had the Appellate Body found it necessary to complete the areas of the Panel's analysis that were in its view incomplete, it would have found Canada's special milk classes to be export subsidies within the provision of Article 9.1(a) as well. In addition, while the Appellate Body had not, for reasons of judicial economy, found it necessary to review the Panels' findings under Article 10 of the Agriculture Agreement, New Zealand considered that the Panel's findings nevertheless represented a useful clarification of the scope of this provision. New Zealand looked forward to receiving information

from Canada within the next 30 days in relation to its intentions in respect of the implementation of the report, as provided for in Article 21.3 of the DSU. In the meantime, New Zealand expected that Canada would not exceed its export subsidy reduction commitments during the 1999/2000 dairy year in violation of its WTO obligations.

The representative of Canada said that her country accepted the adoption of both the Panel and the Appellate Body Reports. These Reports provided important guidance to WTO Members in relation to their rights and obligations in the application of WTO Agreements. In particular, the principles for the interpretation of tariff rate quotas in a Member's schedule and to the disciplines on export subsidies contained in the Agreement on Agriculture. The Appellate Body ruling upholding the conditions Canada attached in its schedule to its tariff rate quota on fluid milk was welcomed. It confirmed the principle that reference might be made to negotiating history, in order to assist in the interpretation of a treaty provision. With respect to the decision on export subsidies, Canada was disappointed that certain of its dairy export pricing practices had been found to be export subsidies. This decision would not alter the Canadian position, which it shared with many Members, that all export subsidies in agriculture had to be eliminated as quickly as possible. The views of the Appellate Body on this issue provided Canada and all Members with useful clarifications of certain important elements of the Agreement on Agriculture. Canada would provide the DSB with a statement on its intentions regarding implementation within the next 30 days. Canada would take the necessary steps to ensure that its measures remain fully consistent with its WTO obligations.

The representative of Australia said that his country which was a third-party in this dispute, welcomed the findings and conclusions of the Appellate Body Report. He noted that this was the first time that the WTO agricultural subsidies commitments had been examined by the panel and the Appellate Body. Australia welcomed the jurisprudence that had been provided in this dispute. Full implementation of export subsidy rules for agricultural products was essential part of the multilateral trading system. The result in this dispute was an important outcome for the system and reinforced the fact that export subsidy commitments could not be circumvented. Australia looked forward to Canada's implementation of the DSB rulings and recommendations in this case.

The DSB took note of the statements and adopted the Appellate Body Report in WT/DS103/AB/R - WT/DS113/AB/R and the Panel Report in WT/DS103/R - WT/DS113/R, as modified by the Appellate Body Report.

9. Review of the Dispute Settlement Understanding

(a) Report to the General Council

The Chairman noted the oral report to the General Council made by then Chairman of the DSB, Mr. Akao. That report contained a thorough summary of the discussions on the DSU Review. In his view, any report to the General Council should be based on Mr. Akao's oral report. During the consultations on the content of a report to the General Council, he had been impressed with a constructive approach of all delegations. It was his understanding that some interested countries had continued to discuss possible amendments to the DSU. He therefore wished to invite Mr. Suzuki of the Japanese delegation, who had chaired the informal discussions, to report in his personal capacity on the progress made thus far.

Mr. Suzuki made the following statement:

"I will report in my personal capacity as the chairman of the informal group of interested Members on the DSU review, as was explained by the Chairman of the DSB. The group was organized under my initiative. It was an open ended one and met outside the DSB. I informed all

Members about the schedule of the meetings of the group through faxes sent out by my mission or through the Secretariat upon my personal request for material reasons, to allow all interested Members to participate in the work. I had a very good and active participation from many Members. I believe all those who had keen interest in the exercise were able to participate. I also communicated to all Members of the results of the group' s work as I interpreted. Based on the discussions in the group which started in early July and continued until the middle of September of this year, I first produced a paper dated 21 September 1999 on what I believed to be the "Elements of Possible Agreement" which served as a basis for me to, subsequently produce a first legal text on the amendments of the DSU. The "Elements" paper was circulated to all Members having missions in Geneva and to the Secretariat as well as to the Chairman of the DSB. The first draft of a legal text was completed and distributed to all interested Members who contacted my mission. I organized subsequently a series of discussions on the legal draft until 15 October which was the informal deadline that I had set reflecting the general feeling of the participants to the work, taking into account the constraints imposed on all of us by the preparatory work for the Seattle Ministerial Conference. Based on the outcome of the discussions, I produced a proposal on the suggested amendments to the current DSU. The proposal entitled "Proposed Amendment of the DSU", dated 15 October, was circulated to all Members having pigeon boxes in the Secretariat as well as to the Secretariat itself - and to you, Mr. Chairman on 22 October after technical adjustment. I would like to thank the delegations of Hong Kong, China and Canada for their hospitality to provide the group with the venues for the meetings as well as to all those who have actively and constructively participated in the discussions of the group to help me produce the legal text. I am presenting today the text dated 15 October on my personal capacity. It does not prejudge the position of any Member who has participated in the work of the group that I organized. The text is an attempt on my part, based on my own judgement, to present to the DSB what I believe could constitute a basis for consensus on the possible DSU amendment. I tried to reflect as faithfully as possible the general sense of the group in producing the text. For these reasons the text has no brackets. I believe that the text enjoys a large degree of support. However it is my duty as the chairman of the informal process to report to the DSB that the text does not yet command full consensus among those who have participated in the group. My view is that further discussions among interested Members are needed on issues such as the following to finalize the text: the footnote to paragraph 7 of Article 22 concerning the equivalence between the level of nullification and impairment and that of the suspension of concessions or other obligations, time-frames, deadline on the non-confidential summary and the participation of third parties to the consultations held during the reasonable period of time. I am prepared to organize discussions on these points if I have the support of the interested Members and report back to the DSB. I believe it is also my duty to report to the DSB that there are several issues that we discussed in the group, which I did not include in my text. A certain number of Members attached importance to these issues but my impression was that the discussions up to the deadline of 15 October that I had set were not conclusive enough for me to include concrete proposals on them in the text that I am presenting today. They are, among others, standing panel body, modalities for providing an opportunity for inputs from civil society to panel proceedings, the public observance of the dispute settlement proceedings, co-defendants, possibilities for the developing Members to join in the suspension of concessions and the strengthening of third-party rights. I hope the text I am presenting today to the DSB could constitute a basis for the final outcome of the informal exercise on DSU review that I have conducted and be adopted by all Members and forwarded to the Ministers as the proposal for the modification of the DSU. I would like to reiterate my gratitude through you Mr. Chairman, to the support and positive cooperation I received from all those who have helped me in this process and sincerely hope that the collective exercise that I had the privilege to organize comes to fruition. Here are the outlines of the text that I am presenting today:

Implementation and prompt compliance to panel and/or Appellate Body recommendations and rulings

We have reviewed the current language of paragraph 3 of Article 21 on the reasonable period of time in light of recent practices. However, I was not able to draw a conclusion from the group to

modify the language. We have then discussed about ways to enhance surveillance on implementation during the reasonable period of time as well as to encourage parties to the dispute to consult with a view to reaching a mutually satisfactory solution. I propose amendments to paragraph 5 and 6 of Article 21 to this end. I then propose a new Article 21 *bis* on the determination of compliance to address a case where there is a disagreement among the parties on the issue of compliance. This new article is proposed to bring greater clarity to the DSU for the procedure to determine compliance and to strengthen the multilateral nature of the process. This article stipulates the establishment of a "compliance panel", a new mechanism under the DSU to determine expeditiously the issue of compliance in the case of disagreement among the parties. There will be no appeal under this procedure. On Article 22, I propose an amendment of paragraph 2, to clarify the cases in which the complaining party to a dispute may request authorization to suspend concessions or other obligations under the covered agreements. The proposed amendments will make it clear that the complaining party will be able to and can only seek authorization for the suspension of concessions or other obligations after the new 21*bis* procedures are completed. The principle of reverse consensus for granting the authorization is maintained, i.e. unless the DSB rejects by consensus such a request will be granted. When there is a disagreement between the parties on the level of suspension, an arbitration will be sought as in the current DSU. However I propose to amend paragraph 6 of Article 22 to limit the arbitrators, in principle to, the original panel and to make the arbitration and the ensuing procedure for the authorization by the DSB of suspension more expeditious. At the same time, I propose to add a footnote to paragraph 7 of Article 22. The purpose of the footnote is to clarify the procedure of the arbitration to ensure the equivalence between the level of nullification and impairment and that of the suspension. I have added a procedure of multilateral monitoring. This does not alter the current structure of paragraph 7 in that it does not restrict the discretionary ability of the complaining party to determine the nature and the content of the suspension within the criteria set forth in the current paragraph 3 of Article 22, nor for the complaining party to modify the content if necessary. I also propose to add a new paragraph 9 to Article 22 to lay down a procedure, using the same Article 21*bis* procedure to terminate the suspension of concessions or other obligations when there is a disagreement between the parties as to whether the implementing party has complied or not. There are proposals in my text to reduce certain time-frames in the current DSU based upon the discussion of the group. These reductions have been suggested based on the experience to date of the dispute settlement proceedings. Experience has shown us that certain time-frames initially established in the current DSU were either redundant or were not utilized meaningfully. Thus reallocation of these time-frames seemed to be reasonable. However, given the limited capabilities of the developing Members to handle the dispute settlement procedures, concerns were expressed by some participants to the informal discussions to maintain the current time-frames in cases where they needed them. Thus, I inserted provisions in the text in relevant parts requiring parties to the dispute to give sympathetic considerations for adequate time-frames. The proposed amendments concerning the time frames touch upon paragraph 7 of Article 4, paragraph 1 of Article 6, paragraph 8 and 9 of Article 12, Article 20, paragraph 4 of Article 21 and paragraph 12 of the Appendix as well as the deletion of paragraph 1 of Article 15. A new paragraph 13 is added to Article 3 to make it clear that any time-frames in the DSU can be extended by mutual agreement of the parties.

