
Special Session of the Dispute Settlement Body
28 May 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 28 May 2003

Chairman: Mr. Péter Balás (Hungary)

Prior to the adoption of the agenda, the Chairman welcomed participants to the thirteenth meeting of the Special Session and said that the agenda for the meeting contained three items, namely (i) action pursuant to paragraph 30 of the Doha Ministerial Declaration concerning the Dispute Settlement Understanding; (ii) report to the TNC; and (iii) "Other Business". He asked whether any delegation would like to raise any matter under "Other Business". As there was no request from the floor, the item relating to "Other Business" was removed from the agenda. The agenda was subsequently adopted, as amended.

I. DISCUSSION OF THE CHAIRMAN'S TEXT

1. The Chairman said that he expected a thorough discussion of his text under this agenda item. He said that there were some errors in the text as it had been put together in haste. He drew Members' attention in that regard to paragraph 13 of Article 3 and said that there was an omission in this paragraph and that there were some words which should not have been included. The paragraph should read as follows: "[a]ny time-period in this Understanding may be extended by mutual agreement of the parties to the dispute concerned, except for the following [...]. A corrigendum would soon be issued to that effect. He said that the consultations he had held in recent days had resulted in the removal of some square brackets around some proposals, although some still remained. The text had not changed significantly. There had been relatively few changes in the first section of the revised text, although a number of changes had been made from Article 22 onwards. Contrary to his expectations, each stage of the process had taken a longer time to complete. This was partly due to the large number of proposals submitted by Members as well as the late submission of some of these proposals pushing back the date of their examination by the Special Session. He said that he had done his best to capture the views of delegations by including proposals which enjoyed broad consensus during the negotiations. He cautioned Members that no proposal in the text had been expressly agreed to by Members.

2. The representative of Malaysia recalled that his delegation had stated at the previous meeting of the Special Session that they could accept the text as basis for further work. The document reflected the views of Members, as it excluded proposals which many delegations, including Malaysia had difficulties with. Although the text excluded proposals which Malaysia was willing to accept, it was prepared to support it in the spirit of compromise. There was the need for realism given the short time available for the negotiations to be concluded. The text, however, needed to be refined further for it to be acceptable. Some of the proposals needed to be examined further to assess their implications. Malaysia was also concerned about some proposals, particularly those relating to

Articles 6, 8 and 18 of the DSU. The Chairman should report on the status of the negotiations to the TNC indicating that there was still a number of issues to be addressed but that time had run.

3. The representative of Uruguay said that it had taken almost a year and half of intense negotiations to reach the present stage. Members had all worked hard to fulfil the mandate given by Ministers. From the very beginning of the negotiations, Uruguay and other Members had expressed the view that the DSU had generally worked well and that Members should focus on real problems that had been identified by them and where there appeared to be the greatest convergence of views and the greatest possibilities of reaching consensus. He said that Uruguay had also pointed out that in view of the short time-frame, there was the need for realism and flexibility on the part of Members. It had suggested in that connection that Members draw up a list of potential issues to be negotiated at the beginning of the process, as the Doha mandate referred to making clarifications and improvements to the DSU and not creating a new Understanding. Regrettably, this advice was ignored and a different path chosen. He thanked the Chairman for text which he had circulated under his own responsibility and said that he would be sending it to his authorities. He said that his delegation considered the text to be a working document with no legal status, as it had been submitted by the Chairman under his own responsibility. The text included some proposals which, in Uruguay's view, should have had square brackets around them, as they had not been sufficiently discussed and had attracted sharply contrasting views from Members indicating that they were not yet ripe for a decision and that further clarification of the underlying concepts was required. These included Articles 8.10, 10.3, 17.1 and 17.4 (third sentence), 18.2 (third and fourth sentences) and 28. He concluded by saying that Uruguay might have further comments after reviewing the text thoroughly.

4. The representative of Canada said that his country had been an active participant in the negotiations right from the outset and had expected an ambitious result by the end of May. Unfortunately, it appeared that agreement could not be reached at the present meeting on the Chairman's text. This did not signal the end of the process, as the Doha mandate only spoke of aiming to complete the negotiations by 31 May 2003. Although, there were still some outstanding issues to be resolved, considerable progress had been made. There appeared to be convergence of views on a number of important issues which should facilitate the process of consensus-building. It was essential for the negotiations to continue after 31 May. Canada was ready to engage and would be seeking agreement on a number of essential improvements to the dispute settlement system, including sequencing, enhanced transparency, remand, the protection of confidential information and an improved panel roster system. There was the need to capitalize on the work done to date, with a view to completing the work assigned by Ministers as soon as possible.

