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**Special Session of the Dispute Settlement Body
10 – 11 April 2003**

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 – 11 April 2003

Chairman: Mr. Péter Balás (Hungary)

Prior to the adoption of the agenda, the Chairman welcomed participants to the eleventh meeting of the Special Session and said that the agenda for the meeting reflected two items, namely (i) discussion of the "Framework Document" and (ii) "Other Business". He said that the "Framework Document", which would be the basis for further work, had been circulated as (Job(03)/69). He said that since the previous meeting, two new documents had been circulated: a joint proposal by Chile and the United States circulated as TN/DS/W/52 and a revised proposal by Jordan, circulated as TN/DS/W/53. He recalled that the joint proposal by Chile and the United States had been discussed informally at the previous meeting. He said that China had made some rectifications to its proposal and the revised document had been circulated as the Chinese proposal, as reflected in TN/DS/W/51/Rev.1. He further stated that there had been two informal contributions from the African Group and the LDC Group clarifying certain aspects of their proposals in response to the questions posed by participants at previous sessions. These documents had been circulated, respectively as Job(03)/55 and Job(03)/70. He said that he did not intend to raise any issue under "Other Business" and asked if any delegation intended to do so. As there was no request from the floor, the item relating to "Other Business" was removed from the agenda.

The Chairman said that while progress had been made in the negotiations, there were still wide divergences in the views of Members on certain issues preventing him at this stage from circulating a "Chairman's Text" for the consideration by participants. It was in this light that he had chosen to circulate the "Framework Document" in order to continue with the process of consensus building. He drew participants attention to a revised version of the "Framework Document" stating that the revision had been made to take account of new contributions from some participants. He said that the document only existed in English given its very late finalization and that French and Spanish versions would be made available as soon as possible. As regards the document, he said that where there was a high level of convergence, he had proposed specific texts for the consideration of participants. These texts had been shaded to distinguish them from the other texts. There were not many of such texts reflecting unfortunately the continued differences in participants' views on a range of issues. In other parts of the document, he said that he had attempted to merge the various options put forward by participants, although keeping them distinct by putting square brackets around the alternative proposals. He said that notwithstanding his appeal to delegations which had submitted similar proposals to get together and explore the possibility of coming up with a joint text, very few of such texts had been submitted. Where the differences were great, he had simply reproduced in full the various options proposed by participants. He encouraged participants to read carefully the explanatory notes and comments he had provided on the various proposals as it would give them an overall picture and the way he intended to proceed. He underlined that the document had been prepared and issued under his own responsibility and that it did not prejudice the positions taken by participants on any specific issue. He said that in line with the comments expressed by some

delegations, revised versions of the "Framework Document" would clearly indicate new contributions from participants or the changes which had been made.

As regards the conduct of the meeting, the Chairman said that he would like the discussions to take place both in formal and informal modes. He said that delegations which wished to comment on the "Framework Document" and make any general statements on the process could do so in formal mode. Delegations wishing to make specific comments and drafting suggestions could do so when the meeting switched to an informal mode. As regards future work and process, the Chairman reiterated the wide divergences in the views of Members on certain issues and said that he intended to hold consultations in different formats and configurations with interested delegations, particularly proponents of contrasting specific legal texts with a view to narrowing the differences in views and agreeing on a possible common text. Such consultations should also help the Chairman put forward a single draft text on a given issue for the consideration of participants. This would inevitably mean that there would be increased meetings between now and the end of May when the process was scheduled to conclude. He said that the Special Session would not be meeting for the full two days as was originally envisaged, in order to give the participants the opportunity to consult among themselves and come up with possible compromise texts that would facilitate the process. He informed participants that it was his intention to convene an informal meeting of the Special Session on 5 May for the purposes of reporting back on the consultations that he would be holding to participants. It was imperative for the process to remain transparent and inclusive. Participants would also have the opportunity at that meeting to offer their comments on any specific texts that might have been introduced between now and then. He said that he would also use that opportunity to outline how he intended to conduct the process until the end of May 2003. He recalled in that context that a Special Session had already been scheduled in the last week of May 2003 to take appropriate decisions in light of progress made.

1. Discussion of the "Framework Document"

1. The representative of Uruguay thanked the Chairman and the Secretariat for circulating the "Framework Document" (Job(03)/69 and Rev.1) and said that a great deal of effort and skill must have been expended in putting it together. He recalled that at the meeting of the Trade Negotiations Committee in March, the Chairman, Dr Supachai, had asked delegations the following question: "Given that the dispute settlement negotiations are outside the single undertaking, how can we create the necessary impetus to ensure that by May at the latest an agreement is reached on improvements and clarifications?" Of the 23 delegations that answered this question, there were 15 delegations whose responses were quite similar: (i) they reaffirmed their commitment to the end of May deadline as mandated by Ministers in Doha; (ii) they stressed that fundamental changes were outside the scope of the mandate and that the objective was not to invent a new DSU, but to improve on the existing one. Certain Members specifically stated that the intention was not to dismantle the DSU, but merely to try to improve it in areas where improvement was necessary; (iii) they also emphasized the importance of focusing the discussion as soon as possible on areas in which there was a better chance of achieving consensus and which many Members considered important.

2. He said that Uruguay fully agreed with these points and wanted to stress that what was needed was a dose of realism. It was also important for due account to be taken of similar processes that had taken place before in this Organization. Given that there was only 50 days until the end of May deadline set by Ministers in Doha, it was important for participants to concentrate on the real problems besetting the current dispute settlement system, and on which there was clearly a greater convergence of views and better chances of reaching a consensus. It should be borne in mind that the Doha mandate spoke of improvements and clarifications of the current DSU, and not of radical changes. He recalled that Uruguay had made all of these points before on various occasions and that

its position had not changed. He said that it was essential that this subject remained outside the single undertaking, and that every effort should be made to fulfil the mandate given by Ministers at Doha.

3. He said that his delegation would like to highlight a number of points in order to avoid any last-minute surprises such as, for example, the possible submission of packages or results that had not been sufficiently discussed in terms of substance, or worse still, that contained elements which various delegations had qualified as "non-starters" from the very beginning. In this connection, Uruguay wanted to make the following points: (i) it was imperative that the end of May deadline be respected by the Special Session. To ensure the fulfilment of the mandate, however, there must be clear guidelines and a comprehensive approach which would bring about the necessary convergence of views that could ultimately lead to a consensus among all participants; (ii) the current approach was not satisfactory, as it was not leading to, or it did not facilitate the achievement of, the necessary convergence of views. It was important for a new strategy to be adopted; one which would focus on specific areas where it was likely that consensus would be reached. It was important in that regard for the process to be as transparent and inclusive as possible; (iii) the process would be facilitated if there was already at this stage a possible list of subjects from which certain issues could be isolated and concentrated on with a view to achieving consensus on them by the end of May. After several years of discussions, it was clear that there were certain areas where a number of Members considered important and on which there was a high degree of convergence, while other areas seemed problematic to many Members; (iv) there were many issues which had been consistently identified by a number of Members as priority issues and on which it was possible to reach consensus before the end of May deadline. These included the sequencing issue, improved participation of third parties, and remand authority. There were other equally important issues which could be improved and clarified in the negotiations, but given their complexity and the short time available, it was doubtful whether consensus could be reached on them; (v) there were certain issues on which Members held very divergent views making it most unlikely for consensus to be attained on them. These included *amicus curiae* submissions and the system of permanent panellists. It would be advisable to isolate these issues and not consider them in the current exercise; (vi) it was important in this last phase of work to concentrate on issues which most Members had identified as priority issues and on which it was possible to achieve consensus before the end of May deadline.