Better addressing the interests of third parties

I propose to amend paragraph 3 of Article 10 as well as paragraph 6 of Appendix 3 for the purpose of increasing the transparency of the dispute settlement proceedings to third parties. I have also added a new sentence to paragraph 6 in the Appendix to encourage panels to continue the current practice of paying attention to the special circumstance of third parties.

Improved transparency to Members and to the public

In a broader context of increasing the transparency among Members of any agreed solution to a dispute, I included in my text language based on what the DSB has discussed as part of the technical

issues last year and early this year, a new footnote to paragraph 6 of Article 3 to set a deadline for a notification on a mutually agreed solution as well as to define the nature of such notifications. Change brought to item (k) of paragraph 12 of the Appendix is intended to increase the transparency of the panel procedures to Members as well as to the public by reducing the delay between the time of issuance of the final report to the parties and the time of circulation to all Members and the derestriction to the public, from three weeks to three days.

Particular attention to the developing Members

Finally, I propose a certain number of amendments regarding the issue of giving particular attention for the developing Members. Theses concern paragraph 10 of Article 4, paragraph 2 of Article 21 as well as adding a footnote to paragraph 12(a) of Appendix 3."

The Chairman said that, as indicated by Mr. Suzuki, no consensus had yet been reached on the text, but it seemed that there were not so many outstanding issues and that further consultations could be held to try to reach a consensus thereon. He asked delegations to provide their views on this matter. He recalled that, in accordance with the Ministerial Decision, a recommendation had to be made as to whether to continue, modify or terminate the DSU rules and procedures.

The representative of Mexico said that the oral report by Mr. Akao should have been reflected in the minutes of the September DSB meeting. At that meeting, Mexico had stated that the DSU Review had ended on 31 July 1999 as decided by the General Council. Therefore, at the present meeting, one had to consider whether that decision could be changed retroactively. Mexico did not support any retroactive decision. He was concerned with the approach taken by the Chairman to invite Mr. Suzuki to report, in his personal capacity, on the outcome of the informal discussions. In the WTO, reports were made by Members, not by individuals in their personal capacity. The DSB had not authorized any person to carry out consultations on the DSU Review. Mr. Suzuki could only speak on behalf of Japan. He recognized that Members had had frequent contacts with Mr. Suzuki, and that some delegations, including Mexico, had met without any mandate from the DSB, but these contacts and meetings had taken place outside the WTO. Mr. Suzuki did not have a mandate to inform the DSB of his private consultations. Mexico considered that at the present meeting the representative of Japan had made a statement not a report. Any documents to be presented to the DSB had to be submitted in accordance with the rules and procedures and no such document had been submitted to the DSB. A statement was made by one delegation. He wished to point out that the item on the agenda referred to a report on the DSU Review to the General Council scheduled for 3 November 1999. The DSU Review had been terminated on 31 July 1999 and, therefore, in the absence of consensus on possible modifications to the DSU, the existing DSU rules and procedures should continue.

The Chairman said that, as stated by Mexico, the 31 July deadline had not been extended by the General Council. However, it was common practice to report on results of informal consultations in formal meetings. Therefore, in his capacity as Chairman of the DSB, he had invited Mr. Suzuki to report on the work he had carried out.

The representative of the European Communities said that the informal discussions had been carried out by Mr. Suzuki in an open fashion which enabled delegations to clarify their positions and to bring closer different views. Mr. Suzuki had indicated that a new text would be circulated shortly. The EC looked forward to that text since the most recent version of the Suzuki text contained a square bracket. The EC considered that further consultations were required on the text. The DSU Review should lead to a balanced result which would permit more effective and predictable procedures for settlement of disputes. The EC was prepared to pursue further discussions in order to arrive at a satisfactory result.

The representative of Malaysia said that his delegation shared the views expressed by Mexico. The Chairman had stated that the DSU Review had ended but that informal discussions were still ongoing. He believed that the Chairman's comment would send a signal that informal work of some delegations under the chairmanship of Mr. Suzuki had a legal mandate from the DSB. That informal group did not have a mandate from the DSB or the General Council. Malaysia considered that, at the present meeting, one delegation had made a statement on the DSU Review. Therefore, the Chairman's proposal to invite Mr. Suzuki to make a statement would send a signal that the informal group had a legal mandate. Malaysia together with Mexico, Hong Kong, China and several other Members had made it clear in the DSB and the General Council, that any work undertaken under the chairmanship of Mr. Suzuki was without a mandate of the DSB or the General Council. Therefore, as stated by Mexico, under this agenda item Members should consider the question of what should be recommended to the General Council. There was only one recommendation: i.e. the DSU Review had ended on 31 July 1999 and since there was no consensus to modify the DSU, the current DSU should continue.

The Chairman said that, for transparency purposes, he considered that it was his duty to bring this matter to the DSB. He clarified that it was not his intention to give a formal mandate to Mr. Suzuki. He was fully aware of the fact that the work had been carried out informally. Any delegation was free to consult on any matter and if a consensus was reached, such a matter could be brought to the DSB. He only wished to be informed whether Mr. Suzuki was able to succeed in his task. He considered that the discussion at the present meeting should focus not only on the procedural issues but also on the content of a report on the DSU Review to the General Council. He therefore invited delegations to provide their views on this matter.

The representative of Egypt said that her country, like Mexico and Malaysia, had already made it clear on other occasions that the ongoing informal open-ended consultations on possible amendments to the DSU did not have any legal basis since the deadline for completion of the DSU Review had expired on 31 July 1999. She recalled that a possibility to extend the deadline until 6 or 15 October 1999 had been discussed, but no consensus had been reached thereon. Egypt considered that a report to the General Council should be factual and should indicate that since there was no consensus to amend the DSU, the current DSU should continue. It was not appropriate to terminate the DSU. Egypt could not agree to any extension of the DSU Review.

The representative of Venezuela said that the Suzuki text was a good basis for a compromise solution in order to have in place a dispute settlement mechanism which would be satisfactory to all Members. He wished to underline the following: (i) the Suzuki text provided a good basis for consensus; (ii) if no consensus was reached prior to the Third Ministerial Conference, the DSU Review should be extended for another six months in order to consider the elements which were pending and might be included in a compromise text; (iii) there was a need to ensure that all issues and concerns raised by Members were taken into account before reaching a conclusion; (iv) Venezuela could not accept any "surprise" agreement on the DSU Review in Seattle unless it was part of the general agreement wherein all the concerns raised by countries were reflected; (v) the DSU Review should not be part of the negotiated package. He underlined that the Suzuki text could strengthen the dispute settlement system.

The representative of Colombia said that the Suzuki text was currently under examination by her authorities. Her delegation had been unable to accept Mr. Suzuki's invitation to participate in the informal discussions due to the workload stemming from the preparatory work for the Third Ministerial Conference. Therefore, the Suzuki text did not contain the issues of importance to Colombia but only the matters raised by the countries that had sufficient human resources to attend the large number of meetings. Colombia believed that the Suzuki text was a significant step forward and could serve as a basis for consensus to modify the DSU. However, Colombia could not accept the text until improvements were made to paragraph 2 of Article 21.5, paragraph 8 on an overall

reduction of the time-period for consultations from 60 to 30 days, and paragraph 18 on summaries of panel submissions for dissemination to the public. She requested that the Secretariat circulate Spanish and French translations of the Suzuki text.

The representative of Canada was surprised at the turn the discussion had taken in terms of whether the DSU Review had expired on 31 July 1999 and whether Mr. Suzuki could inform the DSB of some ongoing informal consultations outside the WTO. She believed that, for transparency purposes, the DSB should be informed about informal consultations and discussions and whether those informal consultations could produce some agreement that could be brought back to the DSB. The most important issues was not whether the deadline for completion of the Review had expired, but whether it was possible for delegations working together, as stated by Mr. Suzuki in an open-ended informal process, to come forward with some ideas that would improve the multilateral trading system. A number of delegations considered that the Suzuki text was a good basis for consensus but would like to see some improvements or some fine tuning. Canada considered that the text was very important. In the past discussions on the DSU Review there was a great deal of concern that the dispute settlement system and the multilateral trading system were faced with a major crisis and that there was an urgent need to deal with some issues, in particular with regard to implementation and sequencing. At that time, delegations had considered the absolute urgency and need to find a solution to that issue. The Suzuki text was aimed at resolving a number of those issues. Therefore, she was surprised that delegations were concerned about whether the deadline had lapsed rather than discussing the substance of the issue. She reiterated that her delegation considered the text to be valuable and believed that more fine tuning could be done. Canada was prepared to work further with other interested delegations so that a consensus text could be presented for adoption by Ministers in Seattle.

