

**Special Session of the Dispute Settlement Body  
25 March 2004**

**MINUTES OF MEETING**

Held in the Centre William Rappard  
on 25 March 2004

*Chairman: Mr. David Spencer (Australia)*

The Chairman welcomed participants to the eighteenth meeting of the Special Session and said that the airgram for the meeting had been circulated in WTO/AIR/2268 and that the draft agenda (TN/DS/W/65) contained one item, namely discussion of work programme.

**1. Discussion of work programme**

1. The Chairman said that since the last meeting on 1 March, Members had consulted among themselves with a view to agreeing on the best way of moving forward the negotiations. During the past month, he had met with a number of delegations and had listened attentively to their advice. With the resumption of the Special Session of the Committee on Agriculture and with other negotiating bodies scheduled to meet in the next few weeks, he had been heartened to witness what appeared to be a significant shift in the general tone of exchanges and the level of engagement among delegations. The Agriculture Special Session meeting was still in session and it was too early to reach any assessment of where it would lead and whether it would have a spillover effect on the work of other negotiating groups. The signs were encouraging, the atmospherics were better and delegations appeared willing to explore and discuss solutions. While he was mindful that there had always been a healthy level of engagement in this Group, he hoped that with Cancún now behind Members, and a new phase of negotiations underway, there could be substantive progress in this area as well.

2. One common feature that had clearly come through in all the discussions he had with delegations was the shared sense that the dispute settlement mechanism was a key component of the multilateral trading system, and that all Members shared a strong common interest in its preservation and improvement. This did not necessarily imply a uniform assessment of what should be done to improve or clarify the DSU, but it was certainly a solid starting point that all should build on. Many had some doubts as to the chances of reaching an early agreement, mainly because of what had occurred at Cancún and also the length of time it had taken to get things back on track. On substance, there were still diverse assessments of what might be done. Some Members were yet to be convinced that significant changes to the DSU were necessary, while others were convinced that significant changes were warranted, but did not necessarily agree on what those changes should be. However, it was clear that a number of delegations were prepared to work hard to come to a result by the end of May believing that an agreement would inject momentum and confidence into the Doha Round.

3. The Chairman said that substantive progress could be made in the DSU negotiations and results achieved by the end of May if Members participated constructively and showed a greater willingness to accommodate the interests of others. Intensive work would be required between now and the end of May with Members having to focus on their efforts. In the course of his consultations,

some Members had referred to the need for the outcome to be "significant", "meaningful" and "realistic". The challenge was how to achieve all these within the limited time-frame. He recalled that at the December Special Session, Members had agreed to an intensive round of formal meetings to be held between now and the end of May and the previous Chairman had volunteered to put forward a draft text for Members' consideration some time after the present meeting. He said that in light of developments thus far, it would not be possible for him to come up with a text anytime soon in the absence of explicit guidance from Members. He said that given the limited time available, he shared the view of a number of Members that it would not be productive at this stage to have an issue-by-issue discussion. He said that he was encouraged to see that a number of delegations were working together which was the most useful path to pursue at this stage if there was to be a realistic chance of reaching an outcome by the end of May.

4. He stressed that the best way forward would be to continue providing delegations with the time to work together on substantive matters, with a view to presenting the results to the broader membership for discussion as soon as possible. He urged those delegations intending to propose elements for the consideration of the entire membership to do so as early as possible in view of the approaching deadline. He urged broader consultations among Members as it was the surest way of building consensus on the relevant issues under discussion in a timely manner. He informed Members that the dates for the next Special Session might have to be changed because of the meeting of the TNC in that week.

5. The representative of Bulgaria said that unlike other areas of the negotiations which were linked to market access, the DSU negotiations were aimed at strengthening the rules and procedures for the settlement of disputes and as such it was important for convergence to be reached on all the issues under negotiation. He said that his delegation did not agree with the view that an issue-by-issue discussion would not be helpful at this stage. This type of discussion helped concentrate minds and encouraged delegations to talk to each other with a view to reaching common ground on the relevant elements.

6. The representative of Switzerland said that it was imperative for progress to be made in the negotiations. Delegations should aim at reaching agreement by the end of May on the following: timeframes, transparency, third party rights, sequencing and remand authority. Switzerland shared the view that the DSU had been working well and that very minimal changes should be made. There were some issues of systemic importance, including the professionalization of the panel process and strengthening the effectiveness of WTO remedies that needed to be tackled in the negotiations.

7. The representative of Norway expressed support for the Chairman's views on how to move the negotiations forward and said that Norway was ready to play a constructive role so as to ensure that the mandate given by Ministers was fulfilled.

8. The representative of the European Communities said the DSU was a central element of the multilateral trading system and that while it had worked very well, some improvements could be made to it. He said that it was extremely unlikely for a comprehensive agreement to be reached at the end of May. The EC was, however, willing to work towards reaching an interim agreement by the end of May. It would be desirable if an agreement was reached within the time-frame envisaged, otherwise Members' interest in the DSU negotiations would wane making it extremely difficult to reinvigorate the negotiations in the future. An interim agreement on some of the issues under negotiation would pave the way for attention to be focussed on the more difficult issues in respect of which agreement had eluded Members for the past six years. It was imperative that any agreement reached in May be significant in order to sustain the interest of delegations in the negotiations.