4. The representative of Chile thanked the Chairman and the Secretariat for circulating the "Framework Document" and the revised version. He recalled that Chile had all along requested the Special Session to prioritize its work by focusing on issues which would actually improve or clarify the DSU and on which there was the greater likelihood of reaching consensus before the end of May deadline. Proposals which would fundamentally alter the DSU did not fit into this category, as Members continued to hold very divergent views making it almost certain that consensus could not be reached on them before the end of May deadline. It was unfortunate in that regard that the "Framework Document" reflected all the proposals that had been submitted by Members and did not attempt to distinguish between them on the basis of which ones were likely to garner broad support among the membership before the end of May deadline. He questioned whether it was realistic to expect the Special Session to make progress on issues in respect of which the proponents had not succeeded in narrowing their positions and submitting a single text. If the proponents themselves had not been able to exude confidence in their proposals, especially as regards their implications for the operation of the DSU, it was only natural for other Members to be cautious in their judgment. It was not realistic to expect Members to bridge all their differences in five weeks, especially when they had spent a year discussing these issues and not made any substantive progress.

5. He assured the Chairman that Chile was willing to work with him in a constructive manner, as it had always done, to make substantive progress in the time available. To facilitate the process, he reiterated the need for the Special Session to prioritize its work. He said that it would be useful if at the beginning of May, the Chairman could inform Members about the outcome of the consultations he would be holding with Members in various formats and configurations and give an assessment of

where things stood. The Chairman should also consider submitting a proposal for the consideration of Members on how best to proceed and give an assessment as to the likelihood of success of the proposed course of action. In early May, it should become clear whether or not agreement would be reached at the end of May. If there were indications that it would not be possible, Members should accept this fact and consider requesting for more time and probably further guidance from Ministers. In that case, if Members so wished, the period between May and the time for holding the Cancún Ministerial Conference could be used to further clarify concepts and explore the possibility of bridging differences in the views of Members on certain issues, if Members so wished.

6. The Chairman said that he agreed with Chile that by early May it should become clearer whether or not it would be possible for an agreement to be reached at the end of that month. Issues on which consensus was emerging should be clearly identified in that respect. It would then be up to Members to take whatever decisions they deemed fit at the end of May. He said that it was apparent from the discussions in the Special Session that there was no consensus on which issues were to be regarded as priority issues. Given this fact, he deemed it appropriate to reflect all proposals in the "Framework Document" indicating which ones had a high level of support. He said that certain elements of the joint Chile/US proposal had a high level of support among the membership, while others were clearly problematic. He asked whether Chile was trying to suggest whether those problematic elements should not have been included in the "Framework Document". He said that in the absence of clear directions from Members, he did not want to exercise that judgment. He noted that Uruguay specifically mentioned the sequencing issue, enhancement of third party rights and remand authority as priority issues. Did it mean that proposals relating to special and differential treatment for developing countries, for example, should be dropped from the "Framework Document"? He said that guidance from Members on this issue would be extremely helpful in terms of planning for the next phase of work.

7. The representative of Chile said that in submitting their joint proposal, Chile and the United States were conscious that some Members would have difficulty with certain elements of their proposal and were, as such, not surprised by the varying degrees of support expressed in the Special Session for the elements contained in the proposal. He said that from Chile's perspective, there could be further discussion on those elements of the joint proposal which did not enjoy broad support, considering that the proposal was introduced quite late in the process. He further said that Chile was prepared to hold consultations with interested delegations with a view to clarifying those elements and building consensus around them. Should consensus prove elusive, these elements could be taken up after the Cancún Ministerial Conference.

8. The Chairman thanked Chile for its response and said that his decision to reflect all proposals in the "Framework Document" was intended to allow more time for discussion and consensus building. He invited proponents whose proposals had so far failed to attract broad support to indicate as soon as possible whether they would like to withdraw them allowing more time to be devoted by the Special Session to proposals on which consensus could be built before the end of May. He clarified that the shaded texts in the "Framework Document" had not been accepted by all Members and as such they could not be described as consensus texts. These texts had been isolated because of the high level of support that they attracted.

9. The representative of Ecuador said that his country had participated very actively in the negotiations and that it was their expectation that the mandate of Ministers would be fulfilled. He said that Ecuador was, however, concerned about the progress made thus far. Given the short time available, it was necessary to isolate issues which commanded a high level of support among Members and examine the possibility of making them the basis of an agreement at the end of May. Proposals included in any eventual package should result in an improvement in the functioning of the DSU. It would be useful in that context to give serious thought to the inclusion of systemic proposals that reflected the reality and experience of Members. He said that proposals submitted by Ecuador

belonged to this category, as they were intended to redress serious shortcomings of the dispute settlement system, including the sequencing issue. He said that issues which were not included in the package to be adopted at the end of May could be discussed after the expiry of the mandate under the same conditions given by Ministers at Doha. He stressed the importance of transparency and inclusiveness and said that any meetings should be open to all Members.

10. The representative of Djibouti said that his delegation found the statements by Chile and Uruguay very interesting and supported them. It was imperative that the Special Session prioritized its work given the short time available for the negotiations to be concluded. With respect to proposals that would not be included in the package for adoption at the end of May, guidance could be sought from Ministers on how they should be handled. They could probably be taken up after the Cancún Ministerial Conference. He stressed the importance of documents being distributed in the three official languages of the WTO in order to facilitate the fuller participation of all Members in the work of the Special Session.

11. The Chairman asked the representative of Djibouti if the LDC and African Groups had made an assessment of which of their proposals commanded broad support among participants to the negotiations and whether they would agree to the setting aside of some of their proposals for further discussion after the Cancún Ministerial Conference.

12. The representative of Djibouti said that he did not speak on behalf of the LDC and African Groups, but that he could bring to the attention of the two groups the question just posed by the Chairman.

13. The representative of Argentina thanked the Chairman and the Secretariat for distributing the "Framework Document" and said that it would be useful in the next phase of work. He said that a serious effort should be made to compile a list of issues on which it would be possible to reach consensus before the end of May. He said that in addition to the texts highlighted in the "Framework Document" as having a high level of support among participants, there were other issues that could also be probably included in the list, as convergence on them seemed to be growing. He said that the list should be circulated at the latest by the beginning of May, so that Members could start building consensus around them.