The representative of Costa Rica said that his delegation supported the statement made by Canada. In Costa Rica's view, the DSU Review had not been terminated since a considerable number of delegations had held consultations and had expressed the view that these consultations should be further pursued. As stated by Mr. Suzuki, delegations had participated constructively in the process. The dispute settlement mechanism was a key element of the multilateral trading system. Costa Rica believed that any effort aimed at strengthening of that system should be welcomed whether carried out formally or informally, provided that the underlying principle of the WTO, such as transparency, were respected. Although some elements contained in the Suzuki text were not fully satisfactory to his delegation, in general terms, the content of the text was balanced and could improve the DSU. He noted that not all matters of interest to Costa Rica had been included in that text. Costa Rica considered that some details should be further discussed. It was not possible to re-open the discussion on matters on which there was a clear divergence of views such as transparency. It was necessary to focus on those points on which a consensus could be reached and which were contained in the text. He reiterated that Costa Rica supported the text and believed that it constituted a good basis for the Ministers to take a decision to modify the DSU to improve the functioning of the multilateral trading system.

The representative of Turkey said that in spite of intensive consultations no consensus had been reached on possible amendments to the DSU. The Suzuki text was useful but required some improvements. The present dispute settlement system contained some shortcomings and therefore further consultations should be carried out on the DSU Review.

The representative of Brazil said that, on a provisional basis, his country would be prepared to accept the Suzuki text. Although the text was not perfect it constituted a good basis for consensus. He was not in a position to comment on a report to the General Council. Brazil had a great interest in the DSU Review and would prefer to have an agreement on the Suzuki text as soon as possible. He believed that it would not be helpful if Ministers had to negotiate the text in Seattle. Brazil did not wish to see a new text in Seattle. It would also not wish to block any text as a result of insufficient

time for its examination. Brazil was ready to continue its work after the Ministerial Conference for a short period of time and, if necessary, it would accept the current DSU.

The representative of Switzerland said that her country supported the statement by Canada that at this stage the most important issue was to reach an agreement on improvements to the text. The question of the mandate was secondary. The Suzuki text was a result of intensive informal discussions and constituted a basis for a balanced package which reflected, to the best extent possible, the positions of those delegations that had participated therein. The text resolved in a satisfactory manner some essential questions such as the sequence between Articles 21.5 and 22 or the need to strengthen the surveillance of implementation. It was her understanding that this was not a consensus text. Switzerland was concerned that the wording of footnote to Article 22.7 did not correspond to the views expressed by many delegations. Switzerland was willing to continue to participate in further discussions on the DSU Review.

The representative of Norway said that although many of the proposals that had been tabled in the course of the DSU Review were not reflected in the text, his country believed that the Suzuki text provided a good balance of the views expressed. Norway's preliminary view was that the text was a good package, and that the proposed amendments to the DSU would represent improvements. The informal consultations carried out under the chairmanship of Mr. Suzuki had been very useful and had brought Members much closer to the consensus on the substance of the matter. Norway shared the views expressed by Canada and was ready to participate in further consultations to complete the fine tuning of the text.

The representative of New Zealand said that the Suzuki text set both realistic and viable parameters for a successful conclusion of the DSU Review, in particular, in providing clarifications in relations to disputes over compliance. That subject had been identified in the DSB and the General Council as being of crucial importance to the more effective functioning of the dispute settlement system. New Zealand believed that the commitment to address this issue was shared by a large number of Members. A range of issues had been raised in the course of the Review which were not reflected in the text. It was his understanding that there were a couple of hundred proposals on the DSU Review and it was therefore not surprising that not all of them were reflected in the text resulting from intensive discussions among delegations. Those issues should be taken up at some point in future beyond the period of the current Review. New Zealand hoped that delegations who had commented positively on Mr. Suzuki's initiative would refrain from seeking to extend the parameters of the text at this stage. This would facilitate preparation of a report to the General Council. New Zealand supported the statements made by Canada, Switzerland, Norway and others that the substance was the most important element to agree and once there was a general agreement to fine tune the text, a report to the General Council could be facilitated.

The representative of Mexico reiterated that the DSU Review had ended on 31 July 1999. However, after the expiry of the deadline any amendments could be proposed by delegations under Article X of the WTO Agreement. A proposal could also be made in the context of the preparatory work for the Third Ministerial Conference. It was important that the appropriate procedures were followed. As indicated on the Agenda of the present meeting, the discussion should be focused on a report to the General Council. In Mexico's view it was necessary to have a draft report for adoption. The only report of which he was aware was that circulated at the end of July 1999 by Mr. Akao as Revision 2 on which delegations presented views and which contained three options in paragraph 10. That report would have to be updated and one of the three options should be chosen.

The representative of Korea said that, at the present meeting, he did not wish to comment on the status of the text presented by Mr. Suzuki. He only wished to echo the comments made by Canada. The proposed text had resolved major problems in the current text of the DSU and had achieved, to a considerable degree, the common objective of ensuring the multilateral nature of the

system while enhancing prompt compliance. In particular, the resolution of the sequence between Articles 21.5 and 22 represented the most important improvement to the current DSU. Korea also had some difficulties in accepting certain aspects of the proposed amendments such as a reduction of the overall time-frame of panel proceedings. Korea was willing to consider the Suzuki text as a basis for consensus, provided that the key elements of the overall package remained intact. Further fine tuning of the text would be required in order to ensure its legal consistency with the existing DSU rules and to resolve the remaining problems including the bracketed language in footnote 11. Korea believed that any attempt to re-open substantive negotiations would disrupt the balance of the package. While Korea was ready to participate in further work it wished to reserve its final position until a consensus was found.

The representative of India said that, like Mexico, his country also considered that the DSU Review had been terminated. His authorities were now in the process of examining the Suzuki text and he only wished to make preliminary comments. India looked favourably upon the text presented. However, there should be no change to the reasonable period of time in Article 21.3 of the DSU, no link – direct or indirect – to matters outside this text and no substantive negotiations henceforth on this text. India was prepared to consider some fine tuning for legal consistency and was ready to participate in meetings provided that such meetings were held only once a week. India wished to reflect further on the procedural issues.

The representative of Hong Kong, China said that from the substantive point of view, at this stage, there was no consensus text. It was not possible to determine when such a consensus text would be available. It would depend on how wide the gaps were on the outstanding issues highlighted by Suzuki, in particular the issue related to footnote 11. Whether it was possible to reach a consensus would depend on whether the Suzuki text was the universe. If so, there might still be a chance to reach a consensus before Seattle. If not, the question was what were the other possible elements. Whether they were controversial or technical. The question was whether there was any prospect that a consensus could be reached. If there was any re-opening of substantive issues this would not be possible. With regard to the procedural point of view, the mandate had expired by 31 July 1999. The DSB had to prepare a report. At this stage there was no report since no consensus had been reached on the text, despite all the formal and informal discussions. Hence the DSB could not recommend to modify the DSU. Some delegations maintained that one of the option available was to terminate the DSU. This option however was not realistic. The DSB should recommend that the existing DSU be continued. With regard to the Chairman's question as to how the DSB should report to the General Council on 4 November, the DSB had two choices: (i) delegations could make further efforts towards reaching a consensus on the Suzuki text: if delegations were agreeable with the text, without any square brackets and without any re-opening of substantive issues or additions of new issues then that text could be submitted to the General Council for adoption on 4 November; (ii) delegations could conclude that there was no consensus on any modifications to the DSU and recommend that the current DSU should continue.

The representative of Ecuador said that his country also had a problem with the Suzuki text but considered that it was a balanced and good result of intensive negotiations. The text provided a basis for consensus to amend the DSU in Seattle. Ecuador could accept the Suzuki text on the understanding that negotiations on the substantial matters had ended on 15 October 1999. Ecuador would be willing to participate in negotiations aimed at fine tuning of the legal text. He believed that there were many delegations that would be able to participate in this work. He supported the suggestion made by Colombia that the Secretariat prepare a translation of the Suzuki text. If no consensus was reached, any Member at any time could propose changes to the DSU.

The representative of Guatemala said that her delegation had worked towards an agreement on possible amendment of the DSU beyond the agreed deadline. There were still several points in the Suzuki text on which there was no consensus. Guatemala could not endorse any changes that would

weaken the credibility of the dispute settlement system. Her country could not accept the package of amendments proposed. Her delegation did not support any extension of the DSU Review process. In Guatemala's view the General Council should recommend that the current DSU should continue.

The representative of Argentina said that the Suzuki text was an important step forward in the DSU Review process. Argentina could support most of the amendments, in particular those related to Articles 21.5 and 22 of the DSU, which were the priority in the Review process. The Suzuki text constituted a good basis for consensus. However, Argentina was concerned with some elements such as a reduction of time-frames, paragraph 8 and footnote 13. For these reasons, Argentina was prepared to continue to work in the forthcoming weeks to fine tune the present text, provided that no new proposals or elements other than those contained in the proposed text would be made. It was not advisable to re-open issues on which it had not been possible to reach consensus.