5. The representative of Morocco, speaking on behalf of the African Group, thanked the Chairman and the Secretariat for circulating the text and said that the African Group would be examining it in detail before drawing any conclusions. As a preliminary comment, he said that African countries participated actively in the negotiations with a view to increasing their participation in the dispute settlement system. It was therefore disappointing that the proposals of the African Group were not sufficiently reflected in the text. It was the expectation of African countries that their proposals would be taken into consideration in the report by the Chairman to the TNC. He said that the African Group was of the view that the mandate of the Special Session would expire at the end of the month and that the General Council seemed to be the appropriate body to extend it.

6. The representative of Thailand expressed his delegation's appreciation for the text and said that his delegation shared the Chairman's view that issues not included in the text required further discussions. While considerable progress had been made, it was quite clear that the Doha mandate had not been fulfilled. The text was far from complete and as such Thailand could not join any consensus to adopt it. An extension of the mandate would allow a thorough discussion of all the proposals on the table and also give delegations time to reflect further on certain aspects of the Chairman's text. It was preferable to have a comprehensive result which would actually improve the

functioning of the dispute settlement system. Instead of engaging in a lengthy debate on the scope of the Doha mandate, it would be better if delegations focussed on how to frame their recommendations to the TNC and the General Council. He said that Thailand was ready to engage constructively in the next phase and looked forward to working closely with the Chairman and other Members.

7. The representative of Chinese Taipei thanked the Chairman and the Secretariat for their hardwork and strenuous efforts to move the process forward. He said that his government was disappointed that it had not been possible for a consensus to be reached on the Chairman's text. While the text contained some commendable improvements, including the enhancement of third-party rights, there were some elements which needed further reflection and fine-tuning. A principal objective of Chinese Taipei in the negotiations was to improve access to the dispute settlement system by all Members, particularly the least experienced. Care must be taken to ensure that the negotiations did not result in an overly complex process which would make the system much more complicated and put it out of reach of many Members. Some proposals in the text, particularly those on remand authority and sequencing, appeared to head in that direction. The proposed procedures were too detailed and complex and might not lend themselves to easy application. Given the stalemate in the negotiations, Chinese Taipei was prepared to continue the negotiations beyond the May deadline on the basis of the Chairman's text. Considerable progress had been made in the negotiations and every effort should be made to build on the convergence which had been achieved in some areas. There was the risk of losing the momentum and the goodwill that had been generated, should there be an interruption in the negotiations until a new mandate was obtained from the Ministerial Conference. With that in mind, Chinese Taipei could support the proposal made by a number of delegations that a report on the status of the negotiations should be made to the TNC to be followed by a request to the General Council for an extension of the mandate.

8. The representative of Israel thanked the Chairman and the Secretariat as well as other Members for working very hard to bring the negotiations to this point. He restated Israel's position that it was prepared to accept the Chairman's text as a basis for further negotiations. Regarding proposals not reflected in the text but which the proponents would wish to see included, he said that because of the impending Cancún Ministerial Conference, it might be advisable to use the period immediately after Cancún until December 2003 to explore the possibility of widening and deepening the results which had been attained thus far. With respect to the extension of the mandate to continue the negotiations beyond May 2003, he said that the General Council appeared to be the most appropriate body to which such a request should be addressed.

9. The representative of Colombia expressed her delegation's appreciation to the Chairman and the Secretariat for the time and effort they had invested in the negotiations. She said that her delegation had taken careful note of the explanations provided by the Chairman regarding Members' positions on the text. While the text could not be adopted at the present meeting, it was apparent that there was convergence on a number of issues which should be built on. She said that her delegation would not be making any specific comments on the text, as they had just received it. The process on the whole was inclusive and transparent, but the last few weeks had highlighted the problems faced by small delegations.

10. The representative of Chile thanked the Chairman and the Secretariat as well as other Members for investing so much time and effort in the negotiations. It was to be expected that the text could not reflect the positions and expectations of all Members. It had to strike a careful balance between the interests of all Members. There would be other opportunities to further improve the DSU. It was necessary to capitalize on the good work done thus far and build on it. The report to the TNC should highlight the considerable progress that had been made, including the convergence of views in a number of areas. Members had shown their commitment to the negotiations and their preparedness to continue working beyond May 2003 so as to achieve further progress. While the Chairman's text was a good basis for further work, it would be necessary to have a more focussed approach in the

future. The parameters ought to be clearly defined so that focussed discussions could take place on the various elements and lead to results which would strengthen the dispute settlement system.

