

WORLD TRADE ORGANIZATION

RESTRICTED

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General Council
30 April and 1, 4 and 6 May 1999¹

MINUTES OF MEETING

Held in the Centre William Rappard
on 30 April and 1, 4 and 6 May 1999¹

Chairman: Mr. Ali Mchumo(Tanzania)

The Chairman said that the present meeting, which was a resumption of the meeting adjourned on 14 April 1999, had been convened for the purpose of considering the item on "Appointment of the Next Director-General". The remaining items on the agenda of the 14 April meeting that had not yet been considered would be taken up at a meeting of the General Council to be convened as soon as possible after the present meeting. He recalled that among the items not yet taken up were a number of requests for extensions of waivers with time-limits expiring on 30 April 1999. He proposed that when the General Council again reconvened, those requests be granted with retroactive effect to 30 April 1999.

The General Council so agreed.

1. Appointment of the next Director-General

The Chairman said that requests had been made by some delegations to hold an informal meeting prior to the present meeting. However, since the present formal meeting had already been convened, he suggested that it proceed and that he make his presentation. After that, and if necessary, he would suspend the meeting for a few hours. When the meeting then resumed, consideration could be given to whether an informal meeting was necessary.

The representative of Mexico, speaking on a point of order, said that his delegation had been requesting for a week that an informal meeting precede the present formal meeting, since it had felt it important to be able to discuss this matter in a more relaxed manner prior to the formal meeting. He proposed that the meeting move to an informal mode.

The representative of Argentina said that the present meeting had been convened formally to hear the presentation by the Chairman, and insisted that it should proceed accordingly. Following the Chairman's report, and if necessary, the meeting could move to an informal mode, although his delegation did not see the need to do so.

The representative of India said that there had been situations in which an informal meeting had preceded a formal meeting, and others in which a formal meeting was followed by an informal

¹ This meeting is the continuation of the meeting that was adjourned on 14 April 1999, the minutes of which are contained in WT/GC/M/40. Only the item on the Appointment of the Next Director-General was taken up at this meeting. The remaining items on the agenda at the 14 April meeting were considered at a subsequent meeting in June.

meeting. If it were in the interests of frankness and a free exchange of views, an informal meeting could be held first.

The representative of Uruguay supported Argentina's statement. The present meeting had been convened to hear the Chairman's report. At the end of the present formal meeting, it could be considered whether an informal meeting should be held. It was not appropriate to hold an informal meeting prior to the Chairman's report.

The Chairman said that as the General Council was already convened in a formal meeting, and as he was mandated by the General Council to make a proposal as to how to decide on this matter, he would make his presentation, and Members could decide thereafter whether an informal meeting was needed in order to decide on what he would propose. He would then suspend the meeting for an hour or two, so that delegations could receive the text of his statement. He then made a statement² in which he recalled the history of the process for the appointment of the next Director-General since its inception, and explained the basis on which he and Mr. Rossier had decided to put forward to the General Council the name of Mr. Mike Moore as the candidate around whom consensus might be built. He recalled that it was the limit of his mandate to propose a candidate and that the actual decision to appoint the next Director General was the Members' responsibility, and said that if no decision were made at the present meeting, there could be serious systemic implications for the organization.

Following a two-hour suspension of the meeting, the Chairman proposed that the General Council agree to appoint Mr. Mike Moore as the Director-General of the WTO for a term of office of four years as from 1 May 1999.

The representative of Malaysia, on behalf of the ASEAN Members, said that these countries regretted that despite public evidence showing Mr. Supachai to be the candidate consistently in the lead, and despite the fact that no WTO Member had publicly indicated that it would object to Mr. Supachai, the Chairman had not been in a position to propose him as the consensus candidate. If the WTO was to be credible, it was imperative that there be a level playing field, and that all Members abide by a code of conduct of fairness and fair play. The Chairman had indicated that he had based his judgment on the facts and the views made known to him during his consultations. However, the ASEAN Members could not accept the proposition that Mr. Supachai, who had consistently been shown to be the leading candidate, could not be proposed as the consensus candidate, especially when no WTO Member had indicated objections to him. In this connection, and with much regret and reluctance, the ASEAN Members had no alternative but to object formally to the Chairman's proposal on the basis of Footnote 1 to Article IX:1 of the WTO Agreement. They requested that the Chairman proceed with the decision-making procedures on this matter as legally required under Article IX:1 and in accordance with the relevant provisions of the rules of procedure for meetings of WTO bodies.

Most of the delegations who then spoke thanked the Chairman and the facilitator for their hard work in carrying out a very difficult task.

The representative of Japan fully supported Malaysia's statement. His delegation would support whichever candidate was elected in accordance with the provisions in Article IX:1 of the WTO Agreement.

The representative of Colombia said it was essential to the credibility of the organization that Members follow the rules agreed at the start of this process, which had included certain criteria and a mandate. Her delegation could abide fully with the Chairman's proposal.

² The text of the Chairman's statement was subsequently circulated in document Job No. 2554.

The representative of Zimbabwe said that his delegation had been faithful to this process from the outset. It had come to the present meeting to hear the results of the Chairman's consultations and his recommendation, and prepared to support whatever proposal was made that received consensus. The fact that the proposal had not received consensus in no way cast aspersions on the conduct of the process by the Chairman and Mr. Rossier, who had merely done their job. It was important for the organization and for the next Director-General that the procedures be followed right up to the end. Article IX had been agreed by consensus by Members, who had clearly foreseen that there might be occasions when consensus might not be reached. His delegation endorsed Malaysia's proposal.

The representative of Uruguay said that his delegation had come to the present meeting to hear the results of the Chairman's consultations and his proposal, and to accept that proposal. Members had established a process, more difficult and more complex than a mere vote, that was fully consistent with the WTO procedures regarding the appointment of a Director-General. At the present meeting, the Chairman had submitted his report on the basis of the criteria established by Members themselves. It was now up to Members to assume their responsibilities and to take a decision on the basis of the Chairman's recommendation. There had been some objections, expressed in terms of concerns or points of view held by some delegations, over what had occurred over the past six months, and these might be useful in working out the future process for appointment of the Director-General. However, these objections could not in any way be regarded as a veto, as one of the rules adopted from the outset was that there could be no veto. All those who had spoken had indicated that they could accept either of the two candidates. The current objections, if intended to be vetoes, would call into question the process itself and the very dignity of the Chairman's office. He called for dignity, ethics and solidarity and urged Members to show a spirit of reconciliation.

The representative of Germany, on behalf of the member States of the European Communities, said that as was known, there were members of the European Communities who supported Mr. Supachai and those who supported Mr. Moore, and their sympathies were therefore on both sides. Despite this fact, the member States respected the Chairman and were grateful that he and the facilitator had taken over this task and discharged it dutifully. In light of what he had said at the outset, he had to limit himself to this statement of institutional support.

The representative of Canada, recalling that his country still had a candidate formally in this race, said his delegation recognized that the Chairman had been trying to build consensus around one of the two leading candidates, and that Canada had respected and supported that process. In July 1998, Members had decided on a procedure to try to seek agreement on the appointment of the next Director-General by consensus. Canada still believed that this was the correct process to follow. Consensus was the bedrock on which this organization was based. It was important to reflect on the essence of the WTO as a contractual organization, which was that concessions and rules that ensured the openness of markets was enshrined first in the WTO and then in domestic legislation and regulation. This system could only work if it had the confidence of the Members, and an element of that confidence was the knowledge that decisions were taken on the basis of consensus. Canada, and probably other Members, would feel threatened if it believed that decisions taken in the WTO - which were increasingly domestically intrusive in nature - could be imposed on Members through a vote. The selection of a new Director-General was a decision with a very high profile which would affect perceptions around the world of how the WTO did business. A vote on this matter would send a highly visible signal that would risk seriously undermining public confidence in the WTO. Canada opposed a vote.

The representative of Kenya said that this process had gone on too long and was affecting other matters. It should be concluded as soon as possible. The lack of consensus meant that one had to proceed to a vote as provided for in the rules. His delegation would support whoever won that vote.

The representative of Bolivia said that a process had been agreed from the outset, which had been lengthy and complex. Bolivia had followed that process at all times and had expected others to do the same. Her delegation hoped that all would be able to join in a consensus and support whichever candidate was chosen. Bolivia agreed with Canada that at no time should a decision affecting the internal administration of a sovereign state be taken by a vote. Consensus should be the rule.

The representative of Egypt said that his delegation had some questions about the Chairman's report. Regarding the extent of tolerance, he wondered how quantifiable the sentiments involved in this were. He also wondered whether Egypt had been placed in the category of countries referred to by the Chairman as the Middle East, or in the category of Africa. Egypt's position had been clear from the outset that consensus should be sought within a clear time-frame, and that if this were not possible, the full rules should be resorted to. The General Council had no right to modify the rules or to apply them selectively. From the Chairman's report it was clear that there was no consensus, and therefore there had to be a vote. His delegation would support whoever was elected through a vote.

The Chairman said that the reference to the "Middle East" as a region was completely neutral.

The representative of Haiti said that the Chairman had worked to build a consensus around the most acceptable candidate based on the three objective criteria set out. The need to reach a consensus should in no way be used to set aside the views of a majority of Members in favour of those of a minority. His delegation had always called for respect for the principles of non-discrimination, democracy, equity and mutual confidence. Some delegations had orchestrated a series of false rumours against one of the candidates and had even tried to convince others to change their views. This was very serious, since the new Director-General would have to represent all Members and be independent and impartial. The organization was in danger, and the venture in which Members were involved could only damage its reputation. His delegation would consult its authorities on the position to be taken on this matter.

The representative of Norway recalled that his Government had been among the first to support Mr. Supachai and had maintained that support throughout. However, one also had to support the system, which meant supporting the Chairman's proposal, whatever it might be. The consensus process agreed by Members required that those who had not supported the candidate proposed would have to accept the Chairman's recommendation. He could not find reasons for objecting to the Chairman's proposal, which was based on a democratic process. Norway supported Canada's statement on the systemic implications of this matter. Members had agreed on a consensus process and it would be very bad to change the rules of the process at the last moment. Those arguing for a vote were correct in saying that the rules provided for this, but there had been a gentleman's agreement that a vote should be avoided. That agreement was now being broken. His delegation asked the ASEAN Members to reconsider their position.

The representative of Romania said that his delegation had come to the present meeting intending to uphold the rules and the process that Members had themselves established for this exercise, and had full confidence in the way the process had developed, in the Chairman and Mr. Rossier, and in the Chairman's assessment and conclusions. Romania had come prepared to accept whichever candidate the Chairman would propose. The only way ahead was consensus. Romania could accept the Chairman's proposal and appealed to Members to place the interests of the organization above all others.

The representative of India recalled that at the outset of this process the then Chairman of the General Council had stated that it was ultimately the Members who would have to decide on the next Director-General. It was in that spirit that the current Chairman had made his proposal. If some Members had difficulties in accepting the proposal they should not be accused of lack of confidence

in the Chairman. It was obvious that there was no consensus on the proposal. His delegation had been somewhat surprised by the Chairman's report, as it had had some legitimate expectations – based on the reports received from the facilitators and the Chairman to date and on its own knowledge of the situation. One had to deal with the discomfort felt over the perceived dichotomy between expectations and results. India was wedded to the principle of consensus, but where there was no consensus and the deadline for decision had been reached, there was no choice but to take a vote. While some were uncomfortable with a vote and while it was an unprecedented step to take, it was better than the alternative scenario. His delegation would support whoever won a vote. This matter was being scrutinized by public opinion, and transparency should be respected. All were interested in safeguarding the system, but there were different views as to how that should be done.