The representative of Hungary, speaking also on behalf of the Czech Republic, said that they attached priority to the elimination of the ambiguities in the provisions regarding implementation in order to strengthen the multilateral trading system. The shortcomings of the DSU could only be redressed as part of the package deal. In this regard, Hungary had indicated in the past that it would favour a negotiated package. The Suzuki text was a good basis for compromise. Like other delegations, Hungary had some reservations with regard to footnote 11 but the package as a whole seemed to offer a meaningful and balanced compromise. He hoped that Members could be flexible and consider the text seriously. If no agreement was reached in Seattle, Hungary would support the continuation of the DSU without any modifications. His country believed that the dispute settlement mechanism was a pillar of the multilateral trading system and therefore should not be left in the state of a permanent review during the new round of negotiations. Hungary would have difficulties with any decision that would result in the continuation of the DSU review during such negotiations.

The representative of Indonesia said that the Suzuki text could improve the DSU. With regard to the report to the General Council, many delegations had expressed their views that the deadline had expired and that there was no agreement on possible modifications to the DSU. It was clear that the deadline had expired on 31 July 1999. However, some delegations believed that this fact was not so important due to the expected results of the informal discussions under the leadership of Mr. Suzuki. Indonesia was concerned that the decision of the General Council on the deadline for the DSU Review could be undermined. This would set a precedent which would have an impact on the future work of the WTO. Therefore, a clear procedural solution was required in order to be able to move forward. His delegation was not sure what was meant by the package referred to by some delegations. It was not appropriate for the DSB to endorse an open-ended package and forward it to the General Council which would then be recommended to the Third Ministerial Conference. From the legal point of view there was no package on the table at present. Indonesia therefore proposed that Members should first deal with the procedural issues and then clarify the package of possible agreements. He reiterated Indonesia's position that in case there was no agreement to amend the DSU, the General Council should recommend that the Ministerial Conference decide that the existing DSU should be continued. His country would not be prepared to any further review of the DSU before the conclusion of the next round of negotiations.

The representative of Malaysia recalled that Canada supported by some delegations had stated that the procedure was not important and that substantive issues should be discussed. The WTO was a rule-based organization and therefore he failed to understand that some delegations had claimed that deadlines were not important. It was necessary to clarify procedural elements. Delegations were free to make statements. Mr. Suzuki made a statement for the sake of transparency to inform other delegations. With regard to the suggestion by Colombia that the Secretariat circulate the Suzuki text in the three WTO languages, he believed that this would set a dangerous precedent since Mr. Suzuki had made a statement in his personal capacity. Malaysia could not agree to that proposal. His

country would have difficulties to continue to work on the DSU Review in the period of the new round of negotiations.

The representative of Thailand said that his delegation supported the continuation of the work on the basis of the following understanding: (i) the purpose would be to fine tune the elements already contained in the Suzuki text; and (ii) no other substantive elements should be introduced to this text. With regard to the substance, the text should be circulated without any bracket.

The representative of Australia said that his country could not support a formal decision by the Third Ministerial Conference to modify the DSU either with immediate effect or with effect from a later date. Before being able to be bound by any changes to the DSU, Australia had to undertake domestic treaty amendment processes, and those processes could not commence until a draft text covering all proposed changes was available. Australia could however support at the Seattle Ministerial Conference a statement of intent to modify the DSU on the basis that a formal decision to modify the DSU would be made at a later date either by a subsequent Ministerial Conference or by the General Council. Such a statement of intent could incorporate any draft amendments that had received consensus endorsement by the membership.

He also wished to make some specific comments on the work in which Australia had been engaged in recent weeks. Australia had participated in the dispute settlement system both as a complaining and responding party. Moreover, Australia was one of a few Members that had been involved in the proceedings under Articles 21.5 and 22 of the DSU. Its approach to the DSU Review had been influenced by the wish to ensure due process and procedural equity for both parties to a dispute. He believed that ultimately the WTO in the interest of the rule-based multilateral trading system would best be served through positive encouragement of Members to comply with their obligations. Against that background, Australia had raised a number of concerns with regard to the current text, some of which had also been raised by other Members. Australia was encouraged that the draft text before the DSB directly addressed a number of those concerns, for example, the need for clearly defined procedures in the event of dispute over implementation of the DSB recommendations and those for the removal of retaliatory measures, as well as the need for enhanced third-party rights. Although Australia recognized that further work might be required on the draft text to ensure internal conformity. Australia believed that there was some value in discussions on the basis of the draft text in an effort to address other concerns, in particular: (i) the need for the DSB supervision of retaliatory measures; (ii) the utter impracticability of the proposed requirement for notification of implementation measures 20 days prior to the expiry of the reasonable period of time; (iii) the timetable for the dispute settlement process; and (iv) the need for equitable treatment of the different systems of governance of Members in the arbitration of a reasonable period of time under Article 21.3(c) of the DSU. Australia accepted that Members could not expect an ideal outcome on every issue and had worked with other Members to try to resolve concerns that had become apparent on the basis of the operation of the DSU over the past several years. Australia remained willing to continue to do so with a view to ensuring that any amendments to the DSU promote the aim of the dispute settlement system to secure a positive solution to a dispute. Australia looked forward to participating in further discussions on possible amendments to the DSU to address its concerns and the concerns of other Members.

The representative of the United States said that the Chairman was within his mandate to ask Mr. Suzuki to report on the work of the informal group. She believed that it was imperative in the interest of transparency that delegations who could not attend these meetings be informed of the progress of that work. The Chairman should be commended for encouraging such transparency. The United States could not agree with all the elements contained in the text but was willing to continue negotiations on the basis of that text with the exception of footnote 11 to Article 22.7 of the DSU. The United States believed that further discussion was required on this issue. Her delegations noted that the text of footnote 11 was bracketed in the version of the text that had been distributed on

22 October 1999, and those brackets had to remain. Brackets indicated that further discussion was necessary and that was exactly the case with footnote 11. The United States had already stated it was willing to work to ensure that any suspension of concessions was equivalent to the nullification or impairment in a dispute and remained equivalent. The United States was prepared to keep a dialogue open on this point and believed that Members could work to resolve the issue before Seattle. However, footnote 11 could not remain in the final text in its present form. There was nothing about fine-tuning about footnote 11. In addition to its concerns on the substance, the United States also wished to take the opportunity to raise one technical point that had to be corrected in any final text. It had been generally agreed that the references to the work of the compliance panel had to be consistent in Articles 21 *bis* and 22, so that the drafting of Articles 21 *bis* and 22 had to be aligned with the drafting of Article 21 *bis*, paragraph 1. The United States could not defend a package that did not include enhanced transparency. The United States was pleased that the Suzuki text provided concrete improvements in transparency of the dispute settlement process. However, these improvements were not enough. There were other areas where there was a need to improve the transparency of the process. The United States also took careful note of Mr. Suzuki's introduction of his text in which he had indicated that amicus submissions and public access to panel and Appellate Body meetings were among the topics on which discussions as of 15 October had not been conclusive enough for him to include concrete proposals thereon in the text. Therefore, the United States would be consulting intensively with other delegations on the issues of amicus submissions and open hearings between now and the Ministerial Conference. The United States had presented a proposal on amicus submissions that was reasonable and workable and answered the problems that delegations had raised in previous discussions. Her delegation considered that it was worth a closer look and it would continue to urge others to give it serious consideration. In its consultations the United States would be seeking views from delegations on detailed aspects of the proposal and looked forward to an opportunity to respond to the points raised. Her delegation continued to believe that opening panel and appellate hearings to public observance was key to ensuring public support for the WTO. The United States would continue to consult intensively with other delegations on that point as well.

She also wished to respond to delegations that had stated that the Review had already been concluded and no further discussions were possible. The 1994 Ministerial Decision which called for the DSU Review provided that at the first Ministerial Conference after the completion of the Review, Ministers were to take a decision on "whether to continue, modify or terminate" the DSU rules and procedures. Ministers would have to take that decision at Seattle. Therefore the question of the mandate of the DSU Review was rather irrelevant. The mandate for the Review had concluded in July 1999 but that did not change the fact that the Ministers would be required to take a decision at Seattle on whether to continue, modify or terminate the DSU. Also under the 1994 Ministerial Decision a consensus was required for any of these alternatives. One could not assume that the continuation of the DSU would happen automatically and would require a consensus decision. Members could not and should not assume that the United States would agree to continuation of the DSU or to a modification of the rules that would not be acceptable to it. There were certain aspects of the present DSU rules that did not work. If Members worked together they could reach agreement on modifications to the DSU which would resolve the problems in a way all could accept and which would be adopted at Seattle. But it was too early to rule out any of the options provided for in the 1994 Ministerial Decision. The question of modalities was premature. Until there was a consensus on changes to the DSU there was no need to decide on how to put those changes into effect.