11. The representative of India thanked the Chairman and the Secretariat for putting so much time and effort into the negotiations. He said that since its establishment in February 2002, the Special Session of the Dispute Settlement Body had come a long way. The active participation in the negotiations by different segments of the membership of the WTO was a testament to the importance attached to the dispute settlement system. The large number of proposals was also evidence of Members' keen interest in the negotiations. India and other Members had engaged constructively in the process and examined proposals with an open mind. Notwithstanding the lack of a consensus on the text, it was clear from the discussions that Members wanted to build on the progress achieved thus far and complete the work as soon as possible. India was determined to play a constructive role in further negotiations so as to ensure progress. Regarding the text, he said that his delegation had some preliminary comments. Given the far-reaching nature of some proposals and the limited time available for the negotiations to be completed, it was to be expected that there would be differences in opinions and that choices had to be made by Members based on the level of convergence of views on the various proposals. The aim should be to come up with a package that clarified and improved the DSU and made it more meaningful to all Members. The text mostly included issues on which there was a convergence of views. To that extent, it reflected the state of discussions thus far. The text had, however, left out some proposals which would have added enormous value to the DSU. These included the proposals by Mexico and Brazil. Given that the whole text had not been agreed, it was not necessary to put square brackets around some proposals, as it gave the impression the others had been agreed. As far as India was concerned, all the proposals in the text had the same status.

12. He said that while the text could serve as a basis for further negotiations, his delegation had serious conceptual difficulties with some of the proposals, including the following: (i) indefinite extension of time periods by mutual agreement of the parties (Article 3(13)); (ii) the proposal under Article 15(2) that a meeting of the panel after the issuance of the interim report could be requested only by the parties to the dispute and not by any party, as was the case at present; (iii) the proposal regarding suspension/termination of the work of panel at any time before the circulation of the final report to members (Article 12(xii) & (xiii)) and the corresponding provision with regard to suspension of work of the Appellate Body; (iv) the proposal regarding the issuance of interim reports to the parties by the Appellate Body (Article 17(5)(b)); and the proposal regarding the number of Appellate Body members (Article 17(1)). He said that his delegation was also disappointed that many of the proposals that would have made the DSU more meaningful and accessible to developing countries had not been properly reflected in the text. Although the proposal by a group of developing countries was reflected in the text, it was done in such a way as to make developing countries liable to pay litigation costs to developed-country Members. This was not the intention of the co-sponsors of the proposal. Notwithstanding all these reservations, India remained willing and committed to working with the Chairman and other Members in order to complete the negotiations as soon as possible. Given the importance of these negotiations, future meetings of the Special Session should be scheduled in a such a way as to facilitate maximum participation by Members, particularly capacity-constrained small delegations.

13. The representative of Pakistan thanked the Chairman and the Secretariat for the time and effort that they have invested in these negotiations. He also commended Members for their constructive participation in the negotiations. He said that while his delegation was willing to accept the text as a basis for further negotiations, it was concerned that it did not reflect most of the proposals tabled by least-developed and developing countries. For the text to be broadly acceptable, it needed to be improved upon and reflect as much as possible the diverse interests of Members. It was the expectation of Pakistan that the revised text would take account of the proposals of developing countries.

14. The representative of Costa Rica thanked the Chairman and the Secretariat for their hardwork and dedication over the past year and a half. The text reflected the state of discussions thus far and contained proposals on which there was a convergence of views. The text contained the necessary elements needed to reach an agreement in pursuance of the mandate given by the Ministers at Doha. The proposed outcome of the negotiations was substantial and Costa Rica could accept it as an excellent basis for an agreement, even though it was conscious that it omitted certain valuable proposals, including certain elements of the Mexican proposal which would have resulted in an improvement in the functioning of the DSU. Given that it would not be possible to reach agreement within the set time-frame, Costa Rica was prepared to continue negotiating beyond 31 May with the expectation that Members would soon reach a consensus. Members should build on the good work done thus far and seek to reach an agreement as soon as possible. He said in that regard that Costa Rica was prepared to be flexible and could consider a range of possibilities for continuing the further our work, provided that the negotiations were kept separate in the sense of excluding them from the single undertaking.