The representative of Nigeria said that the Chairman and Mr. Rossier had ensured that the concerns of all delegations were taken into account in line with the GATT/WTO practice of taking decisions by consensus. The proposal to invoke Article IX:1 was inappropriate and not helpful. Members had never voted on a Director-General, and in the absence of such a precedent, there was a need for caution in order not to polarize the membership of the WTO, especially as preparations were under way for the next Ministerial Conference. No delegation had opposed the principle of no vote, no veto, and Nigeria was concerned that the idea of a vote had even been raised. Nigeria opposed a vote and respected and accepted the Chairman's proposal. The General Council should endorse that proposal and devote its attention to substantive matters related to the Ministerial Conference.

The representative of Hungary recalled that from the outset his delegation had supported Mr. Supachai. At the same time, it had stated on 14 April, and on behalf of the CEFTA countries, that the decision on the next Director-General would have to be based on consensus. Any alternative method would seriously damage the system. The WTO needed a strong, credible and efficient Director-General. Only a consensus process could produce such a leader. Like Norway, Hungary would willingly join a consensus around Mr. Moore. However, as there seemed to be no consensus at present, the only conclusion was that Members had to continue their efforts to reach a consensus and to appoint a Director-General who would enjoy the support of the overwhelming majority of all Members.

The representative of Hong Kong, China said that a number of objections to the Chairman's proposal had been heard on the grounds of some uncertainty regarding the description in the Chairman's report of the three criteria. His delegation had also noted the Chairman's view that numbers alone were not decisive. This was prudent, especially in light of the closeness of the numbers reported. The other two criteria were either fairly subjective, or quite evenly balanced and of lesser significance. The situation overall was finely balanced. In the light of formal objections to the Chairman's proposal, it was clear there was no consensus, and Members were up against a real and immutable deadline. His delegation therefore asked the Chairman to draw the only conclusion possible in terms of the decision-making process under Article IX:1, which had been accepted by all Members, and to conduct proceedings accordingly. The best way to preserve the integrity of the organization was to follow its constitution.

The representative of Argentina regretted that a group of countries was availing itself of the right to object to the Chairman's proposal. Argentina shared the views expressed by Norway and Hungary. On previous occasions, his delegation had supported a different candidate, but was now prepared to support the Chairman's proposal. The General Council had to elect a Director-General at the present meeting and proceed with its work. It was not right to change the rules of the process. No delegation had ever stated that it did not fully trust and support the Chairman's and Mr. Rossier's work. Unfortunately, some delegations were now raising a veto, albeit in disguise. A lack of intellectual honesty was being shown. The process had reached its end, and the General Council could accept the Chairman's recommendation and conclude the process, or admit its failure in being able to elect a Director-General, which would be a terrible precedent. Members should either accept

the name put forward by the Chairman, or admit that they had failed, in which case a new mechanism and new candidates would have to be chosen. There could be no vote, as this would be counter to previous decisions.

The representative of Pakistan said it was clear that the process for appointment of the Director-General in future would have to be changed. One had to see if there was not a fair and reasonable way out of the present crisis. He did not agree that delegations had questioned the dignity of the Chair – which remained intact regardless of the outcome of this process – or had shown a lack of intellectual honesty. The basis of the Chairman's report could be analyzed in detail were there time to do so, but the General Council had to decide. It had asked the Chairman to conduct a process and had concluded that process, but there was no consensus. There had to be some basis for reaching a decision, and the simplest one was provided in Article IX:1, which stated that where consensus could not be reached there should be resort to a vote. Many delegations had difficulties with this option because it would set a precedent. His delegation could suggest instead that Members agree to hold a straw ballot – not a formal vote – with the prior agreement that whichever candidate received the majority of support in this straw ballot would be supported by all. This would yield a quick result but would not set any precedents. The alternatives of a deadlock were very serious.

The representative of Chile said that at the start of this process Members had agreed on a procedure that included neither a vote nor a veto. Her delegation, like many others, had come to the present meeting prepared to adopt the Chairman's proposal, whatever it might be. However, it now seemed that one was playing under different rules. Chile continued to support the process that all had agreed upon, and reiterated its confidence in the Chairman and Mr. Rossier and in their conclusions.

The representative of Mexico said that his delegation would have wished to have had an informal meeting prior to the present meeting, as was traditionally the case when a decision such as the one at issue had to be taken. Mexico agreed with the statement by Malaysia. It was now clear that there was no consensus, and Mexico agreed that the best way to resolve this matter was to have recourse to Article IX. While this matter did not affect the rights or obligations of Members under the WTO Agreement, if a decision was not taken at the present meeting there would be no Director-General nor any Deputy Directors-General. The agreed rules had to be applied, i.e. there had to be a vote. He noted that the word "veto" was not in any of the legal texts of the WTO; however, the word "vote" did exist. Had an informal meeting been held beforehand, no one would have been surprised at the lack of consensus at the present meeting. He wished to underline that no delegation had called into question the professionalism of the Chairman or Mr. Rossier.

The representative of Belize endorsed Norway's statement, which outlined the way forward.

The representative of Cuba said that the results reported by the Chairman caused his delegation some doubts. Considerable pressure had been put on small delegations to change their positions. Cuba supported Malaysia's statement that Article IX should be invoked. The serious threat to the WTO was not the application of Article IX but the pressure being exerted on Members to change their positions. Cuba supported consensus, but in the present case it was best to move to a vote. As Hong Kong, China had stated, the best way to provide credibility for the organization was to apply its rules.

The representative of Venezuela reiterated his delegation's full support for the efforts of the Chairman and Mr. Rossier, and regretted that a process that with discipline and effort had moved forward had become merely reactions between winners and losers. Venezuela had indicated to Thailand that if Mr. Supachai were to be the candidate recommended by the Chairman, it would immediately support him, and had expected that should Mr. Moore be recommended, others would do the same. A vote was now being suggested, whereas a majority of delegations had repeatedly rejected this. There was now an effort to reject the process that had gone on honourably for six months,

simply because the candidate selected was not the preferred candidate of some. If a new process and another methodology had to be selected, his delegation would support that. To continue to call for a vote was not responsible given the tremendous efforts that had been made over the past six months.

The representative of Costa Rica said that his delegation supported the Chairman's recommendation and thereby supported the process and rules that all had agreed to. After many months of work, the Chairman had presented the candidate that he felt best met the three criteria set out. Costa Rica respected this and was concerned that others did not. Those who had come to the present meeting with the aim of supporting the Chairman's recommendation only if it were consistent with their choice were violating the rules of the process by now proposing a vote. The best way to give credibility to the organization was to respect the rules of the process initially agreed, which was to take a decision based on consensus.

The representative of the Czech Republic said that throughout this process his delegation had stuck to four principles: decision by consensus, which was a tradition and culture of the WTO; full confidence in the process, in the course of which all had had an opportunity to express their views; full confidence in the persons carrying out this process and trust in their judgment; and flexibility. His delegation had consistently underlined that it could join a consensus on any of the candidates. At the General Council meeting on 14 April 1999, his delegation and others had encouraged the Chairman to present a name which in his view could enjoy consensus as the most acceptable candidate. The Czech Republic fully supported the Chairman's proposal.

The representative of Switzerland said that the proposal by a group of delegations regarding the modality for taking this decision had far-reaching systemic effects. Contrary to the General Council's decision in July 1998, some delegations had suggested that the decision on the next Director-General not be based on consensus and that a vote or a straw vote be held. Switzerland opposed this, and did not wish to see the GATT/WTO traditions broken. To decide on the next Director-General by a vote would have serious consequences for the organization, especially at a time when important decisions had to be taken regarding the future of the multilateral trading system. One should stick to the tradition of consensus and keep this matter in proportion.

The representative of Israel said that his delegation recognized the difficulties faced by some delegations in light of the Chairman's proposal, but hoped that the membership would continue to strive to reach a decision by consensus, a principle Israel had always supported.

The representative of Poland said that the Chairman had conducted this process with ingenuity and determination. Consensus was the only way to appoint a Director-General. There could be no vote and no veto. Poland had consistently supported the candidature of Mr. Supachai and would have been pleased had the Chairman's recommendation been in line with this. The Chairman had proposed another candidate and Poland was ready to build consensus around him, but there seemed to be difficulties in doing so. A vote, straw or regular, would not resolve the current problem. Members should not be distracted from the business of consensus-building, as the price would be too high.

The representative of Guatemala said that throughout this process his delegation had stated its trust and confidence in a process aimed at finding consensus, and had said it would accept the Chairman's recommendation. For reasons already stated by others, in particular by Norway and Canada, Guatemala was against a vote, and urged members to show flexibility in order to reach a consensus and complete this process.

The representative of Panama said that his delegation supported Mr. Supachai but also supported the process that all had agreed to. While this process had not been perfect, it had not been incorrect, and Panama had fully supported and trusted the facilitators and their work from the outset.

Nothing the facilitators had done cast any aspersions on this process. While Panama had anticipated that Mr. Supachai might be the consensus candidate, only the facilitators had the information necessary to assess the grounds for a consensus. His delegation urged all Members, particularly those calling for a vote, to join the consensus on the Chairman's recommendation. While there had been objections to that recommendation, no delegation had said it could not join a consensus on it. The Chairman should insist on his recommendation, in order to avoid a decision being taken by any method other than consensus.

The representative of Nicaragua said that from the outset his delegation had had full confidence in the Chairman and the facilitators to develop this process which had been agreed by all. His delegation had come to the present meeting prepared to join a consensus on whichever candidate the Chairman proposed. It was concerned and disappointed that some delegations had not accepted a decision reached through impartial and transparent procedures and were now calling for a vote. One should not continue to erode the organization with intransigence and inappropriate positions and with a lack of respect for the Chair.

The representative of Australia said that his delegation had not supported a vote in the past and did not do so now.

The representative of the United States said that her delegation had put its trust in the Chairman and Mr. Rossier. Members had to uphold the integrity of this organization and the process of consensus. There had been fairness and transparency in the process which had just concluded. The comments made by some delegations were confusing, in that they supported the Chairman's work but rejected the results of that work. In July 1998, procedures had been outlined by the General Council for the selection of the Director-General, specifically regarding the consensus nature of that decision. All, including Mexico, had agreed to that process by consensus. At the 1 March 1999 General Council meeting, the Chairman had explained clearly how he intended to proceed to build a consensus, and all had agreed to this. Pakistan had stated that it should be the rule that no Member would block the emergence of consensus around any of the four candidates. The Chairman had gone on to explain the criteria on which the recommendation would be based, and no delegation had objected to this approach. At the 17 March 1999 General Council meeting, Pakistan had stated that there should be a presumption that no Member would block any consensus building around a candidate. The Chairman had stated that it was useless to go back to counting numbers and appealed to Members form refrain from vetoes or voting. At the 24 March General Council meeting, full confidence and support for the Chairman had been expressed by many delegations, including Pakistan, the ASEAN Members, India, Japan and Mexico. The Chairman had described his role as that of indicating the most acceptable candidate, and all had agreed. Japan had stated that there were two excellent candidates and that consensus needed to be built around one of them, and had pledged its support to the Chairman. Mexico had also pledged its full confidence in the Chairman and Mr. Rossier, and Pakistan had stated that it hoped a consensus could be reached as soon as possible.

The representative of Japan, speaking on a point of order, said it was not fair to quote only part of what had been said. Japan had never said that degree of acceptability should be a major criterion, and had maintained that the level of positive support was the main criterion.

The representative of Pakistan, speaking on a point of order, said that the US statement would not contribute to a process of building consensus. His delegation objected to the selective quotation in that statement and the way it had been made.

