

WORLD TRADE ORGANIZATION

RESTRICTED

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**Special Session of the Dispute Settlement Body
18 January 2005**

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 January 2005

Chairman: Mr. David Spencer (Australia)

The Chairman welcomed participants to the twenty-fifth meeting of the Special Session and said that the airgram for the meeting had been circulated in WTO/AIR/2476 and that the draft agenda (TN/DS/W/72) contained three items: (i) discussion of the contribution by Argentina, Brazil, Canada, India, New Zealand and Norway (Job (04)/52); (ii) future work programme of the Special Session and (iii) "Other Business". He asked whether any participant would like to raise any issue under "Other Business". As there was no response from participants, he suggested the deletion of "Other Business" from the agenda of the meeting. The Chairman's suggestion was accepted and the agenda was adopted as amended.

1. Discussion of the contribution contained in Job(04)/52

1. Before the discussion on the contribution by the group of six countries, the Chairman said that he would like to make a few general remarks. He said that it was his hope that Members had used the holiday season to think about the DSU negotiations and the tasks that laid ahead of the Special Session. He said that looking back on 2004, not much was achieved. He urged a change of gears if significant progress was to be made this year. If the Doha Development Agenda negotiations were to be completed in 2006, substantive decisions had to be taken before or at the Hong Kong Ministerial Conference. He drew participants' attention to two reports which had just been circulated. The first was the United Nations millennium project report entitled "Investing in Development", which contained some recommendations on trade. The other was the report of the Consultative Group which was set up by the Director-General about a year and half ago. The report touched on the dispute settlement system of the WTO and made some interesting recommendations on some of the issues under discussion in the negotiations, including sequencing, remand and post-retaliation. The report also covered issues such as procedures for establishing panels, transparency, parties' control over the dispute settlement process, compensation and retaliation. He urged participants to read the report and reflect on the recommendations made by the group.

2. The Chairman recalled the discussions that had taken place on the contribution of the group of six countries and said that it had been suggested following the questions and answers sessions that it would be better if the Special Session focussed on issues which required further clarification and elaboration by the proponents. It was against that background that he sent a fax to participants highlighting some issues which could be explored further at today's meeting. He underlined that the list of issues in the fax was not meant to be exhaustive nor did it signify that the issues were to be given priority in the negotiations. The list's purpose was to facilitate discussions and help build consensus around those issues. He suggested that in order to have a broad-ranging discussion on the issues, the meeting be switched to an informal mode. The Chairman's suggestion was accepted and the meeting switched to an informal mode. He informed delegations a room document to facilitate the discussions was being copied and would soon be made available to participants.

3. The representative of Norway said that the document being copied was an update of the earlier document which had been circulated. It contained questions which had been received from participants since the last meeting of the Special Session. The additions had been identified in the document to make for easier reading.

4. The Chairman said that the discussions on the three issues – sequencing, remand authority and post-retaliation – had been very constructive to the extent that they had shed light on the main elements of the proponents' proposals and highlighted the areas which might require further elaboration. It was apparent from the discussions that positions on some issues were beginning to crystallize which reflected the commitment of participants to achieve progress in the negotiations. The positions of Members on the issues had been influenced by their real life experiences with the DSU and their conviction that improvements could be made to the DSU. The discussions on sequencing and post-retaliation had shown that there were still some issues which had to be further explored before an attempt could be made to develop texts. On remand, it appeared from the discussions that there was more convergence on substance, although there were still some elements which needed to be further explored. He encouraged participants who had difficulties with some elements of the proponents' proposals to consult with them with a view to achieving a consensus. He commended the group of six countries for their efforts and commitment to move the negotiations forward.

2. Future Work

5. The Chairman recalled his opening statement that a change of gears in the negotiations was imperative if substantive results were to be obtained at the Hong Kong Ministerial Conference. The level of engagement in the Special Session had to be stepped up even though there were a number of participants who were currently engaged in disputes before panels and the Appellate Body. Some of the disputes underway or to be initiated might impinge on some of the issues under negotiation and could probably assist the process in terms of building consensus around those issues. It could also, however, have the opposite effect as delegations might defer taking definitive positions on issues until the completion of the cases. He urged participants to continue consulting with each other with a view to reaching common positions on issues under negotiation. He asked whether those delegations already engaged in consultations on certain issues could give an indication of progress and the chances of an agreement being reached before the next meeting of the Special Session on 28 February. If there was the prospect of an agreement being reached, this could be taken into account in the preparations for the meeting. He said that it was his intention to continue his consultations with participants in various formats and configurations in order to advance the negotiations. The process might benefit from high-level meetings scheduled to take place in February and March. A new momentum was needed to ensure substantive progress in the negotiations.

6. The representative of the European Communities said that the EC was working on some papers but was not sure when they would be ready for circulation to participants. Work was advanced on one of them but it was not certain whether it would be ready before the next meeting of the Special Session.

7. The representative of Canada said that his authorities in Ottawa would be interested in knowing more about the work programme of the Special Session between now and the Hong Kong Ministerial Conference. It was Canada's view that the Special Session should agree on modalities for the negotiations by that time. It would be helpful in that regard if a list of objectives could be agreed upon and work begin earnestly on a limited number of issues around which consensus could be built. He said that Canada was prepared to work with other participants under the leadership of the Chairman of the Special Session to ensure that substantive progress was made in the negotiations.

8. The Chairman said that the term modalities was frequently used in the context of the negotiations on agriculture and non-agricultural market access. In the area of rule-making, it was not clear which form modalities should take. The situation was even more complicated considering the special status of the DSU negotiations. He agreed with Canada that a change of gear was needed in the negotiations if substantive results were to be achieved by the time of the Hong Kong Ministerial Conference.

9. The representative of Norway said that the group of six countries was working on other issues but could not say definitively when the paper would be ready for circulation to participants. He undertook to keep the Chairman informed of any relevant developments.

10. The Chairman reiterated his request to participants to consult more among themselves with a view to reaching common positions on the issues under negotiation. He renewed his commitment to work with participants to advance the negotiations. He reminded participants that the next meeting of the Special Session would take place on 28 February 2005.