15. The representative of Indonesia thanked the Chairman and the Secretariat for their hard work and dedication. He said that the failure to reach agreement on the text should be seen as the collective failure of Members, as the WTO was a Member-driven institution. Regarding the text itself, he said that his delegation was in the process of reviewing it and would be providing its comments later. Suffice it to say that the text was a good basis for further negotiations. He said that in its examination of the text, Indonesia would be seeking to establish whether the proposed changes were consistent with other provisions of the DSU and those of other agreements. Given the importance of the dispute settlement mechanism, it was very unfortunate that Members could not reach a consensus. Indonesia was not a frequent user of the dispute settlement system and as such did not have very high ambitions in these negotiations. It was, however, willing to consider other Members' priorities in the spirit of compromise and flexibility. The decision as to whether to adopt the present package should not be linked to an agreement to continue the negotiations beyond May and adopt the results as a whole. The package was important for developing countries as it could facilitate their use of the dispute settlement system. Adoption of the package would send a positive signal to the outside world that the WTO and its Members were committed to building and enhancing the capacity of developing countries in this area. With respect to the next step in the negotiation process, Indonesia was of the view that the Chairman should submit a factual report to the TNC for its consideration. The good work done thus far must be preserved and built upon.

16. The representative of Egypt said that given the fact that the text had just been distributed, his delegation was not in a position to comment on it. They had sent it to Cairo and would provide their comments later. As a preliminary comment, Egypt had serious conceptual difficulties with certain proposals in the text, including those relating to, for example, Articles 10, 12, 17 and 18. The text did not fully reflect the special and differential treatment provisions being sought by developing countries. He said that Egypt was prepared to support an extension of the time-frame for the completion of negotiations until the end of the year. It was important for the results of the negotiations to remain outside the single undertaking.

17. The representative of Hungary expressed her delegation's appreciation to the Chairman and the Secretariat for the good work that had been done by them over the past year and half. It was regrettable that an agreement could not be reached on the text by Members. Hungary considered the text to be a good basis for the further negotiations and believed that it should be built on by Members. It reflected proposals on which there was a convergence of views. These included proposals on enhanced third party rights, clarified procedures at panel and Appellate Body stages, remand authority for the Appellate Body, resolution of the sequencing issue, improved transparency and enhanced special and differential treatment provisions for developing countries. As some of these proposals needed to be developed and further refined, Hungary was of the opinion that the negotiations should continue beyond May 2003 with a view of making progress on these issues as well as other

outstanding issues, including proposals not reflected in the text. Hungary had a special interest in the proposal on a system of permanent panelists and would like it to be taken up in further negotiations. She said that Hungary was ready to play a constructive role in the further negotiations and looked forward to working with the Chairman and other Members.

18. The representative of Hong Kong, China expressed his delegation's appreciation to the Chairman and the Secretariat as well as other participants in the negotiations for their commitment and hard work over the past 14 months. He said that the text needed to be further examined but it appeared to be a good basis for further work. It was the understanding of Hong Kong, China that some delegations were disappointed that their proposals were not reflected in the text. While this was understandable, it was unavoidable that choices had to be made. Given the large number of proposals that were tabled and the far-reaching nature of some of them and the short time available, it was necessary to focus on those proposals around which there was a convergence of views. As regards the scope of the mandate, he said that Hong Kong, China had taken note of the differences in the views of Members regarding the necessity or otherwise of obtaining an extension in order to continue with the negotiations after May 2003. The discussion appeared to be unnecessary as there seemed to be no objection to the Special Session continuing with its work after May 2003. The issue could be referred to either the TNC or the General Council for a decision. The Doha mandate was very clear that the DSU negotiations had to be outside the single undertaking and the results implemented earlier if possible. If there was going to be an extension of the mandate, it would be preferable to have a clear time-frame. Hong Kong, China could go along with the suggestion that the negotiations should be concluded in December 2003. In any event, it would be better if the negotiations were concluded before 1 January 2005.

19. The representative of Brazil said that Ministers mandated a review of the DSU because they thought that certain aspects could be clarified and improved upon. The basic objective was to come up with a text which would be better than the DSU. The task of clarifying and improving the DSU was not an easy one and the efforts of the Chairman and the Secretariat as well as those of Members should be commended. It was regrettable that the mandate could not be fulfilled within the time-frame given by Ministers. This result was to be expected as Members had not moved from their positions. On the sequencing issue, for example, some Members had stated that they could not support any solution which would have an impact on the overall time-frame for settling disputes, while others had stated that the negotiations would not be complete without a multilateral resolution of this issue. Yet others had also stated that the issue was now redundant, as parties were dealing with this issue through bilateral agreements. Some Members had taken the view that the objective of the negotiations was to make structural or fundamental changes to the DSU, while others had taken the view that the purpose of the negotiations was not to create a new DSU, but to make necessary changes which would result in an improvement in the functioning of the DSU. Long discussions had been held on a number of subjects, including compensation and retaliation, third-party rights, transparency and expedited procedures, yet no significant progress had been made. Members had maintained their long-held views without showing much flexibility. Members seemed to be of the view that as the DSU had been working quite well, it was probably unnecessary to introduce new rules which might actually complicate the process and make its use more difficult. It was important for this basic issue to be resolved, otherwise future attempts would end up with the same fate. Turning to the text, he said that Brazil considered it to be a working document which could be built upon by Members. While it included proposals on which there was a convergence of views, it excluded some important proposals which could actually improve the functioning of the DSU. Some elements in the text needed to be refined for them to be broadly acceptable to the membership. He said that Brazil was open to discussing extension of the mandate which would run out on 31 May. This should enable Members to continue their work and make substantive progress which would eventually serve as the basis of an agreement.