14. He said Argentina was of the view that the following should be included in the list: notification of mutually agreed solutions (Article 3.6); shortening of the time-frame for consultations, including special and differential treatment for developing countries (Article 4.7); withdrawal of a request for consultations (proposed new Article 4.12); consultations in the capitals of LDCs (Article 4.10); establishment of panels at the first meeting of the DSB at which the request appeared on its agenda and special and differential treatment for developing countries (Article 6.1); multiple complaints (proposed new Article 9.3*bis*); enhanced rights for third parties (Article 10.2 and 10.3); interim report (Article 15.2); number of Appellate Body members (Article 17.1); rights of third parties in the appeal (Article 17.4); remand authority (Article 17.12 and 17*bis*); submissions (Article 18.2); expeditious procedures for measures deemed inconsistent (Article 21*bis*); arbitration of the reasonable time-period (Article 21.3); "sequencing" procedures (Articles 21*bis* and 22); procedure for the lifting of sanctions (Article 22.9); possibility of amending working procedures (Appendix 3); and adjustment of certain time-frames (Appendix 3). He said that the list was not exhaustive and that other proposals could be suggested for inclusion by Members. He said that Argentina was conscious that it might not be possible for consensus to be reached on all of them before the end of May, although it was its expectation that the package to be adopted would be substantial. Issues on which progress was not made could be addressed further after the deadline.

15. He said that Argentina was one of the developing countries that frequently used the dispute settlement mechanism and, as such, was interested in ensuring that it operated effectively. The

negotiations should aim at strengthening the DSU in accordance with the Doha mandate and not to undermine its effectiveness. The worst thing that could result from these negotiations was an amendment to the DSU that impaired or hindered its functioning, or made it less accessible to developing countries. It was incumbent on Members to carefully assess whether the proposed package of amendments or additions to the DSU would actually enhance its functioning. He assured the Chairman that his delegation was willing to work for as long as necessary, under his leadership, so that the Doha mandate could be fulfilled.

16. The representative of Malaysia thanked the Chairman and the Secretariat for preparing and circulating the "Framework Document" and said that his delegation was broadly in agreement with the statements made by Chile and Uruguay. He said that as far as his delegation was concerned, the mandate for the negotiations would expire at the end of May, after which time there would not be any legal basis for continuing with the negotiations. It was therefore important for Members to redouble their efforts and concentrate on building consensus around issues which commanded a high level of support among the membership. He said that the "Framework Document" was disappointing in that respect as it included all proposals, including those which had very minimal support among the membership such as on *amicus curiae*, the offering of compensation on an MFN basis, retroactivity and the right to transfer the right to suspend concessions to another Member. With respect to the joint proposal by Chile and the US, he said that to the best of his knowledge, no delegation had expressed serious reservations against any of its elements and as such it was proper for it to have been included in the "Framework Document". This was, of course, without prejudice to the views that might later be expressed by Members.

17. The Chairman said that with respect to the joint proposal by Chile and the US, a number of Members expressed in very clear terms their opposition to the element relating to the deletion by the parties of certain portions of panel and Appellate Body reports.

18. The representative of Hong Kong, China thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would be a useful tool in the next phase of work. The document, which covered almost every article in the DSU, made it clear that Members' interests were varied. It also clearly demonstrated the divergences in the views of Members on certain issues. He said that the credibility of the WTO was at stake and that every effort should be made to fulfil the mandate given by Ministers. Fulfilling the mandate for the DSU negotiations could bode well for the rest of the DDA negotiations, although the DSU negotiations were outside the single undertaking. For progress to be made, it was necessary for Members to be realistic and acknowledge that it would not be possible within the short time available to have an agreement that covered all proposals. It would be more productive if Members focussed on a limited number of issues which commanded broad support, rather than having an issue-by-issue discussion of all the proposals reflected in the "Framework Document". The shaded texts in the Framework Document could provide a basis for further work. There were a number of other issues like sequencing which were quite mature and deserved a greater push. The list of issues outlined by Argentina deserved further consideration in that regard. He said that it would be most helpful if the Chairman could circulate a list of issues in late April or the beginning of May for Members consideration. Regarding proposals on which little progress had been made, particularly those which had attracted sharply contrasting views from Members, he said that it would be better if they were set aside for the time being and taken up after the Cancún Ministerial Conference. He said in that regard that his delegation was open to the idea of obtaining a further mandate from Ministers or the General Council for negotiations to continue and a new deadline set for their conclusion outside the single undertaking.

19. The representative of Mexico said that for the negotiations to be considered successful, they should result in an improvement in the functioning of the dispute settlement system. If the current problems facing the dispute settlement system were not addressed, it would be open to question whether the negotiations achieved their objective. The dispute settlement system had generally

worked quite well and any amendments introduced after the negotiations should not diminish the security and predictability currently offered by the system. Regarding the possibility of obtaining a new mandate from Ministers or the General Council, he said that Mexico had an open mind and was willing to hear the views of Members on this issue. He said that under the constitutional procedures of Mexico, any agreement reached after the negotiations should go through its legislative process.

20. The representative of Venezuela thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it was important for any revisions to be clearly indicated and that an effort should be made to get all documents translated into other official languages of the WTO. He recalled that his delegation had stated on several occasions the need for the Special Session to prioritize its work and felt vindicated by the interventions on this point by Uruguay, Chile, Ecuador, Argentina and Hong Kong, China. He said that the work of the Special Session would be greatly facilitated if the Chairman circulated the list of issues which commanded broad support among the membership by early May, so that Members could start building consensus around them. Regarding the extension of the mandate of the Special Session, he said that his delegation was inclined to support the statement made by Malaysia.

21. The Chairman referred to his earlier statement concerning the revision of the "Framework Document" and said that it was the revised version that the Special Session would be working from. Regarding the circulation of a list of issues, the Chairman said that he had already identified nineteen proposals in the "Framework Document" as having broad support among the membership and it was his wish that more proposals could be added to this initial list. He noted the differences in the opinions of Members on whether the mandate of the Special Session should be renewed and said that the issue would be taken up in another body.

22. The representative of Poland commended the Chairman and the Secretariat for circulating the "Framework Document" and said that it was well-structured document that and would serve as a useful basis for the next phase of work. He said that instead of talking about whether or not the time-frame for the negotiations should be extended, Members should rather concentrate on the task at hand and work to fulfil the mandate that was given by Ministers. The possibility of reaching agreement on a substantial package by the end of May should not be discounted. He said that it would be advisable if there was a discussion on all the proposals in the "Framework Document", in order to gauge the level of support that each proposal had. If it became clear that certain proposals did not enjoy broad support, they could be set aside. He said that whereas it was the right of Members to introduce proposals at anytime, the work of the Special Session would be greatly facilitated if Members only concentrated on those which had already been submitted.