The representative of the United States said that she was reading from the Minutes of the General Council meetings.

The representative of Mexico, speaking on a point of order, said that there had been two points of order regarding selective quotation. He suggested that Members have all of the relevant Minutes so that they could read them through and remind themselves of what the situation was.

The representative of the United States said her point was that the Minutes indicated that Members had given the Chairman their full confidence, had agreed to build consensus, and had never objected to any aspect of the process. However, some delegations were now going against their commitments. One should stick to the rules and to the agreement that no Member would block the emergence of a consensus around one of the four candidates. A straw ballot would exclude non-Geneva-based delegations, and if there were to be a resort to voting, this process should never have been started. Delegations who were now asking for a vote were effectively lodging a veto. This was the point she had tried to make through reference to the Minutes. She hoped that Members could put all of this behind them and work out their differences. This issue threatened the integrity of the system. Some delegations had stated that the system could be safeguarded by resort to a vote, but consensus had been the foundation of decision-making in this organization. Small countries could be adversely affected by resort to a vote. Recourse to voting would not only be totally unacceptable to her delegation but would also be inconsistent with Members' obligations under the WTO Agreement and the approach agreed to in July 1998. There could be no question of voting or a straw ballot in this exercise.

The representative of New Zealand said that as a country with a candidate, New Zealand had held back from speaking, and was not now speaking in support of Mr. Moore, but to ensure that his candidature was treated with fairness. The Chairman had been mandated to recommend a consensus candidate, and had done so in full conformity with the process and the criteria for a consensus-based approach endorsed by the WTO membership. He had also met the deadline of 30 April and had given all delegations ample opportunity to share their views with him. New Zealand appealed to Members to do their utmost to support the Chairman and his consensus recommendation without vote or veto. His delegation asked for no more than fair treatment and respect in the light of views that had been fully and properly registered with the Chairman and the facilitator and had led to the Chairman's recommendation. It would have been prepared to support a consensus on Mr. Supachai had that been the Chairman's recommendation. Like Norway, his delegation could not understand how the consensus recommendation could not be given the serious and proper consideration of Members. He recalled that there had been a well-established understanding that there would be no vote and no veto. Some delegations who had repeatedly supported this principle had indicated at the present meeting that they contemplated deploying both. He appealed to these delegations to reflect again on the equity of the course envisaged, and to all Members to respect the agreed process and the Chairman's efforts.

The representative of Jamaica said that this was a critical day in the life of the WTO. The Chairman had made a proposal which had given rise to difficulties for some delegations. He appealed to all to think ahead and to consider the future. The current discussion did an injustice to two eminent persons and had an adverse effect on the collective strength of the leadership of the WTO. He hoped that once delegations had put their views on record, they would be able to adopt the Chairman's recommendation. At a certain point it would be useful for the Chairman to point delegations in the right direction.

The representative of Bulgaria said that from the outset his delegation had consistently supported the selection of the next Director-General by consensus and had stated that it would support any of the candidates around whom a consensus could be built. Consensus was vital for the organization. Trust and confidence were inherent in the process undertaken by the Chairman. If the figures reported by the Chairman were not challenged, why was a straw ballot necessary? The provision of figures had been questioned throughout the process as not being inherent in the consensus-building process. Nevertheless, figures had been given by the Chairman and by his predecessors. The figures in the reports by the facilitators could be regarded as a straw ballot. A vote

under Article IX would not only be likely to give figures similar to those just reported, but would inflict great damage on the organization. This was not reasonable. His delegation supported any efforts to find a way out of this situation and to conclude this process by consensus.

The representative of Colombia said that her remarks were directed to Mr. Supachai. Members had to support the institution and the process. Some delegations had indicated their preference to decide this matter by voting. This broke tradition and went against the rules agreed at the outset of the process. Voting amounted to concentrating on the first of the three criteria chosen, i.e. the strength of support in terms of first and second preferences for the candidates as indicated in the phase of consultations and as it continued to evolve in the process of further consultations. The Chairman had reported that 59 delegations had supported Mr. Supachai and 62 had supported Mr. Moore. What was the purpose of trying to force a vote when this would not give a different result and might show a greater difference, and in the process would damage the organization?

The representative of Pakistan said that the three criteria that had been applied could have been applied at various stages in the process and at various moments. As an example, he quoted from his delegation's statement at the meeting of 24 March, in which he had stated, *inter alia*, that the process should follow certain principles such as urgency, transparency, democracy and fairness, and that the approach to consensus was clear: one candidate had consistently been in the lead in terms of overall and geographic support and was from a developing country; if any consensus was to be formed it would have to be around the candidature of Mr. Supachai. He had then proposed that the Chairman put the question to the General Council whether it could approve the appointment of Mr. Supachai as the next Director-General. At the General Council meeting on 31 March, the Chairman had said in his statement that the two candidates enjoyed a level of support close to each other but that both had difficulties in getting consensus of the membership. Those difficulties had not been construed as vetoes, but the Chairman had gone on to say that the difficulties faced by both candidates were so serious that neither could enjoy consensus to enable them to be elected the next Director-General. The question then arose how the Chairman had come to the conclusion that the difficulties faced by one candidate, and not by the other, could be overcome because of certain changes in the objective situation. Pakistan had not questioned the facts or the judgement the Chairman had reached. A way had to be found out of the current impasse, as it was affecting the future of the organization, and the only way to do this was through further dialogue and consultations. He suggested that it might be time to adjourn the meeting and to enter into intensive dialogue with the parties concerned in order to achieve a full consensus that all could support.

The representative of Mexico noted that the Chairman's report to the present meeting had stated how many out of 121 Member "countries" had supported each candidate. He wondered whether among those 121 Member countries Hong Kong, China, a separate customs territory, had been taken into account. He added that while his delegation was not keen on voting, there was clearly no consensus on the Chairman's proposal. The WTO rules clearly provided for a vote when there was no consensus. If all decisions in the WTO were to be taken by consensus, Article IX should then be modified. On some occasions, consensus was insisted upon, while on other occasions there was a vote because there was no consensus. Nothing Mexico had stated in the past contradicted what it had said at the present meeting. Pakistan had made a constructive statement which should be borne in mind.

The Chairman said that Hong Kong, China had been included in the 121 Member countries referred to.

The representative of Brazil supported the suggestion by Pakistan that the meeting be adjourned for consultations.

The representative of Peru said that his delegation from the outset had indicated its support for Mr. Supachai and its will to reach a consensual decision. Peru would join a consensus on any procedural proposal the Chairman might make.

The representative of Turkey said that what was under discussion was the future of the organization. Canada had referred to the increasingly domestically intrusive nature of the decisions adopted by the WTO and had stated that taking such decisions by a vote would make his country feel threatened. The WTO could not afford to alienate Members in this way. Some delegations favoured a vote, but a long list of delegations opposed it, among them several supporters of Mr. Supachai. At the General Council meeting on 17 March, his delegation had stated that the point that there should be no veto was crucial and overrode all other aspects, that it could accept any one of the candidates, that it was willing to change its preference if this would help the process, and that the Chairman should have a free hand to conduct this process as he saw fit. One had to find a way out of this impasse, and the meeting should continue. It should be ascertained whether Members' difficulties with the Chairman's recommendation were based on objective elements or on elements of surprise and disappointment. One should not resort to a vote and thereby create a precedent for handling matters in the General Council, as this could be fatal.

The representative of Uruguay said it seemed from the statements that the majority of Members continued to be convinced that the Director-General should be appointed by consensus, and that a decision had to be reached at the present meeting in order to avoid serious damage to the system. A high proportion of those present were against a vote as a means of resolving this or any other problem in the WTO. The responsibility incumbent on Members was to proceed on the Chairman's recommendation. If the General Council accepted certain objections that were only disguised vetoes, it would have to go back to square one. Some delegations had suggested a vote while others favoured continued consultations. Uruguay proposed a third path: in the light of the information given by the Chairman and his recommendation, one of the candidates should take the initiative to withdraw. This would make consensus easy.

The representative of Slovenia said that his Government opposed a vote, which would set a dangerous precedent. Canada's arguments in this regard were convincing. It was difficult to accept even the possibility of Slovenia being faced with a WTO decision that would be contrary to its national interest or, worse, directly damaging. His delegation appealed to those suggesting a vote to reconsider. The only option was to accept the Chairman's recommendation, which Slovenia did.

The representative of Argentina supported the statement by Uruguay. His delegation was not in favour of proposals that were based on an admission that consensus had not been achieved, as these would open a Pandora's box.

The representative of Hong Kong, China suggested that in view of the present situation and in order to preserve the integrity of the WTO and its operational efficiency, the Chairman should ask the Director-General to extend the term of office of Mr. Hoda, Deputy Director-General, by a short period of a few weeks.

The Chairman recalled that he had made a similar proposal at the General Council meeting on 14 April which had not been accepted. He was thus hesitant to take up this proposal.

The representative of Hong Kong, China said that what he had just proposed had been the consistent position of his delegation, as it had been apparent for some weeks that a new Director-General would need assistance in the early part of his term.

The Chairman recalled that what had been informally decided was that the Director-General be empowered to approve the extension of the term of office of one of the Deputy Directors-General. It now had to be decided whether or not to ask the Director-General to take that action.

The representative of Pakistan said that his delegation had some doubts about the proposal just made. It was not necessary for the organization in the interim to be headed by a Deputy Director-General. Members should focus on the selection of the next Director-General, as this was their first priority.

The Chairman said that this situation might provide the necessary stimulus to reach a decision on the next Director-General by midnight. He suggested that the General Council adjourn for an hour for further consultations.

The representative of Japan said that if the Director-General was selected by a vote, his delegation could go along with the outcome of that vote at the present meeting. However, if a decision were to be taken by consensus, his delegation could not take a position on this at the present meeting, even after an adjournment, because it needed to assess carefully the Chairman's report.

The representative of Mexico said that his delegation could not take a decision at the present meeting unless required by the legal texts, i.e. unless there had to be a vote. For this reason his delegation had a week earlier asked for time to react. Mexico had participated in a gentleman's agreement that it did not wish to change. The item on the present meeting's agenda was exclusively on the question of the appointment of the next Director-General.

The representative of Venezuela recalled that the Chairman's intention had been to provide for administrative continuity for the organization should it not be possible to conclude the selection process by the deadline. His delegation disagreed with Hong Kong, China's proposal.

The representative of Jamaica suggested that the General Council take a short break so that delegations could focus on what they were about to do should a decision not be taken on the basis of practicality and pragmatism.

The representative of the United States supported the idea of a short break. There was a need to take a decision at the present meeting. This decision could be taken only by consensus and her delegation could never agree to a vote. It was clear that a majority of delegations wanted to take this decision by consensus and not by a vote.

After an hour's suspension, the Chairman said that it was his view that the possibilities of arriving at a consensus had not been exhausted. Since more time was needed for delegations to consult capitals and to interact among themselves, he proposed that the clock be stopped so that whatever decision was reached the following day would be deemed to have been taken on 30 April, and that the meeting adjourn until the following day at four p.m.

The representative of Morocco said that there would not be time to consult capitals between now and the following afternoon. If the clock were to be stopped, it should be until Monday, in order to allow delegations time to reassess the situation in the light of all that had been said. He suggested that the meeting be suspended until Monday morning.

The representative of Jamaica said that this matter was urgent and serious and that every effort should be made to maintain momentum by having a meeting the following day.

The representative of Venezuela endorsed Jamaica's statement.

The representative of Morocco said that his delegation would not have instructions over the weekend. He also recalled that early on Morocco had supported a vote, which was clearly provided for in Article IX.