20. The representative of Korea thanked the Chairman and the Secretariat for their commitment and hard work and said that Korea considered the text to be a good basis for further work. It accurately reflected the state of the discussions and the level of support for the various proposals. It was regrettable that a consensus could not be reached on the text, notwithstanding the intensive consultations which were conducted in the last few weeks. Korea was ready to continue working beyond 31 May as it believed that the DSU could be further improved, although it had been working quite well since its inception. Among issues of importance to Korea were the clarification of the relationship between Articles 21 and 22 (sequencing issue), improving and strengthening implementation and streamlining time-frames. Korea was also interested in continuing discussions on certain aspects of the Chairman's text.

21. The representative of Switzerland expressed his delegation's gratitude to the Chairman and the Secretariat for their hard work and commitment to the negotiations. He said that the text could serve as a basis for further work. It was a matter of regret that agreement could not be reached on the text at the present meeting. Switzerland was of the view that paragraph 30 of the Doha mandate was flexible and did not prevent Members from continuing with the negotiations after May 2003. It was important to focus on substance rather than procedure. It would be essential in the next stage of the negotiations to focus on proposals which were potentially ripe for a consensus. The proposals in the Chairman's text fell in this category. They had been comprehensively discussed and improved in the past couple of weeks and months. It was the expectation of Switzerland that Members would soon be able to reach a consensus on most of the proposals contained in the Chairman's text. Switzerland would have preferred if the text included certain proposals which could have made a positive contribution to the functioning of the DSU. Notwithstanding their omission, Switzerland was prepared to work very hard and make the necessary concessions to ensure progress in the negotiations. It would be encouraging if all Members could display flexibility and a greater willingness to accommodate the interests of other Members. He said that Switzerland was in agreement with the view that the DSU, as further shaped and developed by panels and the Appellate Body, had been functioning mostly well. This, however, did not mean that it could not be improved upon. From a systemic viewpoint, most of the changes being proposed in the Chairman's text would be extremely useful and strengthen the DSU to the benefit of all Members. A successful outcome would send a positive signal to the outside world and re-energize the negotiations under the DDA. Switzerland was conscious of the fact that the modifications contained in the Chairman's text would not resolve all the shortcomings and deficits of the current DSU. It would as such only be a partial result. Progress needed to be made on important proposals such as the professionalization of the panel system by setting up a system of permanent panelists. He said that Switzerland was convinced that, with the necessary good will and good faith by all delegations, a substantive result could be achieved which would clarify and improve the DSU for the benefit of all Members.

22. The representative of New Zealand said that the negotiating process had been a worthwhile exercise. Members now had a much clearer idea of many of the concepts that had been put forward and had before them the Chairman's text which contained proposals, such as those on enhanced third-party rights and remand authority, that would bring practical and useful improvements to the DSU. There was still a great deal of work to be done. The Chairman's text was a good basis for further work. There were a number of proposals, including increased transparency and expedited procedures for safeguard cases which New Zealand would like to see reflected in the text. He said that New Zealand would be willing to continue negotiating after May 2003.

23. The representative of Jamaica thanked the Chairman and the Secretariat for their hard work and dedication to the negotiations. She said that Jamaica was pleased to see that some issues of interest to it were reflected in the Chairman's text. Jamaica was acutely aware that while there was a convergence of views on certain proposals, there was no consensus on the text as a whole. It was, therefore, necessary for further work be carried out with a view to achieving progress and fulfilling

the mandate given by Ministers. She said that Jamaica was willing to work beyond May 2003 and looked forward to working with the Chairman and other Members.

24. The representative of Mexico expressed his delegation's gratitude to the Chairman and the Secretariat for their commitment and dedication to the negotiations. He said that his delegation had not had the chance to examine the text and as such was not in a position to provide detailed comments on it. He recalled that Mexico had stated that it had some fundamental problems with the earlier version. This did not, however, mean that the review exercise should be halted. It was too important for the multilateral trading system for it to be dropped. A strengthened dispute settlement system was necessary for the credibility of the multilateral trading system. The basic issue was how to proceed in the face of the stalemate in the negotiations. Mexico was inclined to think that it would perhaps be better to leave matters as they were and later take up the issue in the TNC where ways of re-energizing the negotiations might be discussed. It would be extremely helpful if Members could decide on what they really want. Once this was established, it would be easier to work towards it. Two principles should guide the future work that would be undertaken. It would be important to focus on the fundamental areas where there were problems in the DSU. These included the lack of adequate access to the system by developing countries and the growing list of cases where implementation had not taken place. It would also be important to establish very simple and clear rules so as to avoid ambiguities.