The representative of the Philippines wished to highlight the following facts: (i) the DSU Review had ended on 31 July 1999 and there was no consensus to extend it; (ii) notwithstanding that there was no consensus to extend the Review some delegations, including the Philippines, continued to work on possible amendments to the DSU. With regard to a report to the General Council, such report could be factual. However, it was also necessary to address what to recommend to the General Council. Many delegations had stated that the DSU was the most important element of the multilateral trading system and its security should not be put into question. Therefore, he believed

that it was not appropriate to put that system in doubt. The Philippines supported those delegations who had stated that the General Council should recommend to Ministers that the current DSU be continued. However, if in the meantime delegations would continue to work and reach consensus before Seattle then the Ministers could recommend that the DSU Review be modified. If no consensus was reached, Ministers would decide to continue the current DSU and delegations could continue their work after Seattle. It was important that the integrity and security of the system was not put into question. The Philippines was willing to continue to participate in further work.

The representative of Colombia said that the Suzuki text was extremely important and required careful examination in capitals. Since one delegation considered that Colombia's proposal could set a "dangerous precedent" she proposed that Mr. Suzuki read out the legal part of his oral statement which would then be annexed to the minutes of the present meeting to be circulated in the three WTO working languages.

The representative of Indonesia said that his delegation welcomed the US clarification on the meaning of the package to which he had referred in his earlier statement. That package would include the issue of amicus brief and participation of NGOs in the legal proceedings of the WTO. As Indonesia had already indicated in the previous meetings, these two issues should not be part of the package. Indonesia would maintain its position intact. His delegation supported the US position to the effect that the three options concerning the DSU Review remained open up to Seattle. Indonesia would not put aside the third option of the Ministerial Decision, namely to terminate the DSU.

The representative of Hong Kong, China said that the United States had stated that the continuation of the current DSU would require a consensus decision. His delegation believed that this was not the case. A decision whether to continue, modify or terminate the current DSU had to be taken in accordance with Article IX of the WTO Agreement. However, the continuation of the current DSU in the absence of any Ministerial decision pursuant to Article IX did not require any consensus. The legal basis for this argument was contained in Articles II.2, X and XVI.3 of the WTO Agreement.

The representative of Mexico said that it was important to make a distinction between the DSU Review and the 1994 Ministerial Decision. Ministers would have to decide whether to continue, modify or terminate the DSU. That did not mean that Ministers would have to specify individual modifications. This was a legal matter which would have to be considered in the light of the legal provisions of the WTO Agreement. It was his understanding that thus far no Member had proposed to terminate the DSU.

Mr. Suzuki asked the Secretariat to include the full text of his report in the minutes of the meeting.

The Chairman confirmed that the Secretariat would do so.

The representative of Mexico said that the Chairman had referred to the statement made by Japan and Mr. Suzuki had referred to his report. Mexico could not accept that reference was made to a report because this was not allowed under the rules of procedure.

The representative of New Zealand said that his delegation supported the comments made by Hong Kong, China. In the absence of any decision it was not his country's view that the basis for any action taken pursuant to the DSU provisions would have no legal basis. The point made by Hong Kong, China was very important in this regard, given the central role of the DSU.

The representative of Malaysia said that he wished to respond to the comments made by the United States. This was the first time that the United States had formally stated its position on

transparency. He therefore wished to reiterate his country's position, namely, that Malaysia would not be able to accept any package that contained the transparency provisions referred to by the United States. With regard to a possibility of terminating the DSU, Malaysia preferred that the present DSU should continue and in the absence of any agreement to modify the current rules should continue. If the United States called for termination of the DSU Malaysia would also seriously consider that option.

The representative of Australia said that subject to a consensus decision, the DSU should continue by default and to this end he supported the comments made by New Zealand.

The representative of India said that Ministers had to take a decision whether to continue, modify or terminate the DSU. A decision was required with regard to all the three options. He did not support the interpretation made by Hong Kong, China, which was shared by Australia and New Zealand. The text of the Ministerial Decision clearly stated that the Ministerial Conference was invited to take a decision on the occasion of its first meeting after the completion of the review whether to continue, modify or terminate such dispute settlement rules and procedures. Therefore, all the three options were available but one of the three would have to be decided by the Ministerial Conference. If there was no consensus, Article IX of the WTO Agreement would apply.

The representative of the Philippines said that there were different views on the interpretation of the Ministerial Decision but the debate at the present meeting was of a political nature, namely, to what extent Members were willing to cast doubt on the security and stability of the DSU. The Philippines did not support any interpretation which would put into doubt security and stability of the DSU.

The Chairman said that there was a large degree of support for the Suzuki text and it was his impression that the informal group was very close to reaching a consensus. A number of delegations had stated that they supported the work. Although they could not agree on all the points contained in the text they could go along with it. A number of delegations had stated that they wished that the number of issues included in the agreement should be limited to the points contained in the Suzuki text. Some delegations had stated that they wished to pursue other issues as well. A number of delegations had stated that they were willing to continue their work but many delegations had had some problems due to the preparatory work before Seattle. With regard to the procedural points, the deadline for the DSU Review had expired on 31 July 1999 and had not been extended. Therefore, the consultations held after the deadline had been carried out on an informal basis. The DSB had to make a report on the DSU Review to the General Council on 4 November 1999. He was not sure whether it was possible to agree on a report. He therefore wished to propose some points for inclusion therein. If delegation were agreeable, he would put them in writing and circulate them for consideration. The DSB could adjourn its proceedings and reconvene shortly before the meeting of the General Council. He said that a report would: (i) note Mr. Akao's statement made on 6 October 1999; (ii) note that the deadline for the DSU Review as mandated by the Ministerial Decision had expired on 31 July 1999; (iii) underline the fact that the DSU had proved to be an effective and important instrument in contributing towards the strengthening of the multilateral trading system and therefore the termination of the DSU was not an option; (iv) recommend to the General Council that the DSU should continue; (v) note that possible consensus proposals for amendments might still emerge and could therefore be adopted at Seattle; and (vi) note a possibility to continue the DSU Review after Seattle. He said that the DSB could decide at any time to take up a review of the DSU. He would circulate these points with a view to reverting to them on 3 November.

The representative of Malaysia said that his delegation could support points 1 through 4, but could not support points 5 and 6. Any Member could make a proposal at Seattle but such a proposal had to be accepted by consensus. However, a consensus had to be reached before the Ministerial Conference since it would be not appropriate for Ministers to discuss technical issues at Seattle.

Therefore his delegation could not accept point 5. With regard to point 6, Malaysia did not wish that the process of review be continued for another three years. It could not agree with the idea that a review of the DSU could be taken up at any time. Any such review would have to be mandated by Ministers. It was not necessary to recommend to Ministers to do so. If the Suzuki text was considered in Seattle and a consensus was reached it would be up to Ministers to decide thereon. However, he reiterated that any package should not contain transparency proposals.

The Chairman noted the comments made by Malaysia and said that at this stage his intention was to prepare a package for delegations to further reflect thereon.

The representative of Mexico said that his delegation supported the Chairman's proposal to prepare a draft report to the General Council. However, the proceedings of the meeting should only be suspended until 3 November 1999. His delegation believed that as long as the report was factual there would be no problem. He reiterated that Members were free to make proposals in the context of the preparatory work for the Ministerial Conference. That report should not contain any recommendation since there was no consensus thereon. With regard to point 6, Members, at any time could decide to open a review period and this had to be done by consensus. There was also a possibility that delegations could submit proposals for amendments pursuant to Article X of the WTO Agreement. He reiterated that Mexico was prepared to work in order to prepare a report. If no agreement was reached, either there would be no report or such a report would be factual.

The Chairman confirmed that the DSB meeting would be reconvened on 3 November 1999.

The representative of Hong Kong, China said that his delegation could go along with the Chairman's proposal to prepare a draft report and to reconvene the meeting on 3 November. His delegation would participate positively in that process. Hong Kong, China had no objection in principle to the first five points which constituted a fair reflection of the discussion thus far. However, no proposal had been made with regard to the possibility to continue the DSU Review after Seattle. This should therefore not be included in the report. His delegation did not support any review after Seattle.

The representative of the Philippines said that his delegation could accept points 1 to 5 but not point 6.

The representative of Hungary said that his delegation could go along with the first five points but had difficulties with point 6. As he had already stated, Hungary was concerned with the continued review during the next round of negotiations. This would be detrimental to the system.

The representative of the United States said that as stated by the Philippines this was a political decision but needed to be taken in the legal framework. She therefore reiterated that Ministers had to decide whether to continue, modify or terminate the DSU. A consensus was required for any of these alternatives. One could not assume that the continuation of the DSU would take place automatically. The continuation of the DSU would require a consensus decision by Ministers and it should not be assumed that the United States would agree to the continuation of the DSU or to any modifications which would not be acceptable to it. There were different national views and there were certain elements which in the view of the United States were important. Her country would continue to put forward those very important issues. She believed that delegations should work together and try to reach an agreement on the substance of possible modifications.

The representative of Canada said that a report should be factual. A number of delegation had supported five points outlined by the Chairman. She noted that a number of delegations had stated that they hoped to be in a position to reach a consensus agreement in Seattle to clarify some of the most important aspects of the DSU. Some delegations had stated that if that was not possible, they

did not wish to foreclose that possibility to do so at a later date. Canada was among those who held that position.