The representative of Jamaica said that his delegation was making every effort to use a process that it had not wanted from the outset, and asked other delegations to be accommodating.

The representative of Cameroon proposed that the meeting be suspended until Monday at four p.m., as this would be the earliest his delegation could get instructions.

The representative of Canada said that his delegation had hoped to be able to take a decision on this matter at the present meeting. Taking too long a pause might send the wrong signal to those watching from the outside. His delegation favoured meeting the following afternoon at least to take a reading of delegations' positions.

The Chairman proposed that the meeting adjourn until 1 May at four p.m.

The General Council so agreed.

When the meeting resumed on 1 May, the Chairman recalled that he had made a formal proposal for the appointment of the next Director-General and that the General Council had had a useful discussion, but that a decision could not yet be taken. While it had been agreed to stop the clock, this decision had to be taken as soon as possible, and he appealed to all delegations to keep this in mind. Otherwise, there could be an institutional crisis which might have serious repercussions. The task with which he and Mr. Rossier had been charged was not an easy one, and for the past two months they had devoted almost all of their time to it. The possibilities of consensus had not been exhausted, and he was optimistic that consensus could be achieved. If consensus were not possible, Members would have to decide how best to proceed.

The representative of Malaysia, on behalf of the ASEAN Members, stressed that the ongoing process was primarily about the viability and integrity of the decision-making process of a rules-based organization. There was no consensus, and legally there was an impasse. The rules provided for a way out of the impasse, but some delegations felt that those rules should not be applied. Article IX:1 of the WTO Agreement provided that the WTO should continue the practice of decision-making by consensus followed under the GATT. On that basis, Members had agreed to proceed on the understanding of no veto, no vote. Mr. Supachai had consistently been the leading candidate, and had the understanding of no veto, no vote been scrupulously observed, consensus should rightfully have been declared in favour of him. Furthermore, in a consensus-building process where there was no veto and no vote, the formulation of consensus could not be deferred indefinitely. When undue consideration had been given to the allegedly serious obstacles preventing the declaration of a consensus in favour of Mr. Supachai, Malaysia had refrained from criticizing those who had violated the understanding of no veto, no vote by lodging what was in effect a veto. However, now that his delegation was exercising its right to object, there were assaults on its honour and on the honour of those who shared its views. Malaysia's primary concern was still the formulation of consensus for the sake of the organization. His delegation had faith in the integrity of both the Chairman and Mr. Rossier, but the election of the Director-General was the Members' decision. The Director-General had to have the mandate of all. There was no other choice than to comply with the second and third sentences of Article IX:1 and to vote. This was a right guaranteed to Members, which could not be blocked. In the long run, what would erode the organization was not the exercise of rights clearly provided in the rules, but efforts to prevent the exercise of those rights.

The representative of Mexico said that the Chairman's report reflected the professional ability of both the Chairman and the facilitator. He agreed that, as mentioned in that report, figures might be

important but were not decisive. The difference was now a matter of three votes in favour of one candidate, and these three votes were less than the number of Members who had not expressed their views. It was not a situation where one candidate was so far in the lead that one could automatically go along with a consensus on that candidate. If the General Council were working in a voting mode, one vote would be sufficient to win, but it was working towards consensus. Members had made formal objections and therefore there was no consensus. There was nothing in the criterion of geographical distribution of support that was meaningful. Regarding the criterion of acceptability or degree of tolerance, in light of objections raised, this seemed to have acquired a relative importance compared to the other two criteria. Given that there was no consensus, the vote provided for in Article IX:1 was the orthodox approach. Those who did not want a vote should suggest an alternative for a rapid solution.

The representative of Zimbabwe said that the accusations of intellectual dishonesty levelled by some delegations at the supporters of Mr. Supachai showed a serious lack of respect. In expressing opposition to the Chairman's proposal, his delegation was in no way denigrating the integrity of the Chair. From the beginning of the process, his delegation had objected to the criterion of acceptability, which could be used as an indirect veto, but had conceded to it out of respect for the Chairman. The Chairman himself had said this was a fairly subjective criterion. In Zimbabwe's view, the opposition to Mr. Supachai's candidature was a veiled veto. His delegation had worked for consensus. However, if consensus could not be reached, his delegation had consistently said that the General Council had to vote, as provided under Article IX, and a request for a vote should not be denigrated. A request to form consensus around Mr. Supachai had been made when the two candidates were neck to neck. Had the Chairman's proposal been made earlier, the present scenario would be different. The time had come to accept leadership from the south, especially given the qualities and capabilities of Mr. Supachai.

The representative of Colombia said that this matter was particularly important for a small developing country like Colombia which needed an organization that worked well and ensured the participation of developing countries. The General Council had agreed by consensus on the procedure and the criteria to be applied to the selection of the Director-General, and had also agreed there would be no veto. There had been lengthy consultations and Colombia had been ready to agree to whatever recommendation the Chairman would make on 30 April; it had expected others to do the same. His delegation was surprised at calls for a vote, since in a rules-based organization the rules agreed had to be maintained to the end. His delegation reiterated its willingness to go along with the process agreed to.

The representative of Bangladesh recalled that his delegation had said it could live with either candidate. Bangladesh's stakes in the WTO were high, and it was anxious to return to substantive work. His delegation was prepared to be led by the Chairman out of this impasse either through consensus-building or through a vote as provided for in Article IX.

The representative of Hong Kong, China said that it would have been pertinent for the Chairman to refer in his introductory remarks to the formal objections made by a number of delegations. The Chairman's report of 30 April conveyed the impression of a very fine balance between the candidates, and it was not clear why one candidate had been proposed over the other. The report thus remained an insufficiently clear or certain basis on which his delegation could agree to the proposal.

The representative of the United States stressed the need for unity in this endeavour. All had worked hard since July 1998, when specific criteria and procedures had been set out that all had agreed to. Delegations not only had to prepare for the Seattle Ministerial Conference, but to attend to the commitments already undertaken by Members and to improve growth in trade. There had to be early closure to this matter, and Members had to confirm their trust in the Chairman and the facilitator

and reach a consensus on the Chairman's recommendation. Decision-making by consensus would be critical to all of the decisions Members would have to make. It was consensus that had brought the multilateral trading system to its great status. There was more work to do and more countries to include in this organization. The new-comers were wanting to join the WTO in order to realize the benefits of commitments based on consensus. Delegations had to fulfil their mandate to represent their governments with integrity and to move to the long-standing work ahead. She reiterated that the United States would not be in favour of a vote, and noted that those calling for a vote seemed to think it should be between Mr. Moore and Mr. Supachai. That was incorrect, as any vote – which would have to be a postal ballot so as to include all Members – would be on whether to accept or reject the Chairman's proposal.

The representative of the Dominican Republic noted that the ASEAN Members, Japan, Mexico, Zimbabwe, Pakistan, Kenya, and Hong Kong, China had raised objections to the Chairman's recommendation. His delegation had always said it would go along with a consensus, but it was clear there was none. There was a need to restore unity.

The representative of Nigeria referred to the statements by Canada and Jamaica which he said provided a road map out of the current impasse. A vote would be divisive, would compromise the confidentiality and impartiality of the entire process, and would negatively impact on the institutional image of the WTO. Resort to the voting procedures in Article IX:1 would only compound the problem. The WTO Agreement was not perfect, but through a spirit of compromise and accommodation, things had not fallen apart; that Agreement had been adopted by consensus, and not through a vote.

The representative of Uruguay said that the sense of urgency should encourage Members to look at this situation in a frank and serene manner, and to focus on the facts. The General Council had given the Chairman a mandate, had agreed to certain criteria and had asked the Chairman to make a recommendation on one name. The Chairman had complied with this mandate on the basis of an objective and impartial evaluation of all the criteria. The result was that Mr. Moore was ahead and his lead was substantiated by facts. He wondered whether, had Mr. Supachai been in the lead with the same difference of votes indicated, Members would be making the current arguments regarding a vote. The answer was no, because delegations like Uruguay would have accepted the recommendation and would have supported Mr. Supachai. All had worked on the basis that there would be no objections and that the proposal the Chairman would make would be accepted. The implications of a vote went far beyond this particular issue, as any lack of consensus in the future would lead directly to a vote. Since a large percentage of delegations were against a vote, there would be no vote, and to continue to insist on this solution was not appropriate. Regarding Zimbabwe's statement, as a developing country Uruguay found the characterization of this process as a north-south struggle offensive. Members had to recover their spirit of unity and reconciliation and to work together to tackle the urgent tasks at hand.

The representative of Japan said that that his Government's position remained the same. He recalled the Chairman's statement of 14 April which indicated the following: he had first tried to see whether there could be consensus on Mr. Supachai, who was the leading candidate, but there was opposition to this; he had then tried to see whether there could be consensus on Mr. Moore, but that had not been possible; and he had therefore reported on 31 March that there was no consensus on either of the candidates. In light of the Chairman's statement the previous day, and the discussion then and at the present meeting, it was clear there was no consensus on the Chairman's proposal. Therefore, his delegation asked the Chairman to see now whether there could be consensus on Mr. Supachai, particularly since, as stated in the Chairman's report of 30 April, the levels of support in every respect for both candidates were very close. Regarding Colombia's statement, it was true that no one had objected to the Chairman's suggestion that he present one name by the end of April, but as the Chairman himself had made clear, it was up to the Members to decide whether they could accept

that candidate. No Member had committed itself to accepting that candidate. This was an important point.

The representative of Korea said that his delegation had consistently emphasized that the next Director-General should be selected on the basis of a consensus. However, after the lengthy discussion on this matter, it had become clear there was no consensus. Korea was hesitant to accept the Chairman's assessment of the three criteria used, and therefore felt there had to be recourse to voting as stipulated in Article XI:1. In this way transparency could be enhanced and the current impasse broken. Korea would abide by any outcome of a vote.

The representative of Canada said that his delegation had consistently supported the Chairman's process for the selection of the next Director-General, even though Canada's candidate had not fared well in this process. The Chairman had pointed out that this was a process of reduction, in that out of four candidates only one could be chosen. One of the risks at the present juncture was the focus on procedure, when what was most important was to ensure cooperation among Members in order to continue with opening markets, to ensure respect for the rules, and to see how to help each other more effectively. The way ahead lay through working together, stressing unity and operating on the basis of consensus. Better procedures for selecting the Director-General had to be devised, and part of the conclusion of this process might be that Members committed themselves to that task. One of the concerns discussed in the autumn of 1998 was the possibility of the process becoming divisive, and recent discussions indicated that had indeed happened. Members needed each other and had to work together. He hoped that with more time for reflection, they would be able to proceed in a way that would allow all to stress their commonality of purpose.

The representative of India said that his delegation shared most of the points made by Malaysia and Zimbabwe. Regarding the Chairman's report on 30 April, his delegation supported the statements by Mexico and Hong Kong, China. Honest remarks based on honest perceptions should not be criticized. India regretted the sentence in that report on the extent of tolerance to the effect that the difficulties expressed against Mr. Moore were more reactive to what was perceived to be the main source of his support and the fact that he came from a developed country. This sentence was not fair to Mr. Moore nor to those who might have supported Mr. Supachai. He reiterated that were all things equal between the two candidates, his delegation would prefer the one from a developing country. Regarding the calls for a vote, he wished to note that the provision for voting in Article IX had been accepted by consensus by the entire membership. The US had said that if there were a vote it would be a vote on the Chairman's proposal. He wondered whether any delegation had accepted every proposal put to it. The normal procedure was for there to be an informal meeting or consultations, before a delegation or a chairman made a proposal at a formal meeting, so that it could be informally agreed in advance. It had been said that voting would affect the confidentiality and impartiality of the process, but this would not be the case with a secret ballot. Members had to find a meaningful solution to this complicated situation.