25. The representative of Argentina thanked the Chairman and the Secretariat for their hard work and commitment to the negotiations. He said that notwithstanding the tremendous efforts that had been deployed by the Chairman in recent weeks, it was unfortunate that agreement on the reform of the DSU had once again eluded Members. While the DSU had worked quite well, it was obvious that it could be improved in certain respects. A strengthened dispute settlement system was a central element in guaranteeing security and predictability to the multilateral trading system. He said that Argentina had always attached the highest priority to the proper functioning of the dispute settlement system. It had in that context been flexible and willing to accommodate the interests of other Members so that progress could be made in the negotiations. A successful outcome would have sent a positive signal to the outside world about the commitment of Members to the dispute settlement system and also the DDA negotiations. For progress to be made, Members needed to demonstrate more realism and flexibility. Argentina was ready to play a constructive role in the next phase of work which should build on the elements contained in the Chairman's text. As mandated by Ministers, the DSU negotiations should remain outside of the single undertaking.

26. The representative of Cuba thanked the Chairman and the Secretariat for the good work that they had done over the past fifteen months. She said that her delegation was in the process of examining the revised text and would later provide its comments. She recalled that Cuba had indicated in comments on the earlier version that it was prepared to accept the Chairman's text as a basis for further work, although it was concerned that it had omitted several proposals tabled by developing countries. These proposals were intended to enable developing countries to participate more effectively in the dispute settlement system. It was the expectation of Cuba that work would continue after May 2003 on the basis of the Chairman's text. She supported the statement by India that care must be taken in the scheduling of future meetings of the Special Session in order to allow small delegations to participate effectively in them.

27. The representative of Paraguay expressed his delegation's appreciation for the hard work and commitment of the Chairman and the Secretariat to the negotiations. He said that his delegation was in the process of examining the revised text and would later provide its comments. Given the importance of the dispute settlement system, it was unfortunate that Members could not fulfil the mandate given by Ministers. He recalled that Paraguay had submitted a proposal in September 2002 and said that it was his expectation it would be considered again in the next phase of work.

28. The representative of the United States said that, at this phase of the negotiations, it wanted to thank the Chair and the Secretariat for all their hard work in these negotiations, in particular during the intensive discussions held over the past several days. The Members had presented the chair with a difficult task, and the United States appreciated the commitment and energy that he had shown. As the United States indicated at the outset of this process, the Ministerial Declaration presented a challenge to Members, particularly in aiming to complete the negotiations by the end of May. Time had shown that this was an ambitious target. While much progress had been made, Members were not there yet. It was a tribute to the value of the dispute settlement system that so many Members had shown an active interest in these negotiations and had proposed so many ways to clarify or improve it. Some of these were quite far-reaching or complex, and it was no surprise that Members had wanted sufficient time to discuss and understand the proposals and to work through their potential implications. When it came to the DSU, it was more important to get it right than to get it fast. The objective was to clarify and improve the DSU, not to create more confusion or problems through hasty drafting or changes that were not fully developed. The United States thanked the Chair for the revised draft that had been provided at the present meeting. The United States had made its position clear at the previous meeting of the Special Session in terms of how it viewed these negotiations overall, as well as the draft Chair's text at that time. The current draft was an improvement over the draft that Members had the previous week. However, it continued to be true that while there were promising elements in the text, there were also elements that were problematic even when taken alone. In addition, a few additional components of the elements that were in the text would need to be included if Members were to improve the DSU. The United States was in agreement with other delegations that more work needed to be done, and it also accepted that this would require further discussions beyond May, both to continue discussions on elements included in the draft text and to work on additional elements to improve the DSU. It recalled that the Ministerial Declaration simply called on Members to aim to reach agreement by the end of May. The United States saw no bar to continuing to work past May. It looked forward to working with the Chair and other Members in making further progress in these negotiations.