The representative of Venezuela said that his delegation had referred to the extension of the period of review. He reiterated that in the absence of consensus prior the Ministerial Conference, the period for the review should be extended for a further six months. It was a responsibility of the DSB to try to enable Ministers to approve an agreement which contained elements to amend the existing text. There was a need to improve the DSU and therefore efforts should continue. However, the review should not be part of negotiations. Venezuela supported the points outlined by the Chairman and looked foreword to this text which could constitute a good basis for a report. In his view, point 3 should not refer to a termination of the DSU.

The representative of India said that it was his understanding that the Chairman was proposing a consensus report to the General Council. Some delegations had expressed concerns with regard to the possibility of continuing the discussion after the Ministerial Conference. Therefore, if the report was supposed to be factual, different positions should be reflected therein.

The representative of the European Communities said that it was important to try to take into account different views on this matter. The DSU was an essential element of the system and had proven to be useful. However, the experience had thus far demonstrated that there were some shortcomings which had to be resolved. The DSU had to be improved. The DSU Review should result in a balanced outcome and in a more efficient and predictable system. The EC was ready to pursue further discussions with the aim of achieving a satisfactory outcome. At this stage, the EC's preferred option would be to improve the DSU and therefore no possibility to this end should be precluded.

The representative of Indonesia supported the statement made by India on the need to ensure that this would be a consensus report. His delegations would have difficulties with points 5 and 6.

The Chairman noted the statements made by delegations and said that he would prepare a report which would take into account different positions. He recognized that delegations wished that the report be as factual as possible. He proposed that the DSB revert to this matter at its reconvened meeting on 3 November.

The DSB took note of the statements and agreed to revert to this matter at its meeting on 3 November.

Upon resumption of the meeting on 3 November 1999, the Chairman said that on the basis of the discussion held on 27 October 1999, he had prepared the following statement to be read out at the General Council meeting on 4 November:

"1. The Chairman's statement would note the Oral Report to the General Council on 6 October 1999 of Ambassador Nobutoshi Akao, then Chairman of the Dispute Settlement Body. That report provides a review of the discussions and actions taken pursuant to the Ministerial Decision (Marrakesh) and the General Council Decision, taken at its meeting of 9-11 and 18 December 1998, to continue and complete the review process by end of July 1999.

2. The DSB notes that the 31 July 1999 deadline for the completion of the review process has lapsed, and also notes that informal consultations among interested delegations have continued after 31 July 1999.

3. The DSB wishes to underline the consensus view that the WTO dispute settlement rules and procedures have proved an effective and important instrument in enforcing the rules of the multilateral trading system and that it could be further improved.

4. Accordingly, the Chairman would propose to the DSB that it:

(a) recommend that the General Council take note of all the discussions that have taken place during the Review; and

(b) note that in the context of the informal consultations among interested delegations mentioned above, it is still possible that proposals to amend the Dispute Settlement Understanding which may constitute a consensus can emerge in time for a decision at the Third Session of the Ministerial Conference."

The Chairman said that he would make that statement on his own authority and he would indicate that the statement had received broad support. Delegations were invited to present their views which would be reflected in the minutes of the present meeting. In his statement to the General Council, he would refer to the statements made in the DSB by stating that his statement should be read in conjunction with the individual statements of delegations. He proposed a technical change to the statement that he had just read out, namely to bring up the chapeau of paragraph 4 so that paragraphs 2 and 3 would become subparagraphs under that chapeau. He also wished to add the word "some" in paragraphs 2 and 4(b) to further qualify the words "interested delegations".

The representative of the Philippines said that it was his understanding that the Chairman would make a statement on his own responsibility and that the statements made by delegations would be part of the Chairman's statement. His country could not object to that approach because the Chairman was free to make any statement based on his observations. However, he wished to point out that there should be no reference to the effect that the DSB noted that the informal consultations were ongoing. Furthermore, the Philippines objected to the reference that the DSU could be improved.

The Chairman noted the points made by the Philippines and said that he would try to accommodate these concerns.

The representative of the United States said that his delegation supported the Chairman's approach. He drew attention to the third paragraph and proposed that it be further qualified by stating that "the rules and procedures have proved largely an effective and important instrument in enforcing the rules of the multilateral trading system".

The representative of Malaysia said that his delegation shared the concerns expressed by the Philippines. He recognized that the Chairman was free to make any statement but at the same time there was a need to reflect the current status. He proposed that the DSB suspend its proceedings for five minutes in order to see the wording suggested by the Philippines. Otherwise, he would not be in a position to accept the approach proposed by the Chairman.

The Chairman said that he would circulate his statement to delegations prior to the meeting of the General Council. He was aware that since he would make a statement under his own authority he could not indicate that the DSB noted some elements. He wished to assure that he would consult with delegations on this question. He proposed to proceed on that basis.

The representative of Mexico said that his delegation did not object to the approach proposed by the Chairman. However, he did not support the Chairman's suggestion to move the chapeau of paragraph 4 since that would change the sense of the language.

The Chairman said that he would not insist on the technical change he had proposed.

The representative of Venezuela said that his delegation supported the Chairman's proposal. He noted that paragraph 4(b) indicated the possibility to continue with the informal consultations before the Third Ministerial Conference. His delegation supported further efforts aimed at reaching an agreement in the context of the DSU Review. However, he was concerned that a meeting of the General Council would have to be held in order to consider any possible results. He therefore proposed that in paragraph 4(b), the Chairman under his responsibility, indicate to the General Council that he could consider a next step, if the situation was ripe. Venezuela believed that it was necessary to have an appropriate mechanism to ensure that the DSU Review was not linked with future negotiations. Venezuela would continue its efforts towards reaching an agreement but if not, an appropriate mechanism for continuation of the Review should be ensured.

The Chairman said that at the October DSB meeting delegations had stated that any Member was free to make a proposal at Seattle. A number of delegations had also indicated that the Suzuki report could become the Chairman's report.

The representative of Hong Kong, China said that it was his understanding that the Chairman would make a statement on his own responsibility. Therefore, he was not sure why the Chairman wished to consult on this matter and why specific amendments had been suggested to the Chairman's statement. He therefore sought clarification as to whether the Chairman's intention was to seek suggestions from delegations on how to further improve his statement.

The Chairman reiterated that his intention was to make a statement under his own responsibility. However, the DSB had to authorize him to do so. That did not exclude the possibility that delegations could make specific points which would be reflected in the minutes. He would state in the General Council that in addition to his statement delegations had made specific comments on the DSU Review.

The representative of Hong Kong, China said that pursuant to the General Council's decision on 18 December 1998, the Review process had to be concluded by 31 July 1999, including the preparation of a report by the DSB. He sought clarification as to whether Mr. Akao's oral report would constitute part of a report on the DSU Review to the General Council.

The Chairman said that a report to the General Council would contain Mr. Akao's statement as well as his statement to be made at the meeting of the General Council on 4 November.

The representative of the Philippines said that his delegation was concerned that the Chairman's statement would be elevated to the status of a report of the DSB. If his understanding was correct, a consensus was required if the Chairman's statement were to be a DSB report. If this was a Chairman's report, then the Chairman could state in his report that there was no consensus on a report by the DSB. It was up to the Chairman to decide on the content of his report.

The Chairman said that he would make a statement on his own responsibility with the consent of the DSB. Since it was not possible to agree on a report of the DSB he had to make it clear to the General Council that his report was not a consensus report. He had therefore proposed to make a statement rather than to seek agreement on a report.

The representative of Ecuador noted that the Chairman would make a statement to the General Council under his own responsibility. He wished to state Ecuador's position on that statement. In his delegation's view the informal consultations referred to in paragraph 4(b) had concluded substantial discussions on 15 October 1999. A result of those consultations had been submitted to the DSB on 27 October 1999 by Japan as a legal text, which required some drafting modifications. Ecuador considered that the text reflected the concerns of the majority of the delegations that had participated in the informal consultations, on the understanding that the negotiations for the preparation of the text had concluded on the 15 October. Ecuador supported the suggestion that the report by Mr. Suzuki could become the Chairman's report. That would be a positive contribution towards a consensus on modifications to the DSU.

The representative of Mexico said that Ecuador had referred to the substance while the issue under consideration was related to the procedure. He said that the Chairman's report on the DSU Review was different than a DSB report. Mexico supported the Chairman's approach on the understanding that such a report was the Chairman's report, under his own responsibility, and not a DSB's report. It was his understanding that the Chairman's report would be submitted to the General Council together with the statements made by Members at the present meeting. The General Council could then take note of the report. It was not necessary to adopt such a report. The best approach would be to avoid further changes to the text because this would lead to negotiations. He did not have a problem with the change proposed by the Chairman to include the word "some", but did not wish any technical change such as to bring up the chapeau of paragraph 4 nor to add any other words because that would mean a drafting exercise. It was his understanding that any drafting suggestions would be reflected in the minutes which would be submitted together with the Chairman's report to the General Council.

The Chairman said that Mexico's comments with regard to the technical change would be taken into account.