23. The representative of Israel said that her delegation attached great importance to the dispute settlement system and had been working closely with other Members to improve and clarify the DSU in line with the Doha mandate. She said that being a small delegation, Israel had devoted significant resources to the DSU negotiations and would be disappointed if no agreement was reached at the end of the process. Given the short time available for the negotiations to be concluded, it was important for the Special Session to change gear and focus on a limited number of issues around which consensus could be built. The DSU had worked quite well and it was not the objective of the negotiations to make fundamental changes to it. Any amendments introduced should, however, improve the functioning of the system and not deal superficially with the problems currently facing the dispute settlement system. Among the core issues which could be addressed on a priority basis were remand authority, the sequencing issue, how to make compensation more attractive *vis-à-vis* suspension of concessions; accelerated time-frames for disputes concerning safeguard measures; notification by third parties within 10 days of the establishment of the panel; re-calculation of the level of nullification or impairment should the respondent party fail to bring its measures into conformity with the recommendations and rulings of the DSB; amending Article 22.7 to ensure an enhanced surveillance of suspension of concessions and other obligations; amending Article 22.8 so

ensure that products *en route* were not subject to retaliation, and also making it possible for retaliation to be ended upon the elimination of the WTO inconsistency.

24. She said that if agreement were to be reached on these proposals, it would result in an improvement in the functioning of the dispute settlement system and thereby fulfil the mandate of Ministers. The chances of consensus being built around these proposals were quite promising, as they already enjoyed broad support among the membership. The remaining proposals, especially those which had attracted very divergent views from Members could be taken up later. Proposals belonging to this category included transparency issues, *amicus curiae*, the creation of a system of permanent panellists and the retroactive application of WTO remedies. She urged the Chairman in his consultations to observe the cardinal principles of transparency and inclusiveness. To that end, she said that her delegation would prefer open-ended meetings, so that any delegation with an interest could attend. She urged the Chairman to circulate as soon as possible a list of issues which he thought consensus could be built around, so that Members could have ample time to analyse them and offer their views in a timely manner.

25. The Chairman said that he had already identified nineteen proposals in the "Framework Document" as having broad support among the membership, and it was his expectation that more proposals would be included in this initial list. He said that while there were several options open to him, he preferred a bottom-up approach under which issues would only be included, once it had been ascertained that they had broad support among the membership.

26. The representative of the European Communities thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would be a useful tool in the next phase of work. It was important in this phase for Members to show flexibility and a greater willingness to accommodate the interests of other Members. The EC had actively participated in these negotiations from the very beginning and had shown flexibility by amending its proposals on two occasions following comments and suggestions from Members. The EC was committed to these negotiations and would continue to engage in the process as constructively as possible. He said that the EC remained convinced that only an ambitious and balanced package would command the confidence of all Members. A less than comprehensive package would undoubtedly create problems for a number of delegations. It would be helpful if delegations approached the negotiations with an open mind and refrain from labelling certain proposals as "non-starters" and refusing to discuss them. Such an attitude was very unhelpful and could complicate efforts to reach an agreement.

27. He said that each delegation had its own set of priorities and that it was very doubtful if a general list of priorities at this stage would help move the process forward. What was needed was an agreement on a concrete text that struck a careful balance between Members' interests. The EC was willing to work intensively in the remaining weeks with other delegations in that regard. He reiterated the EC view that only an ambitious and balanced package was likely to satisfy all Members. The EC agreed with the view that the objective of the negotiations was not to fundamentally alter the DSU, but rather to improve and clarify it. The proposals made by the EC went in that direction; they attempted to deal with real problems that had been encountered in the operation of the DSU.

28. The representative of Peru thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that like other delegations, Peru was concerned about the progress made thus far. She said that a new approach to work was needed if the mandate given by Ministers was to be fulfilled by the end of May. To that end, priority should be given to issues around which consensus could be forged. It was not realistic to expect consensus to be reached on issues such as the submission of *amicus curiae* briefs and opening up the process to the general public, which had attracted widely diverging views from Members. She said that the work of the Special Session would be greatly facilitated if the Chairman could distribute a list of selected issues by early May, so that Members could start building consensus around them. The selected issues could include the

sequencing issue, enhancement of third party rights, improved special and differential treatment for developing countries and remand authority for the Appellate Body. She urged the Chairman in his consultations to observe the key principles of transparency and inclusiveness. She said in that connection that meetings should as far as possible be open-ended, so that any interested delegation could attend. She stressed that the objective of the negotiations was not to make fundamental changes to the DSU, but to improve and clarify it. She said that as these negotiations were outside the "single undertaking", the results could not be the subject of trade-offs, as a strengthened dispute settlement system was in the interests of all Members.

29. The representative of Colombia thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would be a useful guide in the next phase of work. She said that her delegation had some doubts as to whether the document correctly reflected the current state of discussions, given that it did not distinguish between proposals whose underlying concepts were found to be problematic by a number of delegations and those on which there was a convergence of views, except on some minor details. She said that her delegation was of the view that the dispute settlement system had worked quite well since its inception, and that it was not appropriate to make comparisons between it and domestic legal systems. It was a unique system and its dissuasive power and ability to maintain security and predictability could not be over-emphasized. The negotiations could only be judged as successful if they resolved, *inter alia*, the "sequencing" problem, expanded third-party rights and reduced time-frames. Positive actions on these issues should be complemented by a balance between the mechanism's various stages. The terms of reference of panels should be refined in relation to those of the Appellate Body. The proposal by the EC on remand authority provided a good basis for further work in this regard. As regards the panel selection process, a middle-ground solution would seem preferable. A combination of the tabled proposals would appear to be the most optimal solution. With regard to special and differential treatment, it was necessary for the differences in levels of participation in the system to be minimized through improved technical cooperation and capacity-building programmes. The proposal by the African Group for the establishment of a fund to support developing-country participation in dispute settlement was particularly apposite. On transparency, as the existing situation was not satisfactory, Colombia was open to proposals that recognized the present realities, although care must be taken to ensure that developing countries were not overburdened financially or otherwise.

30. She said that Colombia could agree with the suggestion that a Member should be able to request arbitration to determine the level of nullification and impairment as soon as it was established that the Member concerned could not comply immediately with the recommendations and rulings of the DSB. As regards compensation, Colombia was in support of proposals designed to encourage Members to have recourse to it. However, compensation should not become a substitute for the full implementation of the recommendations and rulings of the DSB. It should remain a temporary and transitional measure. As regards the Appellate Body, she said that Colombia sympathized with the notion of greater flexibility in terms of the number of Appellate Body members. It was also in favour of proposals aimed at giving the parties greater scope for suspending proceedings and finalizing long-standing consultations. She further said that Colombia favoured balancing the terms of reference of panels and the Appellate Body with the role that should be maintained by the parties to a dispute. The task for shaping the multilateral trading system was the responsibility of Members and not the dispute settlement organs when requested to exercise their functions on an ad hoc basis. It was important for mechanisms to be built into the DSU to ensure that the scope of a dispute, as defined by the parties, remained unchanged. The joint proposal by Chile and the United States was welcomed in that respect, although some adjustments needed to be made to it. Regarding the steps that had to be followed until the end of May, she said that Colombia was of the view that a realistic package had to be tabled as soon as possible. The accomplishment of this task did not depend on the Chairman, but on Members who have to show greater flexibility and a greater willingness to accommodate the interests of others. There was the need for pragmatism in the and it was the intention of Colombia to participate constructively in the next phase of work.