The representative of Egypt said that his delegation's position had not changed. There was no Middle East region in the WTO and the Chairman's reference to this in his report of 30 April was not clear. Regarding the criterion of extent of tolerance, Egypt had had a reservation on that from the time it was proposed. He wondered how this criterion could be quantified, and noted that the Chairman himself had said it was fairly subjective. It was clear that there was no consensus. During the Uruguay Round negotiations the decision-making process had been subject to controversy because some had insisted that the rule should be consensus and nothing but. The compromise formula that had been agreed by consensus was the provision as reflected in Article IX of the WTO Agreement. The alternative – that the powerful put pressure on the weaker to join a consensus – was unacceptable. It was mandatory, as provided under Article IX, that where consensus was not possible within a timeframe there had to be resort to voting. Voting was the democratic process. Egypt had stated on

several occasions that it was the turn of a developing country candidate to become Director-General. Egypt would support whoever won a vote.

The Chairman said that Egypt had been included in the region of Africa and not in the Middle East. He apologised for the confusion over the reference to this region and said that it had not affected the analysis or conclusion in this respect.

The representative of Kenya supported the statement by Zimbabwe. Both Mr. Supachai and Mr. Moore were good candidates and Kenya could join consensus on either of them. However, its preferred candidate had always been Mr. Supachai. His delegation had consistently stated that there should be no vote and no veto, but the current situation was very difficult. There was no consensus and one had to apply the rules. His delegation felt that Mr. Supachai, who had been the leading candidate, now had the basis on which a consensus could be built on his name. There was no consensus on Mr. Moore, and since many Members opposed voting, one way to resolve this issue was to try to build a consensus on Mr. Supachai.

The representative of Turkey said that his delegation was ready to accept whatever proposal the Chairman would make. During the period of confidential consultations, all objections had been conveyed to the Chairman, and he had had to make a choice, taking into account all the information received. Turkey regretted that in previous discussions of this matter inappropriate language had been used by some delegations, and he urged Members to maintain an atmosphere of friendship and understanding. Regarding Canada's statement on voting, it was only because decisions were taken in the WTO by consensus that governments were able to accept those decisions.

The representative of Malaysia, on behalf of the ASEAN Members and speaking on a point of order, said that his delegation regretted Turkey's statement because it was not in the spirit of unity and cooperation.

The representative of Mexico, speaking on a point of order, said that a member of the WTO Secretariat was providing briefings to the media on this issue in "real time". However, as provided for in Rule 38 of the Rules of Procedure, after a private meeting had been held, only the Chairman could issue a communiqué to the media. Accordingly, he requested that the Secretariat refrain from making declarations to the press which had not been previously authorized by the Members.

The Chairman said that he had requested Mr. Rossier to follow this up with the Secretariat to see that things were done the right way.

The representative of Japan, speaking on a point of order, said that several delegations had referred to a veto, and he asked what veto meant. When one Member objected and the decision was not taken, that was said to be a veto, but when two, five, ten or twenty Members opposed a proposal, that was also said to be a veto.

The representative of Turkey said it was true that consensus could be used as a veto. That was why his delegation had agreed from the outset to accept whatever recommendation the Chairman might make. Japan's proposal was highly unacceptable, because if one opened the way for such a practice in the future, there would be no consensus on any issue and any delegation could paralyse the General Council.

The representative of Pakistan said that it was only through an honest discussion of positions and differences that a genuine consensus could be achieved. This had been a long and complex process. His delegation had expressed doubts at certain times on some of the principles that had been expounded and on some of the criteria used, but had not pressed these points out of respect for the views of other delegations and out of confidence that the process would be satisfactory. It might also

have raised certain points in the Chairman's report of 30 April and some difficulties with the conclusion reached. These points had been made at the present meeting by Malaysia, Mexico, India and Hong Kong, China. He recalled that the Chairman himself had always held that he was merely facilitating the process and that in the final analysis the decision on the appointment of the next Director-General had to be taken by the Members. For these reasons his delegation had chosen not to voice its critical analysis of the report and would refrain from doing so at the present meeting. There were four courses of action open to Members: to reach a decision on the Chairman's proposal, on which so many delegations had declared there was no consensus; to explore the possibility of a consensus on the candidature of Mr. Supachai, as proposed by Japan and as Pakistan had proposed at the General Council meeting on 24 March; to apply the rules as contained in Article IX:1 and to have a vote, for which the rules did not provide for absentee balloting; and lastly, to explore other alternatives to reach a consensus. There had been calls for unity, and his delegation continued to look to the Chairman as the bridge necessary to build that unity and to develop a consensual approach that would enjoy the genuine consensus of the General Council.

The representative of Bolivia said that her delegation had always supported the process agreed to, and insisted that the process be continued to the final outcome. The rules should not be changed mid-stream. Bolivia had not been surprised by the Chairman's proposal because it had always had an open mind. Members who had so often spoken of the leading candidate were now saying that the differences between the two candidates were marginal. Her delegation suggested that Members with objections explain what those objections were, so that work could be done to dispel them. This had never been a north-south struggle. Annex I to the rules of procedure for meetings of the General Council (WT/L/161), regarding voting by postal ballot or fax, provided that all Members would receive the announcement by post. Her delegation hoped that there would be no vote, but should there be one it would be on the Chairman's proposal.

The representative of Morocco said that rather than trying to score points, Members should be trying to find the unity necessary to select a Director General. Morocco appealed to all to take a step back and to return to the spirit of GATT, where attempts were made to find a consensus at least on the working method, and where there was a shared camaraderie. One could say that the race was too close to call, and the Chairman's recommendation could have been one candidate or the other. For Morocco, the two candidates were so close that it did not see any difference between them based on the three criteria. It seemed that the candidates were so close that it would be difficult to convince either of them or those supporting them to agree to one or the other. In the light of this, his delegation had not thought that the Chairman would make any recommendation. Morocco was questioning the process, not the candidates. The process had to be revised. Regarding procedures and voting, there had been cases where one delegation had objected to something and that thing had not been accepted by the General Council. Was this a veto or a consensus? To continue the discussion of this matter was not useful. Several delegations in both camps had referred to General Council decisions which his delegation did not think were decisions taken by the General Council. He suggested that in future, whenever the General Council took a decision, there be either a 24-hour rule or it be clearly stated that the General Council was taking a formal decision which committed Members, because sometimes this was not clear. His delegation did not think that the General Council had ever taken a decision that there was no veto, because a veto had been used in this process. Further, some weeks earlier his delegation had not agreed with the process and the process had not proceeded. Members had never agreed that they could not object. "No veto, no vote" was a slogan. While voting existed in the rules of procedure, it was not a feasible solution, for the reasons Canada had outlined. Either candidate could have a consensus built around him. The only way to build consensus was to allow more time, and it might be necessary to find an interim solution for the period in which the WTO had no head. Members should focus on these practical matters.

The representative of Israel supported Canada's statement. Members should not consider procedures that might create more difficulties in future, and in the spirit of compromise, reconciliation and unity should work toward consensus

The representative of Honduras said that his delegation regretted that it had not been possible to build a consensus around the candidate proposed, but believed there might be other alternatives. A solution should be found in conformity with the established rules which all had accepted.

The representative of Nicaragua associated his delegation with the statements by Colombia, Nigeria, the United States, Uruguay and Bolivia. Members had given the Chairman a mandate with well-defined rules that were approved by all. After an exhaustive analysis, the Chairman had proposed Mr. Moore as the consensus candidate. A vote did not fit into this process, as Members had agreed to a selection process by consensus; also, this would create serious problems for future decisions taken in the WTO. He appealed to all to leave behind confrontation and to join a consensus on the Chairman's proposal.

The representative of Costa Rica said that consensus was a rule that had had more acceptance in practice than any other principle in the GATT/WTO. Taking decisions by consensus might require more discussion, additional effort, greater tolerance and greater flexibility, but consensus was the principle that ensured that the interests of all delegations, however small, would be taken into consideration. What Members did in this process would have consequences far beyond the selection of the next Director General. His delegation trusted that the Chairman would be able to help Members build a consensus on the basis of the proposal of 30 April. The delegations who had voiced objections had not explained those objections, but none of the points raised seemed sufficiently important to stop a decision being taken. His delegation urged all to go along with the constructive spirit of the great majority of Members who could accept the Chairman's proposal.

The representative of Cuba said that his Government's position had not changed. His delegation supported the statement by the ASEAN Members and agreed with Mexico's reasoning that there was no real leader in the process. It also agreed with statements by other delegations, such as Egypt, India, Pakistan and Zimbabwe. His Government's position from the outset had been a third world approach. For reasons of equity, with two equally qualified candidates, it was now the turn of an individual from a developing country to lead this organization. Preference should have been given to a candidate from a developing country. Cuba had doubts regarding the criteria of preferences, since over a six-month period Mr. Supachai had been at the head of the process and at the last minute his lead seemed to have changed. Cuba was concerned that there had been strong political pressure by powerful Members to change the course of events. There was no doubt that the rules should be applied, in particular the provision for voting in Article IX. His delegation agreed with Pakistan's identification of a number of options.

The representative of Bulgaria supported Canada's statement and proposal that efforts should be made to find a better way to select the Director General. It seemed that the substantive objections to the process itself were directed mainly against the second and third criteria. A vote would in essence be a decision based solely on the first criterion – a process of counting numbers. One possible way out of the present situation would be to try to incorporate a process of counting of these numbers into the consensual process, i.e. to agree in advance that there would be consensus around the candidate who had the greater number of Members supporting him. This would not be substantively different from a vote, but would offer the possibility of working towards unity and overcoming the present impasse. This had already been done in substance in the Chairman's report, and he asked if those numbers being questioned.

The representative of Malaysia, on behalf of the ASEAN Members, said that a vote would be for deciding the matter at issue, which was the appointment of the Director General. The Chairman's proposal had been intended merely to facilitate the process and was not the matter at issue.

The representative of Venezuela said that his delegation opposed a vote because it did not see this as a final resort, and because it did not want to contribute to taking the first steps to convert this organization from a forum for negotiations into a forum of voting. Venezuela did not want to see a situation where trade rules were based on a mechanism which through permanent voting guaranteed that the vision of the majority prevailed. His delegation had always stated that it saw the process of consensus as a phase superior to democracy. Consensus required a spirit of understanding, compromise, solidarity, and particularly respect and understanding for the efforts and endeavours undertaken. His delegation had tried to contribute to ensuring that this organization of developed and developing countries acted as a whole. Four months had been spent looking for a consensus, and the call for a vote was not legitimate given the process all had agreed to. There was a need for further room for negotiation. It was the responsibility of the Chairman and the facilitator to consult with Mr. Supachai. While the latter did not have the support he expected to have from a given group, he had the right to give Members a message as to the type of avenue being opened for this organization. Delegations with an objection to the candidate proposed should voice those objections so that one could continue forward in a constructive manner.