The representative of Malaysia said that it was his understanding that the Chairman would take into account the concerns expressed by the Philippines. He hoped that it would still be possible to see the report prior to the meeting of the General Council. His delegations could not agree to the proposal that Mr. Suzuki's text should become the Chairman's text.

The Chairman said that he would circulate his text to enable delegations to indicate any problems directly to him prior to the meeting of the General Council.

The representative of Indonesia said that his delegation could go along with the Chairman's approach. He underlined the importance of the suggestions made by Mexico and the Philippines. He wished that the statements made by his delegation at the meeting of the DSB on 27 October 1999 would be included in the minutes.

The Chairman said that he would refer to all the statements made on this matter in the DSB.

The representative of Egypt said that her delegation shared the concerns expressed by the Philippines and Malaysia. She sought clarification with regard to the proposal that the Suzuki text could become the Chairman's text. As indicated by her delegation, the open-ended consultations did not have any mandate or any legal basis.

The Chairman said that he had asked whether the Suzuki text could become a formal text of the Chairman.

The representative of Egypt asked whether from the procedural point of view it was possible that a result of an informal group which did not have a mandate or a legal base could be taken into consideration.

The Chairman said that if there was a consensus on this matter there would be no legal difficulties for that text to become the Chairman's text.

The representative of Egypt said that her country, like Malaysia, could not accept the proposal made by the Chairman.

The representative of Hong Kong, China said that it was his understanding that the Chairman's statement was not part of the report required under the General Council's decision. If that was the case he was prepared to go along with the Chairman's approach. His delegation would like to submit through the Secretariat its views on drafting amendments to the Chairman's statement. It was his understanding that his delegation's proposal would form part of the Chairman's report as an individual delegation's view on the process, mentioned by the Chairman. He hoped that the Suzuki text at some point would gain momentum. From a practical point of view, the Chairman could take the ownership of the text. That text might be a basis for consensus to be reached before Seattle.

The representative of Mexico said that with regard to paragraph 2 in which a reference had been made to informal consultations among interested delegations, Mexico considered that such consultations did not stem from any mandate from the DSB. With regard to paragraph 3, Mexico's position was that the dispute settlement system was a central element in ensuring security and predictability of the multilateral trading system. With regard to paragraph 4(b) Mexico was aware of the fact that at any time any Member might put forward amendments to any covered agreement under the WTO, in conformity with Article X of the WTO Agreement. Another possibility was provided by the preparatory process for a Ministerial Conference. In Mexico's view if no agreement was reached on amendments to the DSU, the current text of the DSU would continue to apply for two reasons: (i) no proposal had been made to terminate it; and (ii) this would be a logical course of action in the absence of consensus on the three options set out in the Ministerial Decision.

The representative of the Philippines said that: (i) the deadline for the DSU Review as mandated in the Ministerial Declaration had lapsed on 31 July 1999; (ii) under the Ministerial Decision the DSB had the obligation to recommend whether the DSU should be continued, modified or terminated; (iii) in the absence of consensus whether to continue, modify or terminate the DSU, the current DSU should continue. With regard to the Chairman's text, there should be no reference in paragraph 2 that the DSB note that informal consultations among interested delegations have continued. The Philippines would have also wished to add a new paragraph which would read as follows: "the DSB notes that there is nothing that can prevent the parties from agreeing on modifications at any time". Consequently, the current paragraph 3 which would become paragraph 4 could read "the DSB wishes to underline the consensus view that the WTO dispute settlement rules and procedures proved efficient and important instrument in enforcing the rules of the multilateral trading system and that while it could be further improved, it should continue to apply subject to such modifications as may be agreed upon in the future". The next paragraph could then state accordingly: "it was proposed that the DSB recommend that the General Council take note of all the discussions that had taken place, that the DSB recommends that the DSU shall continue to apply subject to such modifications as may be agreed upon in the future".

The DSB took note of the statements.

10. Appointment of Appellate Body Members

(a) Statement by the Chairman

The Chairman recalled that at the DSB meeting on 22 and 24 September 1999, Mr. N. Akao, then Chairman of the DSB, had made a statement concerning the upcoming expiry of the terms of four of the Appellate Body members in December 1999. As Mr. Akao had indicated at that time, two Appellate Body members, Messrs. Said El-Naggar and Mitsuo Matsushita, had decided not to seek renewal of their terms. Two other Appellate Body members, Messrs. James Bacchus and Christopher Beeby had expressed their willingness and interest in being reappointed for a second four-year term.

Since he had become Chairman of the DSB only recently, he had consulted with several delegations on this very important matter. From his discussions it was clear that all Members had sincerely appreciated the urgency and critical importance of ensuring that the Appellate Body could continue its important work without any interruption in the number of its members. The Appellate Body currently had a very busy caseload and there were more cases before panels which might be appealed within the next few months. It would be very unfortunate for the WTO, if the Appellate Body were unable to function because the DSB had not resolved this matter as expeditiously as possible. It was his conviction that Members could and should find an efficient and effective way to renew and replace the four Appellate Body members whose terms were due to expire in December 1999 with the minimum disruption in the very important work of the Appellate Body.

One should not allow the "worst case scenario" described by Mr. Akao at the September DSB meeting to occur. He recalled that Mr. Akao had described a "worst case scenario" as one in which, due to a failure to resolve the current situation only three members of the Appellate Body would be left to rule on the ever-increasing number of appeals in December and early 2000. Mr. Akao had also outlined an "even worst case" scenario in which only three Appellate Body members would remain, and one of them would be unable to hear a particular case, either for reasons of illness or a conflict of interest. One simply could not allow even the possibility of such a situation to arise.

He also wished to give another reason why in his view the matter should be addressed with the utmost urgency. The Appellate Body had only been in existence for a relatively short period of time; it had heard its first case in *United States – Reformulated Gasoline* in 1996. Since that time, the Appellate Body had issued 22 reports and the number of appeals was increasing every year. Three appeals were currently pending. In its first three-and-a-half-years, the Appellate Body had established for itself and for the WTO dispute settlement system as a whole, an extremely enviable reputation. Many international law experts had stated that the Appellate Body had quickly become the most important and prolific international tribunal in existence in the world today.

The principal task of the Appellate Body was to resolve disputes between WTO Members. That was the purpose for which the Appellate Body had been created, and, of course, remained its primary purpose under the DSU. Yet, in deciding how to deal with the expiry of the four Appellate Body members' terms, one should be ever-mindful of the importance of the Appellate Body as an institution, and what this meant for the stature and the success of the WTO. One should be also very mindful to protect and preserve, with the utmost care, the independence and impartiality of the Appellate Body, and of its members individually. Members benefitted from a dispute settlement system which was respected for its independence, impartiality and consistent decisions. One leading publication, the *New York Times*, had recently described WTO dispute settlement as "impartial and unflinching". This was so. This had to remain so, and the preservation of the credibility, impartiality and efficiency of the Appellate Body was a key to keeping it so.

For all these reasons, he proposed that the DSB take a decision, as soon as possible, based on the following three elements: first, to renew the terms of office of the two Appellate Body members

who wished to be renewed, Messrs. Bacchus and Beeby, for a final term of four years, consistent with the DSU; second, to commence a process to ensure the rapid replacement of the two Appellate Body members who had expressed their desire to leave Messrs. El-Naggar and Matsushita. To fill these two vacancies, he proposed that the DSB adopt the same process used in 1995 to select the original seven Appellate Body members. He recalled at that time, WTO Members had been asked to nominate candidates, and a Selection Committee had been established, composed of the Director-General together with the Chairs of the General Council, the DSB, and the Councils for Trade in Goods, Trade in Services and TRIPS. He considered that it would be advisable for purposes of efficiency to set a deadline this year for the nomination of candidates for the two vacancies. After nominations had been made, the Selection Committee could review the curricula vitae of the candidates and consult extensively with delegations. An interview process should take place in January and February 2000, with a view to a final recommendation being made by the Selection Committee to the DSB possibly in March 2000. Third, as it would not seem possible to appoint two new Appellate Body members before March 2000, he wished to recommend the extension of the terms of Messrs. El-Naggar and Matsushita until the end of March, in order to ensure that there was no vacancy in the membership of the Appellate Body during this critical period. Both Messrs. El-Naggar and Matsushita had expressed their willingness to stay for a short period of time, for the sake of the system, and if the DSB so desired. He was aware that Members would need a few more days to consider the proposal outlined by him. He would remain available to discuss with delegations individually in more detail if they so wished. He proposed that the DSB revert to this matter for decision at its resumed meeting on 3 November.

The representative of Brazil asked the Chairman to make his statement available to delegations.

The Chairman confirmed that his statement would be circulated to delegations as requested by Brazil.

The representative of India said that his delegation would provide its reaction to the three elements outlined by the Chairman after receiving its instructions from the capital.

The DSB took note of the statements and agreed to revert to this matter at its resumed meeting on 3 November 1999.