31. The representative of Thailand thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would play a useful role in the next phase of work. The document would, however, fulfil its main objective if it contained all the proposals that Members intended to table in these negotiations. He inquired from the Chairman whether other proposals would be included in the "Framework Document" at a later stage. He said that until such time that the document was complete, Members might be able to form their judgment about progress in the negotiations by drawing inferences from the discussions that had so far taken place. He said that following the Chairman's appeal to proponents to try and come up with common texts, Thailand had consulted with a number of interested delegations on its proposals with a view to developing a common text as an input into the process. These consultations had been undertaken without prejudice to Thailand's rights. He said that Thailand was still willing to consult with other interested delegations on its proposals as well as on other proposals with a view to facilitating the work of the Chairman and the Special Session and ensuring that the May deadline was met. He said, however, that Thailand could only agree to the adoption of a comprehensive package.

32. The representative of Chinese Taipei thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would be a useful tool in the next phase of work. She said that Chinese Taipei shared the Chairman's concern about progress made thus far in the negotiations considering that there was less than 50 days for the mandate to run out. Whether the package to be adopted would be substantial or not depended on the levels of ambition of Members. She said that it was at this crucial phase of the negotiations that Members needed to show flexibility and a greater willingness to accommodate the interests of others. It was also necessary for Members to be realistic and agree on which proposals stood the best chance of commanding broad support among the membership. She said that it was important for the Chairman's consultations to be as inclusive and transparent as possible. It would be helpful in that regard if the Chairman could circulate a list of planned meetings to Members.

33. The representative of New Zealand thanked the Chairman and the Secretariat for producing the "Framework Document" and said that it would make an important contribution to the next phase of work. He said, however, that if the mandate of Ministers were to be fulfilled, more needed to be done in the short period of time available. It was important for the Special Session to take stock of developments and make a careful assessment of what could be obtained by the end of May. The discussions in the Special Session had clearly identified proposals around which consensus could probably be forged before the end of May. This was not to suggest that the remaining proposals were not worthy of careful consideration. In fact, some proposals in that category, particularly those aimed at significantly improving the transparency, and hence credibility of the system, should be further explored and discussed after the May deadline with a view to reaching agreement on them at a later date. The immediate focus should, however, be on identifying a credible package of proposals around which a consensus could evolve by the end of May. Such a package could include the following: (i) a number of house-keeping proposals (e.g. proposals to allow withdrawal of consultation requests, panel requests, and the termination of the panel process); (ii) some time-saving proposals (e.g. panel establishment at the first request and a procedure for remand); (iii) enhancement of third party rights (e.g. improving third party access to documents, and allowing Members to join as third parties at the Appellate Body stage); (iv) some elements of transparency (e.g. improving public access to documents); and (v) sequencing. He noted that New Zealand's list of issues around which a consensus could evolve did not differ significantly from other lists presented by other delegations meaning that a common view was developing of what could be achieved by the end of May. He cautioned that more work needed to be done on these issues for them to be accepted as the basis for an agreement by the end of May.

34. The representative of Brazil welcomed the "Framework Document" and said that the time had come for Members to engage in serious negotiations to fulfil the mandate to improve and clarify the DSU. Any amendments or additions to the DSU should be forward-looking and, at the same time,

preserve the *acquis juridique* that had been acquired over the years. He said that every effort should be made to abide by the May 2003 deadline. For that to happen, however, the Special Session needed to change gears and embrace a new approach to work. One way of proceeding would be to agree on core concepts first and work on the details thereafter. In Brazil's view, there was a greater probability of consensus being reached on the following: sequencing; detailed compliance panel procedures; some elements of transparency, especially regarding the dissemination of documents; enhancement of third party rights; procedures for the lifting of sanctions; a validity period for consultations, remand authority, enhanced notifications of mutually agreed solutions, improved special and differential treatment for developing countries. This list was not exhaustive and other proposals could be added to it. He said that with the necessary flexibility, it was possible for agreement to be reached on a credible package that would satisfy all Members. He urged the Chairman to circulate his proposal as soon as possible and preferably before the beginning of May.

35. The representative of Nigeria thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would be a useful contribution to the next phase of work and ultimately assist the Special Session to reap an early harvest. He said that the African Group would analyze the "Framework Document" and provide its comments at a later stage. As regards the proposal by the African Group, he said that the Group was willing to enter into consultations with interested delegations to explore the possibility of developing a common text as an input to the process. He urged the Chairman to give due consideration to the proposals by the African Group and reflect them in any compromise document that he would be putting forward. He said that it was the expectation of the African Group that the consultations to be carried out by the Chairman would be transparent and inclusive.

36. The representative of Costa Rica welcomed the "Framework Document" and said that it was a useful document which would guide Members towards reaching consensus and fulfilling the mandate of Ministers. While the document showed significant differences in the views of Members on certain proposals, it also showed areas of possible convergence, which could ultimately lay the groundwork for a package of solutions at the end of May. With flexibility on the part of Members, there could be more areas of convergence making it possible for a substantial package to be adopted at the end of May. He said that Costa Rica was prepared to work hard and constructively as it had always done, so that a credible package of reforms could be agreed by the end of May. It was willing to engage other Members in the search of solutions that would facilitate the work of the Special Session. Regarding the way forward, he said that his delegation could agree to the procedures outlined by the Chairman. However, further efforts were required to clean up and turn the "Framework Document" into a Chairman's text as soon as possible, preferably before the meeting scheduled on 5 May 2003.

37. He said that for substantive progress to be made, Members must assist the Chairman by showing the necessary flexibility and approach the negotiations constructively. He said that in response to comments and suggestions from Members, Costa had revised its proposal dropping elements which were deemed controversial by some Members and on which it was clear that a consensus could not be achieved. It was the expectation of Costa Rica that other proponents would follow its lead and accordingly engage Members to explore the possibility of developing texts which would command broad support among the membership. He said that the list of issues outlined by Argentina deserved serious consideration, as it could form the basis of an agreement at the end of May. While it was clear that agreement could not be reached on all proposals before the end of May, a major effort should be made to reach agreement on proposals which reinforced the multilateral character of the dispute settlement system. The package of reforms to be adopted by Members should not be cosmetic in character. They should result in an improvement in the functioning of the dispute settlement system. Regarding proposals on which it might not be possible to reach agreement, Costa Rica was of the view they should be taken up later. To that end, it could support the extension of the mandate and the establishment of a new deadline for the completion of the negotiations.