The representative of Jamaica said that his delegation was ready to join in the consensus on the Chairman's proposal, and would have been ready to join a consensus on 24 March had Pakistan's proposal been taken on board and gathered a consensus. It was now ready to follow whatever direction the Chairman proposed. The Chairman was duty-bound to provide leadership. He recalled that in March 1995 the General Council had agreed on the need to devise more effective procedures for future appointment of the Director General, and that in July 1998 his delegation had indicated it was not in favour of an ad hoc process that would likely lead to difficulty. His delegation was firmly wedded to the principle of voting, but there was a time and a place for voting. Had voting been decided from the outset as the procedure for selecting the next Director-General, Jamaica would have supported it. However, one could not start a process and then change it when it appeared convenient to do so. He appealed to those delegations supporting a vote that this would be an inappropriate time to use this modality, particularly since the implications of that modality had not been explored. Members had to reflect carefully on the implications of a vote. Were the General Council to take a vote at the present meeting, it would have to be on the matter at issue, which was the Chairman's proposal. Pakistan had outlined four options, and it was up to the Chairman to provide guidance. He hoped that the sensible thing would be done to keep the institution running.

The representative of Japan said that regarding the statement by Venezuela, Japan did not think it appropriate for the Chairman or the facilitator to be directly in touch with the candidates and to discuss the business under discussion in the General Council.

The Chairman said that he and Mr. Rossier would not engage in this kind of discussion.

The representative of Argentina said that his delegation had come to the present meeting with the same spirit of cooperation and sense of flexibility it had maintained throughout the consultation process. It had been prepared the previous day to support the Chairman's report and recommendation whatever they were. The fact that other delegations did not share this spirit and had made objections put the organization at risk. There was consistency and logic in the arguments of those suggesting a vote, but voting was not a solution to the present situation. One could not continue to work with rules that were not clear, and the method for appointing the Director-General had to be more efficient. The Chairman should be free to proceed as he best saw fit.

The Chairman said that the current situation resulted from a very complex system of electing the head of this organization. At the time he had been elected Chairman of the General Council he had preferred not to get involved in this process, as he knew it would be difficult, but had been informed he had no choice. No one could have expected him to produce a result acclaimed by all sides, but he had done what was humanly possible. It was the right of delegations to differ and not to accept all that he had said. He had put a proposal on the table and it was for Members to decide on it. Although he came from a developing country, when he assumed the role of Chairman he became the representative of all Members. Regarding the question of levels of support, the last time he had made a reference to this was on 24 March when he had said that the level of support of the two candidates was close. Since then he and Mr. Rossier had refrained from making any reference to this element. Many delegations had demanded that levels of support be divulged and this had been done in his report of 30 April, by which time the situation had changed. It was clear there was no consensus, but efforts for consensus had not been exhausted. For this reason he would propose at the end of the present meeting that the clock remain stopped. Regarding references by delegations to his report, that report had been based on the criteria Members had set as guidelines to be used in detecting the possibility of consensus on one or the other candidate. He recognised that not every delegation had been on board for each of the criteria, but he had understood there was a general acceptance of the three criteria. It had been on the basis of those criteria that one candidate had been removed from the race. The second criterion – extent of acceptance – had been cast as subjective by some delegations. In his view this criterion was objective in the sense that it afforded the opportunity of hearing Members' views on the different candidates, which was clearly a subjective assessment. Without certain criteria there was no basis for making a judgement. He had felt obliged to put one name forward. The evaluation of the report was the Members' responsibility. Some delegations had asked why he had not proposed a consensus on Mr. Supachai at a time when it was clear he was the leading candidate. This had not been done because there was no basis at that time for consensus on Mr. Supachai. Had there not been the deadline of 30 April, he would have sought more time to see whether Mr. Moore was acceptable to delegations. The idea had been to cut short the unending cycle of consultations that had been going on for the past two months. Regarding the options for how to proceed, he still believed that it was possible to reach consensus on his proposal, and he urged Members to reflect on that proposal. Some delegations might need more time to consult their capitals or to interact among themselves. Members needed to consult over the weekend, and by Monday he would come up with a clear programme of how to proceed, on the basis of first exhausting the possibility of consensus. He proposed that the meeting adjourn until 3 May.

The General Council so agreed.

At the resumed meeting on 4 May, the Chairman made a statement³ in which he proposed that the General Council return to "real time" - as there was no further need to keep the clock stopped. He referred to the statement circulated by a group of delegations calling themselves "Friends of the Chair" and said he had not and could not have been a party to this group, nor had he been consulted when the statement had been made. The first time he had seen the statement had been when a delegation had brought it to his and Mr. Rossier's attention. He said that at the General Council meetings on 30 April and 1 May, delegations had had a full and frank discussion of the issue of the appointment of the next Director General. It had been his sense in the course of those meetings that a large majority of Members could join a consensus on his proposal, and others had since indicated their support. He had detected strong evidence of flexibility combined with a clear wish to see the process end as early as possible. On the option of voting, he recalled that in the discussions so far, an overwhelming majority of Members had expressed their opposition to that route, among them some of the strongest supporters of Mr. Supachai. The other option that had been put forward was to try to build consensus on Mr. Supachai, and there was now a formal written proposal to that effect from Kenya. He recalled that Members had committed themselves to certain rules on how to manage this

³ The statement was subsequently circulated to delegations in Job No. 2635.

process, according to which he as Chairman was to hold consultations leading to the appointment of the next Director-General, on the basis of established criteria, aimed at building consensus on the most acceptable candidate out of the four. He and the facilitator had made it clear that this process was reductionist, and that their mandate was to move from four candidates to one. The first candidate to be set aside had been Mr. McLaren of Canada, and Morocco had subsequently withdrawn its candidate, Mr. Abouyoub. Thus, even if the candidacy of Mr. McLaren was theoretically still on the table, he was no longer included in this process. The process, the criteria and the objectives had been the same when there were two candidates as they had been when there had been four – a process of reduction, based on the same three criteria and with the final objective of arriving at one name that could be brought to the General Council. In proposing Mr. Moore on 30 April as the one name to be considered by the General Council, he and the facilitator had eliminated Mr. Supachai from the race. Therefore, this process was over for Mr. Supachai, and returning his name to the race was changing the rules at the end of the process. The status of Mr. Supachai was now the same as that of Mr. McLaren or Mr. Abouyoub. The one candidate that now had to be considered by the General Council was Mr. Moore, and if consensus around him was not possible, there could perhaps be recourse to voting. He said that he still believed that his proposal was the most viable one.

Many delegations expressed gratitude for the Chairman's introductory statement and for the clarifications given.

The representative of Malaysia, on behalf of the ASEAN Members, said that these countries were grateful that the Chairman had acknowledged that dissent from his proposal did not connote doubts as to the Chairman's or Mr. Rossier's integrity, but rather indicated that the spirit of democracy through genuine consensus-building was still the norm in the WTO. The Chairman had indicated indirectly that his recommendation was not infallible and that it had limitations. The Chairman and Mr. Rossier had discharged their responsibility in good faith and had had to operate under extreme pressure. The ASEAN Members had hoped that the Chairman would propose consensus around the candidate who had been consistently in the lead on all of the agreed criteria. The choice of Director-General rested on all Members – a fact that was acknowledged in the Chairman's report. That choice was now urgent, but had been no less urgent when at previous meetings there had been proposals to build consensus on the candidature of Mr. Supachai. The ASEAN Members had not forcefully supported those proposals at the time, in the belief that restraint and prudence were the keys to genuine consensus-building. Members now had to move on. The discussion at the General Council meetings on 30 April and 1 May had been a frank, open and honest exchange of views. What the Chairman had referred to as a process which was "underground" had evolved into an open, transparent process. In the ASEAN Members' view, the situation was the following: first, there were formal objections to the Chairman's proposal, and therefore no consensus thereon; second, many of those who supported that proposal had stated that had the Chairman proposed Mr. Supachai, they would have endorsed him. Thus, there were no serious obstacles to the candidature of Mr. Supachai; third, those Members who had expressed a strong preference for consensus as opposed to voting did not necessarily support Mr. Moore. Legally, there were two proposals on the table. One was the Chairman's, on which there was no consensus. The other was that consensus be formed on Mr. Supachai. The discussion on 1 May had been encouraging. The call was for unity, and the ASEAN Members looked forward to such unity. However, any attempt to impose a decision on Members could divide them and, as a consequence, gravely impair not only preparations for the Seattle Ministerial Conference but the entire organization. The ASEAN Members asked for reflection and responsibility by all as the means to restore unity.

The representative of Kenya said that his delegation had sent a letter to the Chairman expressing its concern that the functioning of the WTO would be adversely affected by the absence of a Director-General. Any paralysis of the work of the WTO would deal a severe blow to developing countries in general, and least-developed countries in particular. Kenya's trade policy review was scheduled for January 2000, and his delegation considered the smooth functioning of the WTO at this

juncture to be of crucial importance. The review was very important in view of the far-reaching policy reforms Kenya had undertaken. For Kenya, the issue was to benefit from the system, unlike some Members whose concern was to preserve the benefits already accruing from their participation in the system. The latest meetings on the selection of the Director-General had not been fruitful and had failed to show the way forward. It was obvious from the most recent two meetings that pursuit of consensus on the candidature of Mr. Moore would lead nowhere and that other avenues had to be explored. It was for this reason that his delegation was proposing building consensus on Mr. Supachai. This proposal had been motivated solely by the earnest desire that the organization continue to function efficiently, and his delegation requested that it be put to the General Council for consideration.

The representative of Uruguay said that his delegation fully supported the Chairman's statement to the effect that he was not in any way linked to the statement to the press by the "friends of the Chair". The title of that statement had not been well drafted since its purpose had never been to insinuate that the Chairman was in any way related to this initiative, but rather that those who had made the joint statement supported the selection process for a Director-General and, as a logical consequence, supported those who had carried out that process to its final phase. His delegation regretted the inconvenience and the negative consequences this might have had for the Chairman and Mr. Rossier. From the outset, Uruguay had supported the agreed process and the institution. That process had been carried out in a legitimate and correct manner following the guidelines, criteria and procedures established by consensus. The Chairman had stated that the development of this process had a logical consequence of progressive phases that would lead to the recommendation of one candidate. On 30 April the Chairman had explained the reasons he had felt Mr. Moore was the consensus candidate. Members had now entered a new phase of the process in which they were called upon to take a decision on the Chairman's recommendation. The Chairman had complied with his mandate in recommending a candidate and it was now up to the Members to assume their responsibility. Any alternative course of action or new proposal that was not related to the Chairman's proposal was out of context and would have no chance of success. The only issue for consideration by the General Council was the Chairman's proposal. Of those delegations with objections, none had justified or explained the nature of its objection or the reason for its difficulties with the name of Mr. Moore. It therefore seemed that the problem was not the candidate, but the process. This was paradoxical – since all delegations had voiced their confidence in the way the Chairman and the facilitator had conducted the process – and undermined the credibility of those who had called the process into question. The objections were abstract and tactical in nature, and should be set aside by the General Council. There was no reasonable justification for rejecting the Chairman's proposal, which already had the support of the majority of Members. His delegation called on all Members to support that proposal.

The representative of South Africa said that his delegation was deeply troubled that it had not been possible to resolve this matter within the deadlines set. The delays had put unnecessary burdens on all delegations, particularly the smaller ones. These burdens had been even greater on the Governments with candidates and on the candidates themselves. The process Members had been working within had failed them and had to be replaced in future. It had resulted in a compromising of the principles underpinning the community of Members in the WTO. Members had to address the accusations being levelled against the organization regarding the lack of rules, the lack of transparency and the lack of democracy. Whoever was ultimately chosen to lead the organization would not be unaffected by the difficulties this flawed process had generated. The report of the Chairman on 30 April had reiterated that the candidates were of the highest calibre. The organization would be enriched should either take up the post of the new Director-General. The integrity of the organization was of paramount importance. Resolution of the selection process should not be seen to be a test of wills in a war of attrition. The central systemic challenge confronting the WTO was to promote the development and integration of developing countries into the international trading system. Meeting these objectives should be at the centre of the preparatory work for the Seattle

Ministerial Conference and in the new negotiations. These objectives might be better served if the organization were led by a representative from the developing world with direct experience in meeting development challenges. The time had come for the WTO to be led by an individual from a developing country. Such a decision would also send a strong positive signal to the international community. South Africa maintained its support for the candidature of Mr. Supachai.