9. The representative of Chile said Members had to make a choice very soon between agreeing to extend the negotiations or work on an interim result for adoption at the end of May. Chile was

willing to consider an interim result, provided it would be significant and include issues such as sequencing. He drew the attention of Members to the fact that there were some differences in the proposals on sequencing and urged them to decide as soon as possible which of the proposals they would like to see reflected in the interim agreement. Chile had an open mind and could join a consensus on either of the proposals.

10. The representative of Malaysia said that her delegation would welcome an agreement at the end of May. She said that Malaysia would like to see the following reflected in any agreement: litigation costs, sequencing, remand authority and compliance. On the timing of the adoption of the results of the negotiations, she said that there were a number of options, including as apart of the single undertaking at the conclusion of the negotiations.

11. The representative of Colombia said that her delegation had an open mind and could accept an interim result at the of May. It there was a consensus on that, it would be necessary to determine at an early stage which elements should be included in the package. As regards the timing of the adoption of the results, she said that her delegation also had an open mind. They could be adopted at the conclusion of the Round.

12. The representative of Thailand said that if an agreement was to be reached by the end of May, political will was needed on all sides. It would also be necessary to have some benchmarks to guide the negotiations.

13. The representative of New Zealand said that while his delegation did not disagree with a two-step approach and could accept an interim agreement, Members had to be cautious about creating expectations and not fulfilling them. From the discussions thus far, it could not be taken for granted that an interim agreement could be reached by the end of May.

14. The representative of Chinese Taipei said it seemed unlikely that a comprehensive result could be achieved by May. While her delegation was not opposed to an interim package, there were a number of issues which had to be resolved. These included the contents of the package and its legal status. It would be advisable to review all the proposals on the table and determine which ones were close to gaining consensus and which still needed further work. A report could then be submitted at the end of May detailing those issues on which there was a convergence of views and those on which agreement was imminent. He said that Chinese Taipei did not have a preference as to when the DSU negotiations should be completed. It could be either before or at the end date of the Doha Development Agenda negotiations.

15. The representative of Hungary said Members had reached a critical point in the negotiations. With two months until the May deadline, it might not be advisable to entrust the whole process to delegations. This strategy was fraught with a number of risks. It was evident that substantive results could not be achieved by the end of May 2004. It might be advisable for delegations to aim for a report setting out the areas of convergence and differences. A substantive interim result could be agreed if Members demonstrated flexibility and a greater willingness to accommodate each other's interests. For the package to be acceptable to delegations, it must be balanced. Delegations would be scrutinizing any agreement to establish consider whether it reflected issues of interest to them, and whether the remaining elements would indeed improve the functioning of the system. He reiterated the need for the consultations to be broad-based, so that all delegations could help shape the size and content of the interim package.

16. The representative of China said his delegation would welcome an interim package which contained effective special and differential treatment provisions for developing countries. He urged Members to be more realistic and scale back their ambitions. Members should focus on issues in respect of which it might be possible to achieve a consensus in the remaining time. Among the issues

which could be considered for agreement were third-party rights, improved notifications, sequencing and remand authority. Achieving an agreement at the end of May would send a positive signal to the outside world about the commitment of Members to the negotiations and increase Members' enthusiasm to work on the remaining proposals after May. He said that China was flexible about the contents and the format of the report and when it should be adopted.

17. The representative of Nigeria, on behalf of the African Group, said they could accept an interim agreement as long as it was balanced and reflected the interests of all Members. He recalled that the African Group had tabled a proposal and it was their expectation that the elements contained therein would be taken into account by the Chairman.

18. The representative of Hong Kong, China said the two options of an interim agreement and a stocktaking report were not necessarily mutually exclusive. Given that Members' positions had not changed significantly since last year, it would be difficult to expect a comprehensive result. Members should, however, press forward and aim for an interim agreement by the end of May. The Chairman's guidance would be indispensable in the process. Should it become clear that an agreement could not be reached by the end of May, serious consideration should be given to undertaking a stock taking and seeking an extension of the time-frame.

19. The representative of Canada said it was premature to discuss extension of the May deadline at this point. Discussing it at this time could result in Members losing their focus and motivation. He said that Canada could accept the two-step approach but the result should be significant.

20. The representative of Costa Rica said his delegation could go along with the adoption of an interim package at the end of May, provided it covered substantive issues and not just procedural ones. It was important for Members to agree on what they wanted to achieve by the end of May bearing in mind the effect another failure would have on the entire DDA negotiations and also on public opinion.

21. The representative of Japan said his delegation could work towards an interim package by the end of May bearing in mind that Members had different conceptions as to the elements it should contain. It would be important to reflect on the legal status of any package which might be achieved at the end of May. Would it be voluntary and if not when would it take legal effect? It had been suggested by some delegations that it could take effect immediately, while others had suggested that it could take effect after the end of the negotiations. It would be prudent to agree on these essential questions at an early stage.