38. The representative of Korea welcomed the "Framework Document" and said that it would be useful in the next phase of work. After intensive discussions in the Special Session for one year, it was disappointing that an agreement had not been reached even on a single issue. Given the short space of time available, it was clear that the Special Session had to re-double its efforts if the mandate given by Ministers were to be fulfilled. He said that Korea was in agreement with the view expressed by a number of delegations, including Argentina that the Special Session had to prioritize its work and focus on issues in respect of which it might be possible to achieve a consensus. One problem which had been encountered was the late submission of proposals. The initial deadline of July 2002 was missed by a number of proponents making it difficult to categorize and analyze proposals on a particular issue. He said that Korea was in agreement with the proposed plan of work announced by the Chairman. Every effort should be made to achieve as much convergence of views as possible until the end of this month. An assessment could be made in early May to determine whether a critical mass had been obtained paving the way for an agreement to be adopted at the end of May. He said that Korea was determined to play a constructive role in the next phase of work.

39. The representative of Singapore welcomed the "Framework Document" and said that it would make an important contribution to the next phase of work. The document was quite clear as to the level of support of each proposal. The commentary, shaded areas and square brackets served to indicate areas of possible convergence and areas of disagreement where more work needed to be done. He said that Singapore agreed with the view that the Special Session had to prioritize its work if it was to have any chance of fulfilling the mandate of Ministers by the end of May. The DSU had worked quite well and it was not the objective of the negotiations to make fundamental changes to it. If a credible package was to be achieved at the end of May, Members had to show flexibility and a greater willingness to accommodate the interests of other Members. As regards the remaining proposals, Members could take stock after May and decide whether or not to extend the mandate for negotiations. Some of these proposals were complex and required more time for Members to assess their potential implications. He said that it was the expectation of Singapore that the Chairman's consultations would be transparent and inclusive.

40. The representative of Switzerland welcomed the "Framework Document" and said that it would be a useful guide in the next phase of work. He said that like other delegations, Switzerland was of the view that the Special Session should concentrate on issues which were ripe for a consensus. With regard to the proposals not yet ripe for a consensus, they should be discussed further and the possibility of getting an extension of the mandate should be explored. Extension of the mandate would allow a thorough discussion of these issues, some of which were designed to address some of the systemic problems being faced by the dispute settlement system. He said that Switzerland was ready to engage constructively in the next phase of work and that it was its expectation that a substantial package of measures could be agreed to by the end of May.

41. The representative of Australia welcomed the "Framework Document" and said that it confirmed the range and diversity of the proposals that had been tabled by Members to improve and clarify the DSU. The document also established that Members faced an enormous task if they were to fulfil the mandate of Ministers by the ending of May. She said that Australia was committed to the negotiations on the dispute settlement system which, it believed, had served Members well. Enhancing its functionality and maintaining a systemic balance between the rights of complainants, respondents and third parties was a priority for Australia. It had been on this basis that Australia had put forward its proposals. As regards the way forward, she said that Australia was willing to work as hard as possible toward the May deadline in line with the approach outlined earlier by Chairman. She also stated that Australia was prepared to work beyond May to the time of the Cancún Ministerial Conference, should that prove necessary.

42. The representative of Bulgaria said that his delegation could accept the adoption of a package of measures at the end of May, only if it was comprehensive and responded to some of the systemic

problems that had been encountered in the operation of the DSU. A cosmetic mini-package would not be acceptable to his delegation. The constitutional procedures of Bulgaria required parliamentary approval for any package of measures which might be agreed to at the end of the negotiations. It would be pointless to request parliamentary approval if the results were insignificant or to go to Parliament twice. He said that Bulgaria was not in support of the proposal to distinguish between proposals on the basis of the level of support they commanded among the membership. He clarified that Bulgaria was not against the Chairman putting forward a text for Members to consider. However, it expected such a package to contain substantive decisions and not merely procedural decisions which did not respond to the current problems facing the dispute settlement system. The decision whether or not to include a particular proposal in the package must be based on sound reasoning, rather than on procedural conjectures. He referred to the list of issues outlined by Uruguay and said that, as far as his delegation was concerned, there was no consensus on at least three of them. He said that his delegation had consistently opposed the solution being advocated for the "sequencing" issue. The proposal by the EC on a system of permanent panellists which had been described by some delegations as a "non-starter" was very disappointing, as it was perhaps the single most meaningful proposal that had been tabled which would make a significant improvement in the functioning of the DSU. He said that Bulgaria could not contemplate accepting any package which did not include the proposal on a system of permanent panellists. The Chairman would be exceeding his authority if he were to unilaterally exclude certain proposals from the package. However, the suggestion by the Chairman encouraging proponents to voluntarily withdraw proposals on which significant differences exist was perfectly legitimate. A list produced by the Chairman using his discretion was likely to be counter-productive, as it would generate a whole new debate whether it was appropriate for him to have included or excluded a particular proposal. He said that although Bulgaria had not submitted a proposal, it was highly interested in these negotiations and would like to be invited to all consultations that would be carried out by the Chairman.

43. The Chairman said that he had some doubts if there could be a consensus on an "agreed list of issues". Invariably, the purpose of a such list would be to delineate the scope of the negotiations, something which Ministers did not do. It was because of these considerations that he expressed a preference for a "bottom-up" approach, where proposals would only be included in the package if the discussions revealed that they commanded broad support among the membership. It was his expectation that through this process more proposals could be added to the nineteen proposals already listed in the "Framework Document".

44. The representative of the United States thanked the Chairman and the Secretariat for producing the "Framework Document" and said that it would be a very useful guide as the discussions on the various proposals progressed. He said that his delegation was still studying the document and would provide its comments at a later stage. As a preliminary point, however, he recalled that his delegation had raised a number of questions on some of the proposals which had been designated in the document as having a "sufficient level" of convergence. He said that the US shared the Chairman's view that the positions adopted by Members on some of these proposals would necessarily depend on elements of other proposals. The various procedures and rules in the DSU were often connected such that a change to one part could have an effect on another part. The "Framework Document" confirmed that a lot of work remained on the proposals and that it would be a challenge to conclude the work by the end of May. He said that the US was committed to the process and was determined to work intensively with the Chairman and other delegations in the remaining weeks with a view to clarifying and improving the DSU and to meeting the challenge posed by the May target.

45. The representative of Norway said that it was important for clear directions to be given as to how work was to be conducted between now and the end of May. He recalled that Members had failed at least on two occasions to reform the DSU. He said that from his delegation's perspective, it was clear that the package being offered would not also achieve consensus either. Given the impasse, there appeared to be two options which Members might wish to consider. The first was to reduce the

package to a few changes which all Members could possibly live with, and the second was to expand the package to include more proposals to satisfy those who had insisted on a comprehensive package. The first option could perhaps be considered to be in line with the mandate given by Ministers, as the objective was not to completely overhaul the DSU, but to make changes and clarifications which would improve its functioning. For Members such as Bulgaria, Mexico and the EC, it would be pointless to agree on a package which would not address some of the systemic problems that had been encountered in the operation of the DSU. Should the second option be chosen, it would be impossible to meet the deadline of May 2003. He said that Norway was willing to work with the Chairman and other Members to ensure that the negotiations were successfully concluded by the end of May in accordance with the mandate given by Ministers.