Upon resumption of the meeting on 3 November 1999, the Chairman recalled that the DSB had considered this matter at its meeting on 27 October and had agreed to revert to it at the present meeting. He recalled that at that meeting, he had proposed that the DSB agree to the following: (i) to renew the terms of Mr. James Bacchus and Mr. Christopher Beeby for a final term of four years; (ii) to commence a process to ensure the rapid replacement of the two Appellate Body Members who had expressed their desire to leave, following the process used in 1995 to select the original seven Appellate Body members, which would involve nominations by WTO Members, by 17 December 1999, and the establishment of a Selection Committee composed of the Director-General, together with the 1999 Chairs of the General Council, the DSB, and the Councils for Trade in Goods, Trade in Services and TRIPS, with a view to a recommendation being made to the DSB for a decision at its meeting in March 2000; and (iii) to extend the terms of Mr. Said El-Naggar and Mr. Mitsuo Matsushita until the end of March 2000. He asked whether the DSB could agree to his proposal.

The representative of Australia said that his country supported the Chairman's desire to address this issue with the utmost urgency. Consequently, Australia could accept a Selection Committee as proposed by the Chairman. His country agreed, in principle, that there should be a deadline for nominations, and suggested end November as a deadline. Nevertheless, Australia believed that the Selection Committee should not rule out considering a potential candidate if

unforeseen circumstances resulted in a name being put forward after the agreed deadline. His country believed it was important to maintain the high calibre of the Appellate Body by ensuring that the selection process was merit based. This was consistent with his country's general view that the Appellate Body should have sufficient diversity to take account of different legal systems. Australia wished to stress that it did not support the automatic renewal of terms for Appellate Body members as this would be inconsistent with the intention embodied in Article 17.2 of the DSU. In this instance, however, Australia could agree to extend the terms of Messrs. Beeby and Bacchus. It also supported the proposal to extend until March the terms of Messrs. El-Naggar and Matsushita. But believed that the term of the extended period should expire once all disputes they might be involved with were completed, rather than a fixed date. Australia would not wish to see appeals handed over "mid-stream" to other Appellate Body members.

The representative of India said that his delegation recognized the special circumstances under which the Chairman had made his proposal. India also wished to ensure the high calibre of the Appellate Body and did now wish that its work be disrupted in any manner. He recalled that in June 1997[1], the DSB had decided, by drawing of lots, to reappoint three Appellate Body members for a final term of four years. Intensive consultations had been held and the DSB had agreed that the approach taken at that time should not set a precedent for any actions of the DSB when the terms of other Appellate Body members would expire. India would have wished that the two Appellate Body members who had expressed their willingness to be reappointed, were considered with other new candidates. However, it recognized that two Appellate Body members had already expressed their desire to leave and the Appellate Body had to carry out its work. Therefore, as a special case and on a clear understanding that this automatic renewal would not become the norm, India could go along with the first element proposed by the Chairman, and had no problem with the second and third elements of his proposal. However this should not set a precedent.

The Chairman had stated that two Appellate Body members, Mr. James Bacchus and Mr. Christopher Beeby, had expressed their willingness and interest to be reappointed and that the existing provision provided for the possibility of a second term of four years. India was not sure whether the procedure of Article 17.2 of the DSU provided an ideal solution. India did not think that it was in line with the dignity and the role of the Appellate Body members to express their willingness to be reappointed and for the DSB to take a decision thereon. India wished that the DSB take a decision, at the present meeting or in the near future, that Appellate Body members be appointed for a fixed term of five or six years. That would ensure their independence and no renewal from the DSB would have to be sought. India proposed that when the DSB take its decision on the Chairman's proposal, it should also decide, in the next one or two weeks, whether it would be possible to appoint the Appellate Body members for a fixed and non-renewable term. India's proposal would not apply to those members who were currently serving on the Appellate Body. Future candidates should have a fixed-term of five or six years so that the DSB would not have to deal with similar requests in future.

The Chairman said that the DSB could take up this matter at its next regular meeting.

The representative of Brazil said that his country wished to join the consensus on the Chairman's proposal. However, Brazil had some doubts with regard to the two elements referred to by Australia. In this regard, Brazil considered that the deadline for nominations proposed by the Chairman should be maintained. His country also wished to reserve its position with regard to the extension of the terms of Messrs. El-Naggar and Matsushita beyond the end of March as suggested by Australia.

The representative of Mexico said that his country had no problem with the Chairman's proposal. However, it should be clear that (i) the renewal of terms of the Appellate Body members

[1] WT/DSB/M/35.

was not automatic; and (ii) any proposal by the Selection Committee should not diminish the fact that a decision had to be taken collectively by Members, and there should be no presumption that the recommendations by the Selection Committee would automatically be accepted by consensus. Mexico supported India's proposal with regard to the modification of terms for appointment of Appellate Body members. This would mean that instead of two periods of four years there would only be one period of five or six years.

The representative of Malaysia said that his country could go along with the Chairman's proposal. Malaysia also shared the concerns expressed by Australia and India. However, with regard to the deadline proposed by Australia, which was end of November, his country would prefer the date proposed by the Chairman. Malaysia wished to underline that the renewal of the Appellate Body members' terms should not be automatic and supported India's proposal.

The representative of Japan said that his country could go along with the Chairman's proposal. Japan would examine the proposal made by India. He recalled that Japan had made a proposal to modify Article 17 of the DSU to increase the number of Appellate Body members by at least two.

The representative of Canada said that her country supported the Chairman's proposal. She was surprised at the proposal by India since she had thought that the DSU Review had ended on 31 July.

The Chairman said that the DSB could take up the proposal made by India at the next regular meeting of the DSB. He proposed that 17 December 1999 should be a deadline for nominations due to the preparatory work for the Third Ministerial Conference. With respect to the issue of the extension of terms of Appellate Body members beyond March 1999, Article 15 of Working Procedures for Appellate Review provided that, "A person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body". He proposed that the DSB proceed on the basis outlined by him.

In response to Canada's comment, the representative of Mexico recalled that under item 9 of the Agenda concerning the DSU Review, he had mentioned that when there was a consensus Members could make any proposal.

The representative of Australia said that his country could accept the deadline proposed by the Chairman. However, Australia wished to seek the Chairman's view on whether the Selection Committee should not rule out considering a potential candidate if unforeseeable circumstances resulted in a name being put forward after the agreed deadline.

The DSB took note of the statements and agreed to the proposal outlined by the Chairman

11. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/114)

The Chairman drew attention to document WT/DSB/W/114 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 therein.

The DSB so agreed.

12. United States - Measures Affecting Textiles and Apparel Products

(a) Statement by India

The representative of India, speaking under "Other Business", said that her country was a third party to the dispute on "United States - Measures Affecting Textiles and Apparel Products (II)" (WT/DS151/1) which had been initiated by the EC. India had participated in the formal consultations held on 15 January 1999. India had reason to believe that the United States and the EC had reached a new settlement in the long-running dispute over the US change in the rules of origin for textile products and should, therefore, notify this mutually agreed solution to the DSB and relevant Councils and Committees as stipulated in Article 3.6 of the DSU. On the basis of information available to it, India had some idea of the proposed changes. While it wished to study in detail the proposed changes, as and when notified, prima facie, India had two substantive considerations arising from the proposed changes by the United States which gave cause for concern and raised doubts about their logic and consideration of commercial reality: (i) the proposed changes would imply that printing and dyeing and two finishing operations would be origin conferring. However, it had been a view of a number of textiles exporting Members, in particular developing country Members, that printing and dyeing as separate operations should be origin conferring; (ii) for cotton flat goods, a distinct determination of origin had been proposed by the United States, which discriminated between one type of flat good and another. An arbitrary definition of cotton was thus proposed, namely, 16 per cent cotton content, while the HS 96 classification was based on "predominance of fabric". India had brought to the attention of Members in relevant WTO bodies its concerns about the changes that had been introduced by the United States to its origin rules after the entry into force of the WTO on 1 January 1995. These changes had adversely affected exports of textile and clothing products from India, besides creating lack of predictability in the trade environment. India was apprehensive that the solution arrived at between the two parties to the dispute would undermine the ongoing work programme on harmonization of non-preferential rules of origin, as well as impeding the attainment of the objectives of both the Agreement on Textiles and Clothing and the Agreement on Rules of Origin. India urged that the DSB note its concerns relating both to its trade interests as well as to its overall systemic interests, and to request the parties to the dispute to notify the mutually agreed solution so that Members could consider the full implications of the proposed changes in US origin rules.

The representative of the United States said that her country and the EC had recently reached agreement on this matter and were currently in the process of preparing a notification of that settlement in accordance with Article 3.6 of the DSU.

The representative of the European Communities wished to confirm that a notification was under way. He noted the comments made by India but was not in a position to respond to them at the present meeting.

The representative of Hong Kong, China said that his delegation shared the points raised by India concerning Article 3.6 of the DSU. He was pleased to note the statements made by the United States and the EC with regard to their intention to notify the DSB in this regard. His delegation would provide its substantive comments upon receipt of such a notification.

The representative of the Dominican Republic said that her delegation shared India's concerns on this matter. Her country had participated as a third party in the consultations between the United States and the EC and looked forward to their notification.

The representative of Honduras said that her country, which had an interest in this matter, had participated in the consultations. Honduras supported the statement made by India to the effect that a mutually agreed solution should be notified to the DSB.

The DSB took note of the statements.