22. The representative of Argentina said his delegation was reluctant to talk about an extension of the time-frame, as it might distract Members' attention from the task at hand. It was important for any package to be balanced in the sense of reflecting the interests of all Members.

23. The representative of Brazil spoke about the unique role of the DSU and said that changes to the DSU should, in principle, be made after the conclusion of the Round. He said that if the agreement to be reached at the end of May would not be definitive, it would be better to have a stock-taking stating areas of convergence and areas where further work needed to be carried out. The guidance of the Chairman would be absolutely crucial in this phase of work.

24. The representative of Israel said that in extending the deadline last year, Members were mindful of the following: (i) the fact that the DSU negotiations were outside the single undertaking; (ii) the need for substantive results which would clarify and improve the functioning of the DSU. Procedural wrangling had to be avoided as it would block progress from being made. There was a need to prioritize issues as agreement could not be reached on all the proposals. She said that Israel could support a report at the end of May outlining areas of convergence and areas where further work needed to be undertaken. Consideration should be given to extending the time-frame by one year in

order to allow Members to thoroughly discuss the proposals on the table and reach a substantive agreement that would strengthen the DSU.

25. The representative of the United States thanked the chair for the consultations process that he had conducted since becoming chair. The United States had listened with interest to everything that delegations had said and would take home, and would like to reflect on, the ideas and suggestions that had been made. It also noted that some delegations had made comments on some of those suggestions that resembled some of the questions the United States had raised in the past. For example, as Members had remarked both in the past and at the present meeting, a change to one part of the DSU could affect other parts. It would seem likely then that continuing work on other issues might require re-visiting parts of any provisionally-accepted interim package. It might also be hard to see how Members could evaluate an interim package without knowing the other elements that might be agreed. The United States understood the chair to have proposed that Members should continue to talk with one another in the coming days and weeks. It looked forward to working with all delegations, and with the chair, on these negotiations in the days ahead.

26. The representative of Korea said that his delegation could accept a two-stage approach as enunciated by other delegations. Getting an interim package by the end of May was a daunting task and would require major efforts on the part of all Members. The package should contain elements on which there was a broad consensus, including the sequencing issue. The Chairman must also be proactive in the process, instead of leaving it to delegations to come up with a package. He said that Korea would support a new deadline for the conclusion of the negotiations. It could be linked for example, to the next Ministerial conference.

27. The representative of Mexico said it was the expectation of his delegation that the negotiations would focus on the real problems confronting the DSU. Improving compliance with the DSB's recommendations and rulings was the main task that needed to be addressed. He said that the DSU negotiations were relevant for all the other areas under the DDA negotiations, as a strengthened DSU would be useful in clarifying Members' obligations and safeguarding their rights. On the possibility of a new deadline, he said that Mexico had an open mind. Any package adopted in May must be significant. It was, however, unlikely that a substantive agreement would be reached by the end of May given the polarization of Members' views on a broad range of issues. If the expectation was to undertake a stock-taking at end of May, it was necessary for a positive message to be issued.

28. The representative of India said his delegation believed that Members could reach an agreement on an interim package before the end of May. He said that the package should contain special and differential treatment provisions for developing countries. He endorsed in that context the statements made by China and Malaysia. He said that it was premature at this stage to discuss about the extension of the time-frame. He stressed that the DSU negotiations were outside the single undertaking and that if Members proceeded as if it was, they could deny themselves flexibility on the timing and the content of the outcome, which might not be helpful to the work.

29. The representative of Morocco said his delegation could support an interim package by the end of May or a report that would evaluate and identify the main outstanding problems and a decision to continue the negotiations after the end of May. He endorsed the statement made by Nigeria, on behalf of the African Group, and said that any package should reflect the interests of developing countries, particularly African countries. He stressed that the DSU negotiations were outside the single undertaking and that no linkage should be made whatsoever between these negotiations and the rest of the DDA negotiations. He asked about the status of the previous Chairman's text of 28 May 2003 and recalled that the General Council mandated that further negotiations should take account of the text of 28 May and other proposals on the table. He said that it was important for the process to be transparent. He asked in that connection whether delegations had already started consulting in line with the Chairman's advice.

30. The Chairman said he was encouraged by the commitment of all Members to go forward with the DSU negotiations and achieve substantive results at the end of the process. He said that he appreciated the frustration of those delegates who had been dealing with this issue for a long time. He proposed giving more time to delegations for consultations until the next meeting, scheduled for 22 April, at which a substantive discussion could take place on the type of outcome to be expected at the end of May. He reiterated the two possibilities that had been discussed which might not be mutually exclusive. Some had raised the possibility of an interim package, while others had mentioned a report setting out areas of convergence and areas where further work needed to be carried out. He said that he was committed to transparency and would do whatever he could to assist Members so that progress could be made in the negotiations.

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