The representative of Peru said there was a need to restore unity among the Members and confidence in dialogue and conciliation. The process had been difficult because both of the candidates were excellent. Peru highly valued the Chairman's and the facilitator's efforts to preserve institutional cohesion in this complex task before the General Council. His delegation was confident that Members would be able to find a path to consensus under the Chairman's guidance.

The representative of Morocco, speaking on a point of order, said that it was usual practice that on important matters, the Chairman circulated a copy of his statement in English so that delegations could study it and forward it to capitals, and asked that this be done within the next few minutes.

The Chairman said that the Secretariat would endeavour to do this as quickly as possible.

The representative of Ecuador, referring to the Chairman's report of 30 April, said that the criterion of level of support did not seem to be decisive since there were at least 13 other Members who had not taken a position. The other two criteria had led to accusations and interpretations that had generated conflict and division. The three criteria taken as a whole were not sufficiently convincing for many Members and had not allowed for consensus on the Chairman's proposal. The only clear point thus far was that there was no consensus. Some delegations had suggested a vote as provided for in Article IX:1, but others had been against this. Kenya had then submitted a proposal for trying to build consensus on the other candidate. His delegation supported that proposal as an equitable alternative so that Members could exhaust all options in trying to designate the next Director-General by consensus.

The representative of Mexico said that his delegation appreciated the clarifications provided by the Chairman at the outset of the present meeting. The Chairman's report of 30 April raised the problem that the Chairman and the facilitator could not predict the future. One of the criterion – the degree of acceptability or extent of tolerance – indicated there would not be a problem in this area. However, there had been formal objections to the name the Chairman had proposed. His delegation had also been struck by the reference in the Chairman's statement at the present meeting to the Canadian candidate, since there was no indication that Canada had withdrawn its candidate. He recalled that when the General Council had been informed that the Chairman and the facilitator would no longer take into consideration the Canadian candidacy, his delegation had said that it continued to support Mr. MacLaren and at subsequent meetings of the General Council Canada had confirmed that it had not withdrawn its candidate. His delegation wondered why the Chairman had not stated already on 30 April that there was only one candidate and that in his and the facilitator's view the candidacy of Mr. Supachai was no longer viable. Only the Members had the right to object to a candidate. No Member had raised formal objections to the name of Mr. Supachai. Kenya had made a formal proposal that consensus be sought on the name of Mr. Supachai, and many Members had said they were flexible and could go along with consensus on either of the two names. For this reason, he trusted that a new Director-General could be chosen at the present meeting by establishing consensus on the name of Mr. Supachai. His delegation did have objections to the Chairman's statement at the present meeting, and shared Morocco's request that the statement be circulated to Members, as had been done on previous occasions.

The Chairman said that he would circulate his statement.

The representative of Hong Kong, China said that his delegation could not draw the same conclusions as the Chairman had drawn at the present meeting. It was clear there was no consensus around the candidature of Mr. Moore, and formal objections had been raised to the Chairman's proposal. Some delegations had suggested that the issue be resolved by voting in accordance with Article IX:1, while others had objected to this course of action. Voting did not seem to be a practical alternative at present, though not for reasons of lack of procedural clarity. The Chairman's report of 30 April conveyed a picture of balance between the two candidates. While Mr. Moore enjoyed the narrowest of numerical leads, the other two criteria did not reveal any important tendency worthy of consideration. The Chairman himself had indicated that numbers alone were not decisive. Just as there were supporters of Mr. Supachai who could join a consensus around Mr. Moore, there were also supporters of Mr. Moore who could join a consensus around Mr. Supachai. It was therefore time to test whether a consensus could be formed around the latter. This would indicate whether there were any formal objections to Mr. Supachai. Thus, his delegation supported, on grounds of equity, Kenya's proposal, and did not agree with Uruguay that the Chairman had a monopoly on making proposals or directing Members' efforts. Kenya's proposal had been formally submitted under the rules of procedure, and was therefore of equal status with the Chairman's proposal. All had agreed that the final decision was to be made by Members, and it would thus be illogical to prevent Members from making proposals.

The representative of India recalled that in the Chairman's closing remarks on 1 May he had reiterated that what he had done had been simply to make a proposal and that it was for the membership to take a view on that proposal. However, there had been no consensus. His delegation supported Kenya's proposal that consensus be formed around the candidature of Mr. Supachai, as a logical way forward. This approach was similar to that adopted by the Chairman during the current process. It was clear from the Chairman's 27 March report that he and the facilitator had initially tried to build consensus around Mr. Supachai, and having failed in that, had then tried to explore the possibility of consensus around Mr. Moore. Kenya's proposal was in tune with the approach adopted by the Chairman. India was not against any candidate, but did have concerns about the process. In their report of 14 December 1998, the facilitators had specifically stated that all three criteria pointed to a hierarchy that had emerged from the consultations that the highest degree of support had been obtained by Mr. Supachai and that Mr. Moore had received approximately 75 per cent of the support given to Mr. Supachai. Subsequently, in their report of 20 January 1999 the facilitators had again indicated that Mr. Supachai was leading in terms of Members' first preference, and that in terms of geographical distribution, Mr. Supachai's support was spread across all continents. In the Chairman's report on 1 March he had indicated that Mr. Supachai continued to lead in terms of Members' first preference and that he continued to have a wide base of support. Then in the report of 27 March, the Chairman had indicated that there had been no significant change in the hierarchy of support or the distance between the two candidates since his last report, thereby confirming that Mr. Supachai had been in the lead even then. This clearly showed that from the time the facilitators had first given an indication of the support enjoyed by the two candidates - i.e. 14 December 1998 - up to 27 March 1999, Mr. Supachai had been consistently in the lead. In the Chairman's statements of 31 March and 14 April there was no reference to the levels of support, which had led some delegations to believe that up to that point there had been no difference in the hierarchy of support enjoyed by the two candidates. Thus, it was surprising when on 30 April the Chairman had indicated that according to the latest evaluation, out of 121 Members 59 had expressed their preference in favour of Mr. Supachai and 62 in favour of Mr. Moore. He recalled that the Chairman had consistently stated that while figures might be important, they were not decisive. This observation was particularly relevant in the context of the marginal difference in the support enjoyed by the two candidates. While his delegation did not doubt the figures given, it was not unreasonable to suggest that the General Council explore the possibility of building a consensus around Mr. Supachai, especially since he had been in the lead from the beginning of the process, and since the margin of difference on the last day of the process had been just three out of a total membership of 134, with 13 abstentions.

Regarding the criterion of extent of tolerance, the greatest damage to the process had taken place because of the nature of this criterion and the unfortunate manner in which it had been interpreted, understood and handled. The Chairman had recognized in his statement of 30 April that this was a highly subjective criterion. His delegation had argued that this criterion could have dangerous implications for the process, especially if it was used when there were only two candidates and when there were rumours about serious opposition to one of them. His delegation had also argued that since all Members had publicly stated that both candidates were acceptable, there was no need for any exercise based on this criterion. Where there were only two candidates in the field, to take into account the so-called degree of tolerance could have only two possible consequences: supporters of each of the candidates would be forced to register opposition to the other because of the criterion itself, and if all Members did not foresee or anticipate – or understand – the manner in which this criterion would be analysed, some Members would not convey any opposition to a candidate. On the other hand, some Members would register their opposition to the candidate they did not support, thus exerting an undue influence on the final outcome. This was what might have happened in the current process. The criterion relating to degree of tolerance, by its very nature, contained an element of distortion and inequity, and should not have been taken into account in making a recommendation at the end of the process. It had two levels of subjectivity: that involved when the Chairman and/or the facilitator assessed the extent of tolerance enjoyed by each of the two candidates, and that of each Member making a judgement as to whether any other Member might have said anything negative about its preferred candidate. For these reasons, his delegation was reluctant to draw the conclusion the Chairman had drawn on the basis of this criterion. Regarding the criterion of the geographical spread of a candidate's support, the Chairman's statement of 30 April seemed to imply that Mr. Supachai's strength in Asia was irrelevant because it was natural. However, both candidates enjoyed support in different regions of the work, and it was risky to introduce any hierarchy with regard to geographical spread of support when no such hierarchy was clearly evident. His delegation respected the Chairman's recommendation, but felt that it would have been equally possible for him to have made a recommendation in favour of the other candidate. It would only be fair and just for Members to look at the other possible recommendation, i.e. a consensus in favour of Mr. Supachai. This was what Kenya had proposed. His delegation urged all Members, particularly those who had said they could have supported whichever candidate the Chairman recommended, to look at this proposal dispassionately and to support it.

The representative of Haiti reiterated his delegation's support for the Chairman's efforts in this process. From the outset, Haiti had urged that this decision be taken by consensus. It was clear that the Chairman had not been able to establish a consensus on Mr. Moore. Therefore, his delegation supported Kenya's proposal, which sought that consensus be formed around the candidature of Mr. Supachai once the Chairman had exhausted all possibilities of arriving at a consensus on the candidature of Mr. Moore.

The representative of Zimbabwe said that his delegation was grateful to have the clarifications provided by the Chairman at the outset of the present meeting. The concept of "friends of the Chair" was common in multilateral and international organizations, but was relevant only when the Chair was associated with those "friends", who were trying to work towards a consensus and who represented both "sides". The "friends of the Chair" letter released to the press contained disinformation and did not contribute to a consensus. It was dangerous to act on the basis of sectarianism, since Members would have to work together once the new Director-General was chosen. It was not true that those who could not join the consensus were not explaining their objections. Explanations had been made throughout the process. The Chairman himself had stated that he recognized that not all Members were on board regarding each of the criteria, but that the general understanding was that there was general acceptance. Thus, it was not true that the criteria had been accepted by consensus. Further, for three months certain delegations had indicated openly that they had problems accepting the candidature of Mr. Supachai, but no one had asked them to explain those problems. He wondered why there was now a call for explanations. His delegation had consistently

said that in the event of failure to reach a consensus, there would have to be a vote. There was no consensus on the Chairman's proposal. It was unfortunate that the Chairman had said in his statement on 4 May that Mr. Supachai was no longer in the race. In his delegation's view, the Chairman had made a mistake in suggesting that anyone but the General Council could remove the name of Mr. Supachai from the process. As India had said, all reports from the Chairman and the facilitators up to 13 April had indicated that Mr. Supachai was in the lead, and only the report of 30 April had indicated otherwise. Members could have asked for a consensus on Mr. Supachai's candidature as early as March, but the Chairman had decided that more time was needed for consultations. It was not unreasonable to ask at the present juncture that consensus be sought on the name of Mr. Supachai.

The representative of Zambia said that as this process had proceeded, some delegations, including his own, had been hesitant to participate in it because of its divisiveness. It was true that the Chairman had not created the process, which had been incremental and dynamic, and that Members had concurred with all the steps taken. The Chairman's recommendation had thus been the result of this process. The proposal to build a consensus around Mr. Supachai conflicted with the Chairman's proposal, because there had already been an attempt to form a consensus around Mr. Supachai that had not proved possible. The Chairman had described the criteria on which the choice of Mr. Moore as the consensus candidate had been predicated. Reversing the process – and trying to build consensus on Mr. Supachai – would produce the same result. The process had been clear and transparent. Recourse to a vote would not lead anywhere, because many Members did not support voting. Until one of the candidates withdrew, the process would go nowhere.