29. The representative of Norway expressed his delegation's appreciation for the hardwork and commitment of the Chairman and the Secretariat to the negotiations. He also thanked Members for participating constructively in the negotiations and said that a lot of effort had been expended with a view to reaching an agreement before the end of May. It was unfortunate that the differences in Members' positions could not be bridged, notwithstanding the last two weeks of intensive consultations. Even if negotiations were intensified in the last remaining days of May, it was unlikely that they would produce any meaningful results. It was up to each delegation to reflect on why agreement could not be reached. It would not be productive to have an extensive debate on the scope of paragraph 30 of the Doha Ministerial Declaration and draw any implications of the missed deadline for either the DSU negotiations or for the entire DDA negotiations. By virtue of paragraphs 45 and 46 of the Doha Ministerial Declaration, it was up to the TNC to assess the implications of the missed deadline, provide the necessary guidance and take appropriate decisions. It should be borne in mind, however, that any changes to the DSU should not be treated as part of the "single undertaking". It would be advisable for the Chairman to attach his revised proposal to the report that he would be submitting to the TNC. While Norway had not had the chance to review the revised proposal, it believed that the text could serve as a basis for future work.

30. The representative of Australia expressed his delegation's appreciation for the hardwork and dedication of the Chairman and the Secretariat and said that like other Members, Australia was disappointed that the mandate given by Ministers could not be fulfilled. He said that while the Chairman's text was very useful, Australia continued to have some doubts about certain elements. The most important one was the issue of sequencing. The Chairman's proposal was overly complicated and could give rise to problems later. This issue could be resolved through the adoption of very simple procedures as had been suggested by Australia. He said that Australia shared the concerns of countries which had registered their displeasure about the non-inclusion of certain

important proposals in the text. As regards the way forward, he said that Australia was prepared to have a discussion in due course in the TNC or in the General Council. It was quite clear Members realized the importance of continuing the negotiations and bringing them to a successful conclusion. While certain aspects of the DSU could be improved, it should be borne in mind that the DSU had generally worked well. Making dramatic changes could complicate the system and make it user-unfriendly which would not be in any country's interests. On the issue of extending the mandate of the Special session and fixing another deadline, he said that it would be advisable if Members reflected further on this issue. It was not in doubt that the negotiations on the DSU were not part of the single undertaking and as such the time when they would be concluded was immaterial. The only real deadline was the end of the negotiations. This did not mean that they would be taken into account in determining whether there was a balanced outcome.

31. The representative of China thanked the Chairman and the Secretariat for their hardwork and dedication and said that the large number of proposals underscored the importance attached to these negotiations by Members. The operation of the DSU for the past eight years had revealed some shortcomings of the DSU. Some of the experiences had been acquired through the involvement of cases initiated under the DSU. It was these types of experiences which Members had to think about in trying to fulfil the mandate given by Ministers under paragraph 30 of the Doha Ministerial Declaration. The challenge was to come up with a balanced result which reflected the different interests and the concerns of Members. While the Chairman's text contained some useful improvements, it only addressed a few of the concerns of Members. It was questionable whether this text fulfilled the mandate given by Ministers in the Doha declaration. The special and differential treatment provisions in the DSU were weak, but regrettably the Chairman's text did not contain adequate provisions which would facilitate access and greater use of the system by developing countries. The proposals tabled by least-developed and other developing countries were not sufficiently reflected in the text. He said that like other delegations, China was disappointed about the partial outcome of the negotiations and could not join others in adopting the text. He stressed that it was envisaged in paragraph 30 of the Doha Declaration that there would be a comprehensive package addressing the concerns of all Members, in particular those of least-developed and developing countries. He said that China had no objection to the extension of the mandate and looked forward to working constructively with the Chairman and other participants in the negotiations with a view to obtaining a comprehensive outcome in the near future.

32. The representative of Ecuador thanked the Chairman and the Secretariat for their hard work and dedication to the negotiations. He said that it was abundantly clear that Members did not want to put aside the good work that had been done. They had demonstrated their intention to build on it with a view to reaching a comprehensive result in the near future. The fact that an agreement had not been reached did not mean that the DSU could not be amended or improved. Progress had been made in that direction and the efforts should be maintained. He said that Ecuador would provide its comments later on the way forward when the matter was taken up in the General Council. He said that Ecuador was ready to engage constructively in the next phase of work and looked forward to working with the Chairman and other participants in order to fulfil the mandate given by Ministers.

33. The representative of Japan said that her delegation appreciated the leadership that had been shown by the Chairman throughout the process, as well as his patience and hard work. She said that Japan was of the view that the DSU had been functioning well and that any proposed changes should be carefully evaluated. She recalled that her delegation had stated that it had some conceptual difficulties with the Chairman's text and further said that Japan was prepared to continue working after the May deadline. It was not productive at this stage to have a full debate on the scope of paragraph 30 of the Doha Ministerial Declaration. The Special Session had done a lot of good work that Members should endeavour to build on in order to strengthen the dispute settlement system, which was a central element in providing security and predictability to the multilateral trading system.