46. The representative of India welcomed the "Framework Document" and said that it would be a useful guide in the next phase of work. He said that India was still examining the "Framework Document" and would later provide its detailed comments. He referred to the proposal co-sponsored by India and other developing countries on special and differential treatment for developing countries and said that the inclusion of certain elements from that proposal in the list of proposals designated by the Chairman as commanding broad support was a positive sign that consensus was emerging around them. It was the expectation of India that all the elements contained in the joint proposal would be reflected in the Chairman's text which would be put forward for Members' consideration. He said that his delegation was surprised to see that the proposal by the EC concerning the system of permanent panellists and certain proposals on external transparency were described in the "Framework Document" as having broad support among the membership. From India's perspective, given the opposition expressed to these proposals by some Members, it could not be said that there was an emerging consensus on them. He said that India was ready to work intensively with the Chairman and other Members, so that a meaningful package, which would advance the interests of developing countries, could be agreed on before the end of May.

47. The Chairman referred to the statement just made by India and said that the proposal by the EC relating to a system of permanent panellists was not designated as having broad support among the membership in the "Framework Document". The explanatory note at the beginning of the document, however, indicated that a number of delegations, including some from developing countries, expressed support for the proposal by Canada, the EC, the US and others that a mechanism should be put into place to ensure that panellists possessed the requisite qualifications and appropriate expertise. Countries expressing support for this proposal were quite vague and did not, for example, indicate whether they believed a system of permanent panellists would ensure that only qualified people were appointed as panellists. With regards to transparency, a large number of Members expressed support for the proposal that non-confidential summaries of submissions should be made available within 15 days of their circulation. Some Members also expressed support for making meetings more accessible to the general public without specifying clearly what measures they wanted to see in place. The explanatory note made the observation that these issues had to be discussed further so as to explore the possibility of building consensus around them. He urged delegations to read carefully the explanatory notes and the cross-references made in the document. He said that it was his wish that Members would build on the nineteen proposals text. He expressed the wish that the nineteen proposals listed in the "Framework Document" would be the basis of a substantial package that could hopefully be adopted at the end of May.

48. The representative of Japan thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it was a good basis for further work. While the DSU had overall worked quite well, it was necessary to improve and clarify it to improve its effectiveness. The sequencing issue, for example, needed to be addressed. Japan was fully aware of the different levels of "ambitions", but there was the need for realism as the end of May was fast approaching. Members needed to show flexibility and a greater willingness to accommodate the interests of others. Japan had been doing its part and it was its expectation that other Members would do the same so that the

negotiations could be successfully concluded at the end of May. Japan was looking forward to the consultations to be held by the Chairman in the coming weeks to try and move forward the process. Members should endeavour to resolve their differences during these crucial consultations. The meeting scheduled for 5 May was important, as it would give clear indications as to the status of the negotiations. It would be discernable at that time whether there were more areas of convergence. The Special Session could change gear depending on the results of the stock-taking exercise. She said that Japan was committed to working intensively in the remaining weeks with the Chairman and other Members, in order to achieve a successful and meaningful outcome from the negotiations.

49. The representative of Hungary welcomed the "Framework Document" and said that her delegation was of the view that the current negotiations should result in a substantive package of improvements and clarifications of the DSU which went beyond mere cosmetic changes. She welcomed the specific drafting proposals put forward by the Chairman on issues such as enhanced third-party rights, speeding up of certain procedures, enhanced transparency of mutually agreed solutions, improved Member control in suspension or termination of the dispute settlement process and some special and differential treatment provisions for developing countries. She added, however, that this list of issues had to be expanded to include others as well if the package was to be balanced and meaningful and have the support of the membership. Among the subjects which should be included in the package were sequencing, clearer procedures for arbitration, ensuring the expertise of panellists, improved surveillance of retaliatory measures and enhanced transparency in some areas. She said that Hungary was willing to look constructively at certain special and differential treatment provisions put forward by a group of developing countries. With respect to proposals on which it might not be possible to achieve a consensus before the end of May, she said that Hungary was willing to consider the possibility of obtaining an extension of the mandate of the Special Session, so that negotiations on them could continue.

50. The representative of Paraguay thanked the Chairman and the Secretariat for circulating the "Framework Document" and said that it would make a major contribution to the work of the Special Session as it entered in its final phase. He said that his delegation was in agreement with Djibouti that documents should be distributed in the three official languages of the WTO. Like other delegations, Paraguay was concerned about the progress made thus far considering that there were a few weeks remaining to the end of May. It was imperative that the Special Session prioritized its work by focussing on issues around which consensus could be built. The DSU had worked quite well and very minimal changes should be made to it. Any changes introduced should not complicate the way the mechanism operated, but should rather assist the parties to resolve their dispute. To make progress in the negotiations and meet the deadline given by Ministers, it was important for there to be a cut-off date for submission of proposals. Proponents of proposals which were unlikely to have consensus built around them should be encouraged to withdraw them or agree for them to be set aside for the time being. A successful conclusion of the DSU negotiations would reverse the trend of missed deadlines and provide a boost for the flagging Doha Development Agenda negotiations. He pledged that Paraguay would play a constructive role and work with other delegations to ensure that the negotiations were completed by the end of May.

51. The representative of Canada welcomed the "Framework Document" and said that his delegation was prepared to accept it as a basis for further work. He said that Canada shared the sense of urgency expressed by many other delegations about the looming deadline and agreed that the Special Session needed to re-double its efforts if the 31 May deadline was to be met. Canada had some doubts if it would be useful at this stage to draw up a list of priorities. Given the well-known substantive differences among Members, it would be a time-consuming, divisive and ultimately unsuccessful exercise to seek to create such a list. Issues which had been described as "non-starters" by some delegations were of utmost importance to Canada and other delegations underscoring the challenge which the Special Session faced were it to attempt to draw up such a list. In the

circumstances, Canada was supportive of the Chairman's efforts to build consensus on the text "using a bottom-up" approach. While it might not be ideal, there was no other realistic option.

52. The representative of China thanked the Chairman and the Secretariat for preparing the "Framework Document" and said that it would make a major contribution to the next phase of work. He said that given the varying interests of Members, it was only a comprehensive package that would be able to obtain the support of Members, particularly developing-country Members. He said China was ready to work intensively with other Members in order to reach agreement on a substantive package that would satisfy all Members by the end of May.

53. The representative of Uruguay said that he would like to make a couple of points related to the discussion underway. He recalled that at the beginning of the meeting, the Chairman asked delegations for their views and comments on how the Special Session should proceed between now and the end of May. A number of delegations had given their comments and made suggestions on the way forward. Some of the comments deserved serious consideration by the Special Session, as they could help re-energize the process and contribute to the fulfilment of the mandate of Ministers. Time was of the essence and the earlier the negotiations were intensified the better. There was almost a universal acceptance that the DSU had worked quite well and that only changes which would actually improve its functioning should be introduced. It followed that the burden of proof should be on Members wishing to make changes to the DSU. They needed to demonstrate the value of their proposals to the Special Session.