34. The representative of European Communities thanked the Chairman for his hard work and dedication and said that the EC attached great importance to the dispute settlement system, as it was the cornerstone of the WTO system. While the DSU had generally worked quite well, there were some improvements which could be made. The EC shared the view that any proposed changes should be carefully evaluated before they were implemented. The EC was disappointed that agreement could not be reached on the text at the present meeting. Substantial progress had been made and Members should build on it with a view to achieving an agreement as soon as possible. The EC was prepared to continue working after the May deadline using the Chairman's text as a basis for further negotiations. He said that it would be important in the next phase of work to also consider other proposals not reflected in the Chairman's text. For the EC, the most important "systemic" issue in these negotiations was improvement of the panel composition process. The EC also shared the view of other delegations that the issue of the effectiveness of DSU remedies was also important as well as increasing access to the system by developing countries. In that context, the EC was prepared to consider constructively possible modalities for the partial recovery of litigation costs. For progress to be made on this issue and other issues, it was necessary for Members to show flexibility and a greater willingness to accommodate the concerns of other Members. Proponents should be ready to reformulate their proposals in a manner that responded to the comments and concerns of other Members. Participants should engage constructively in the negotiations bearing in mind the systemic importance of the dispute settlement system to Members. Members should be guided by the principle of seeking effective and lasting improvements to the DSU. The EC was ready to engage constructively in the next phase of work. Taking into account the concerns of small delegations, it might be preferable for the next phase of work to start after the Cancún Ministerial Conference. The EC was also open to any additional guidance that might be provided by the TNC or the General Council.

35. The Chairman thanked Members for their kind words about him and said that without the great efforts of Members, including small delegations, it would not have been possible to get to this stage. He said that substantial progress had been made as evidenced by the text under consideration. The package was incomplete for two reasons, namely the fact that some of the elements in the text had to be developed further and also the non-inclusion of certain proposals in the text. He reiterated that progress had been made and that it was for Members to build on it. He said that the report he would be preparing for the TNC would describe the process followed in the negotiations and the various elements which had been considered at each stage of the process. It would point out that a large number of proposals were received from a cross-section of the membership underscoring the importance attached to the negotiations by Members. The report would include a list of issues on which there was a broad consensus and those around which a consensus could not be forged. With respect to the report, he said that while agreement could not be reached on it, a significant number of Members expressed the view that they were prepared to accept it as a basis for further work. The text contained a number of special and differential treatment provisions which should facilitate greater access and participation of developing countries in the dispute settlement system. The other special and differential treatment provisions could not be included in the text, as they did not enjoy broad support among the membership. He alluded to the concerns expressed by some Members pertaining to the non-inclusion of certain proposals in the text and their warning that it would be difficult for them to accept a package that did not reflect these proposals. These countries were firmly of the view that further work should not be based exclusively on the Chairman's text, but also other proposals on the table. This view was not shared by other Members, who stated that the Chairman's text should be the sole basis for the further negotiations. He highlighted the fact that a number of delegations had expressed the view that the DSU negotiations were outside the single undertaking and that the fact that the deadline had not been met did not change anything. He proposed that in order to maintain the momentum, the Special Session should have a meeting before the summer break to take stock and deliberate on the way forward. He said that the issue of the mandate of the Special Session would be taken up by the General Council at its July meeting and probably by Ministers at the Cancún meeting.

36. The representative of Malaysia asked the Chairman why he thought the issue might be on the agenda of Cancún Ministerial Conference. He said that he thought there was broad agreement that the issue should be referred to the General Council for its consideration.

37. The Chairman said that he was not prejudging the course of action that would be taken by the General Council, but that it was a possibility that the issue might be referred to the Ministers at Cancún for their consideration.

38. The representative of Norway said that it would be unnecessary for the Chairman to attach the compilation of proposals to his report to the TNC. It would be advisable if it was referenced in the report. In relation to views expressed by Members on the scope of the mandate and whether the Chairman's text was a good basis for further negotiations, he said that it would be better if the report was succinct and merely stated that divergent views were expressed by Members. As regards the need to hold further meetings of the Special Session, he said that decision should be made by a higher body.

39. The representative of Uruguay thanked the Chairman for sharing with delegations the elements that his report would cover and said that it was appropriate for the Chairman to submit the report to the TNC under his own responsibility. It would be up to the TNC to decide on the appropriate course of action. It was clear from the discussions that no delegation had objected to the continuation of work after May, so it was not necessary to create problems where they did not exist. The report should be as factual as possible reporting on the status of work and it should be left to the TNC to decide on the best possible course of action.