54. Given the fact that some proponents had so far failed to convince the membership of the value of their proposals, it should be assumed that consensus could not be built around them and should accordingly be set aside. Time would be saved if Members focussed on proposals whose underlying concepts had been broadly accepted and which had the best chance of having consensus built around them. Regarding the results of the negotiations to be adopted at the end of May, he said that it was not appropriate for delegations to be talking about a mini-package or a comprehensive package. These phrases were not mentioned in the mandate and should not be imported into it at this stage. What might be a cosmetic or mini-package to some Members would be a substantial package for other Members. The mandate called for improvements and clarifications of the DSU. The task of Members was to identify which changes should be introduced to improve the functioning and effectiveness of the DSU to the satisfaction of all Members.

55. He said that according to notes taken by his delegation, thirty-one Members had spoken to this agenda item. Eleven Members had said that the process was fine and that it was not necessary for any radical changes to be made. Three delegations had indicated that they were flexible and did not have any strong views on whether the current process should be maintained. They had said, however, that there was the need for realism and that it might be a good idea to identify possible topics around which consensus could be built before the end of May. Seventeen delegations had said that there was the need for realism and that it was necessary for there to be a change of approach if the mandate given by Ministers was to be fulfilled by the end of May. They had urged the Special Session to focus on issues around which it might be possible to build consensus. As this was the predominant view, the Special Session needed to take it into account and change its approach to the negotiations.

56. The representative of Djibouti said that the negotiations had reached a crucial stage and that the reality must be confronted. He said that for there to be an agreement by the end of May, the interests of developing countries should be fully taken into account. Any eventual agreement should improve access to the dispute settlement system by developing countries.

57. The representative of Chile said that he had listened to the discussions with great interest. While varying views had been expressed, there was virtually agreement on the fact that the purpose of the negotiations was not to undermine or impair the dispute settlement system, but rather to enhance

and make it more effective. The task at hand was difficult not only because of the time factor, but also the lack of political will and real engagement. The position adopted by some Members was neither realistic nor helpful to the negotiations. By threatening to block any emerging agreement, unless their proposals were accepted in the face of strong opposition from a significant number of Members was not the correct way to proceed. While it might be a good negotiating strategy, there was the need for realism and flexibility. In the absence of constructive engagement by all Members, it could be expected that the deadline would be missed. There was the possibility that the good work done would be lost with the passing of time if agreement was not reached by the end of May. The DSU negotiations were outside the single undertaking and as such it would be unhelpful if linkages were made to other areas of the negotiations where progress had been very slow.

58. The Chairman thanked Members for their contributions and said that he had been assured by the determination to complete the work on time. A number of delegations had alluded to the need for the DSU negotiations to buck the trend of missed deadlines and failures, so as to breathe new life into the DDA negotiations. Others had also expressed the view that the DSU negotiations were outside the single undertaking and that progress should not be linked to movement in other areas. It was apparent from the discussions that Members had different levels of ambition in the negotiations. While some saw the mandate as very broad and authorizing the introduction of new rules or permitting any changes to be made provided they would result in an improvement and clarification of the DSU, others saw it as requiring only minimal changes to be made to the existing rules and practices. While it was acknowledged by most Members that the DSU had worked quite well, there was also the general recognition that it could be improved in certain areas. However, there were differences in the views of Members as to what constituted "improvements and clarifications" within the mandate given by Ministers. Some Members were of the view that this did not include proposals which would result in a fundamental change to the DSU. It was clear that a common ground could not be found between these diverging positions. The scope of the mandate given by Ministers was likely to remain a divisive issue.

59. Regarding the package to be adopted the end of the process, he said that various adjectives had been used by describe Members' expectations. While some said that it should be substantive or substantial, others said that it should not be cosmetic and procedural in nature. With regard to the way forward, he referred to the statement made by Bulgaria and said that he doubted whether it would be possible to have an agreed list of issues around which a consensus could be built. He referred to the statistics provided by Uruguay indicating Members' views on whether or not a change of approach was needed in the negotiations and said that there were intermediate positions which were not referred to by the representative of Uruguay. He also said that given the fact that there was no consensus around a single proposal, it was unlikely for the Special Session to agree on a list of priority issues around which consensus could probably be built. While there were clearly different levels of support for different proposals, it would be inappropriate, for example, to state that there was a convergence of views on the sequencing issue. Some delegations had expressed the view that it was no longer an issue and that a decision of the DSB would be enough to address the problem, while the majority view seemed to be that there should be an amendment to the relevant articles of the DSU. It should also be borne in mind that some Members had stated that they would not accept any agreement, unless it included their proposals or those that they supported.

60. He said that all proposals were currently on the table, as his pleas to proponents to voluntarily withdraw proposals which did not command a high level of support had not been acted upon. There were at least 40 different proposals that had been put forward, some of which were quite new. Assuming that the representative of Uruguay was correct in saying that there was an emerging consensus on three to four proposals, that represented between 10 to 15 per cent of the proposals which had been made. This might be seen as insufficient by some Members who had demanded that the package should be substantial. He said that he was not against the drawing up a list of priorities if that was at all possible. The purpose of encouraging proponents to withdraw proposals which did not

command a high level of support among Members and to consult with each other and agree on common language were intended to facilitate the work of the Special Session by limiting the number of proposals it had to focus on. It could not be doubted that the task of the Special Session would be easier if it only had to concentrate on a limited number of issues in respect of which there was already a broad convergence of views.

61. He said that while waiting for Members to take up this challenge, he would continue with his efforts to gradually build consensus on the proposals, mindful that any package could be rejected in the end if it did not include proposals of certain proponents. There was still a window of hope and it was up to Members to use the remaining 50 days to bridge their differences and agree on a package which would strike a careful balance between the interests of all Members. He assured delegations that the process he would follow in attempting to build consensus on proposals would be transparent and inclusive. The objective of holding consultations in different formats and configurations with proponents of similar proposals and regional groups and others was merely to facilitate the process of consensus-building and would not sideline the Special Session which was the appropriate forum to take all decisions related to the negotiations on dispute settlement. Through such consultations, it was the expectation to promote a common understanding of the underlying concepts behind proposals, encourage the submission of common language by proponents of similar proposals and build national and regional support for emerging consensus on certain proposals.

62. The representative of Djibouti thanked the Chairman for an excellent summary of the discussions and said that it was a good idea for the Chairman to continue consulting with proponents of similar proposals and also regional groups, so as to facilitate the process of consensus building. He reiterated the need for all documents to be circulated in the three official working languages of the WTO, so as to give all Members the opportunity to participate effectively in the negotiations.

63. The Chairman said that he would do his best to ensure that future revisions of the "Framework Document" were circulated in the three official languages of the WTO. He pointed out, however, that the issue of translation appeared to be a systemic issue which had to be taken up at higher levels of the WTO. It would appear that more resources had to be devoted to it to ensure the timely production and circulation of all documents in the three official working languages of the WTO.