The representative of Uganda said that his delegation could have accepted the Chairman's recommendation had it had consensus. However, a formal objection had been made. His authorities had reached the conclusion that there was no consensus on Mr. Moore, and therefore supported Kenya's proposal. Disagreement with the Chairman's proposal should not be construed as disrespect.

The representative of Colombia reiterated her delegation's support for the Chairman and the facilitator and respect for the process in which they were engaged. It was a difficult process by nature, since all would not be fully satisfied with its outcome. That process had been agreed by consensus. According to the criteria and deadlines set, the Chairman had carried out consultations in which all Members had had the chance to express their preferences and to comment on the process. The procedure agreed to should be followed, which was that at the end of these consultations the Chairman would make a recommendation. There was at present only a single element to consider – the Chairman's proposal – and neither the Chairman nor any Member had the power to make new proposals. It was now up to Members to take a position on that proposal and to justify those positions. It seemed that the objections that had been made were to the process and not to the Chairman's proposal. While the process might be improved, this was not the issue before the General Council. If Members considered that the process was invalid they would have to start again with a new process and new candidates. Colombia asked those delegations with objections to explain them.

The representative of Japan said that his delegation regretted the press release by the so-called "friends of the Chair", which had been an attempt to form consensus at the earliest possible date and which had aggravated the atmosphere. Using the pressure of the press to force a compromise was counterproductive. The debate should take place in the General Council room and not in the media. Japan sympathized with the difficulties faced by the Chairman in forming consensus on one of the candidates, but was shocked by the Chairman's statement that Mr. Supachai was no longer in the race. He wondered when the Chairman had been given the mandate to eliminate a candidate, and said that his delegation had never been associated with a decision to that effect. Japan supported Kenya's proposal to now explore the possibility of consensus on Mr. Supachai, and had already made a similar suggestion at the 1 May meeting of the General Council. Many delegations who supported Mr. Moore had said they could go along with either candidate, and there had been no objection to Mr. Supachai.

The representative of Brazil said the only thing that was clear was that there was no consensus. There were no new facts indicating that a consensus would be reached at the present meeting. Consensus had been the preferred method in the WTO precisely because it had been felt that a vote would be divisive, but the exchange of accusations in the present and recent discussions was far worse than a vote. The Chairman had been right to make a try at consensus, but he had not succeeded, and Kenya's proposal could not be discounted. When the difference between the candidates was only three preferences, and when 13 Members had not expressed a preference, it was difficult to say there was moral pressure for one or the other candidate to withdraw. Members needed to pause and reflect on the organization and on what was best for it. A consensus that was imposed might be more divisive than a vote.

The representative of Korea supported Kenya's proposal to build a consensus around Mr. Supachai, because the organization was faced with a leadership crisis the consequences of which could be dire. Members had failed to reach a consensus on the Chairman's recommendation, and the next logical step was to try to build a consensus around Mr. Supachai.

The representative of Sri Lanka said that the long deliberations on this matter had clearly showed that there was no consensus. The situation remained bleak. The blame lay squarely with Members for not having in place an efficient selection process for the appointment of a Director-General. However, that process was of the Members' own making, and the problems had been compounded by allowing deadlines to be repeatedly ignored. The criteria used in arriving at the Chairman's recommendation had been to the detriment of the candidature of Mr. Supachai, who had been the leading candidate from the outset. Members had to make every effort to ensure that the Director-General selected was acceptable to all and not on the basis of a wafer-thin majority of a mere three preferences. His delegation recognized that both the Chairman and the facilitator had discharged their duties with a high degree of integrity and under very difficult circumstances. However, accepting or discarding the Chairman's proposal lay with the Members and there was no consensus. Therefore, his delegation saw no purpose in pursuing that proposal. While no delegation wanted to deviate from decision-making by consensus, it was clear that this process could not go on endlessly. However, there was still a large group of Members who continued to think that the consensus-building process had not been exhausted. If that were the case, Members had to try to build consensus around Mr. Supachai, and his delegation welcomed Kenya's proposal.

The representative of Chile said his delegation had always supported the process that all had agreed to, and recalled that the General Council had applauded the Chairman's statement that a reduction in the number of candidates was one of the conditions for reaching a consensus decision. His delegation had been prepared to support whichever candidate the Chairman would recommend, and at the meeting on 30 April had supported the Chairman's proposal. There was a difference between a proposal that was the fruit of an agreed process and one that had not followed that process. The objections to the Chairman's proposal should be analyzed and discussed, in order to conclude this matter on the basis of consensus. His delegation reiterated its support for the process agreed to, for the Chairman, and for the latter's report at the present meeting.

The representative of Malaysia, on behalf of the ASEAN Members, said that these Members could not over-emphasize their firm disagreement with the Chairman's statement that Mr. Supachai was out of the race. He was very much in the race. The only fact was that there was no consensus on Mr. Moore. Kenya had tabled a proposal to the General Council to build consensus on Mr. Supachai, and it deserved, at the very least, respectful consideration by the General Council. The proposal had been made in accordance with Rule 28 of the General Council's rules of procedure and therefore had to be discussed and decided by the General Council. There was no ambiguity in the rules in this regard. The ASEAN Members therefore asked the Chairman to lead the General Council in addressing Kenya's proposal. In the event that, despite Kenya's initiative, a consensus continued to

elude Members, the General Council would then need to consider how to proceed given that a decision could not be arrived at by consensus.

The representative of the United States said that her delegation joined with those who had spoken to uphold the process all had agreed to regarding the appointment of the next Director-General. The process agreed to in July 1998 did not provide that supporters of one or the other candidate should propose that candidate's name to the General Council at the end of the process. Members had not agreed to have the Chairman conduct consultations for nearly six months, only to have – at the end of the process – a different procedure put in place. Her delegation would not agree to consider a proposal from the floor put forward by supporters of one of the candidates and in direct opposition to the Chairman's proposal. Consensus took time to develop, and her delegation would help to build that consensus.

The representative of Pakistan said that Members were facing a serious and unprecedented crisis that could be damaging for the entire organization. This matter had to be kept in perspective, and Members should approach it in a spirit of mutual respect. That was the only way to reach a decision acceptable to all and that would not impair the working of the WTO. The decision had to be fair and be seen to be fair. Members should be guided by the rules of procedure and by common courtesy. While the Chairman's report and proposal on 30 April did not coincide with Pakistan's position, his delegation respected the Chairman's right to put the proposal forward and to allow the General Council to pronounce itself on it. The General Council had done so at three meetings. There was now a proposal from a Member, and as a matter of courtesy and in conformity with the rules, that proposal had to be considered. Should no consensus be possible on that proposal, Members would have to consider how to proceed. In Pakistan's view, the options and alternatives had not been exhausted, despite the current divisive situation. As Brazil had said, voting was bad but a forced consensus would be worse. Efforts had to be made to reach a genuine consensus, and his delegation was prepared to help achieve that goal.

The representative of Egypt said that his delegation affirmed its full respect for the Chairman and welcomed the latter's clarifications at the outset of the present meeting. It was clear there could be no consensus on the Chairman's proposal, and that the decision would be the Members'. The proposal by Kenya deserved consideration, and it would only be fair to try to form consensus on that proposal. Were that not possible, all efforts to reach consensus would have been exhausted and there would have to be recourse to a vote, as was clearly stipulated in Article IX:1. Egypt disagreed with the analysis in the Chairman's statement at the present meeting that Article IX did not clearly state that it applied to the election of the Director-General, since that Article applied to all decisions of the WTO.

The representative of Romania thanked the Chairman for his clarifications at the outset of the present meeting. His delegation had come to the present meeting, as to earlier meetings, to ensure respect for the organization. Members had entrusted the Chairman to act on their behalf to identify a consensus candidate for appointment as the next Director-General. The Members had collectively decided on the procedures to be followed in this process, and had defined the Chairman's role and mandate. The Chairman had fully carried out his task and had not gone beyond his mandate. Romania supported his report and his recommendation. Members had to show they had respect for the rights and obligations they had elaborated and agreed. Thus, his delegation had strong reservations about any last-minute changes to the appointment procedure. Such changes would put the two candidates who were no longer part of the process in a highly inequitable situation. Consensus-building required time, and perhaps more time was needed.

The representative of Venezuela said that when an election process ended, there was always a reaction from those who felt there had been a lack of transparency or that a mistake had been made. There were always difficulties and disappointments when a choice was made. In order to overcome

these difficulties and come to a consensus solution, Members had to learn from the present process. Difficulties and resentment had arisen. It was important to overcome emotions and to keep in mind the need to ensure the continued functioning of this organization in order to enable Members to prepare for the challenges of the negotiations yet to come. Members' strength lay in ensuring the future of a multilateral trading system in which the developing countries were able to fully participate. The Chairman should continue in his efforts to establish consensus on his proposal. It would be alarming if the current scenario was a reflection of what awaited Members in future negotiations, i.e. if months were spent on drawing up new rules for trade which were thrown overboard at the last minute.

The representative of Cuba fully supported the statements by South Africa and India. He recalled that when Mr. Ruggiero had been elected Director-General, there had been an understanding to the effect that the next Director-General should come from a developing country. The leading candidate up until 30 April had been Mr. Supachai, and Mr. Moore had taken the lead only at the last minute and been named as the consensus candidate. His delegation was dubious of this result, as political pressure had been put on some delegations to change their position. On 1 May, the Chairman had recognized that there was no consensus on Mr. Moore. Cuba agreed with Hong Kong, China that there was a balance – and no major difference – between the two candidates. The Chairman did not have the exclusive right to make proposals. For these reasons, Cuba supported Kenya's proposal and requested that the General Council consider it.

The representative of Bolivia said that Members had agreed to a process that had involved, little by little, a reduction in the number of candidates. Each reduction had caused a wound that had had to heal. The Chairman and Mr. Rossier were the only individuals who had all the information, and the Chairman's proposal – based on six months of arduous work – had been made on the basis of that information. Members had agreed to evaluate the Chairman's proposal at the end of that process. Within the framework of the process agreed to, no new proposals could be considered. Members should work towards seeking acceptance of the Chairman's proposal, and anything else would be a distraction and prejudicial to the process. Bolivia, like Chile, would have accepted any proposal by the Chairman, because such a proposal would have been based on an objective evaluation of the situation. Members should devote their time to clarifying the objections and to seeing how to overcome them in order to reach consensus on the Chairman's proposal. Her delegation supported each of the points in the Chairman's report of 30 April and in his proposal.

The representative of Australia said that his delegation supported suggestions that this decision be taken by consensus and did not support suggestions for a vote under Article IX. Australia had not opposed the Chairman's proposal and would have joined – and still would join – a consensus willingly. However, there was no consensus on that proposal. His delegation supported Kenya's proposal, because Members should be given the opportunity to work towards consensus on that basis. Should neither proposal enjoy consensus, Members should pause to reflect.

The representative of Malta recalled that from the outset of the consultations on this matter, his Government had said it could accept the appointment of any of the candidates to the post of Director-General. Like other delegations, Malta had left the recommendation in the hands of the Chairman, and it would not be fair to object to that recommendation considering that it was based on procedures agreed upon earlier. Malta supported the Chairman's proposal, and would have done so even had it been different.

The representative of Ghana quoted from the Chairman's progress report of 27 March 1999⁴, in which the Chairman had indicated that he had tried to forge a consensus on the leading candidate, Mr. Supachai, and when this had not been possible he had tried to do so on Mr. Moore, which had

⁴ Document Job No. 1814.

also been impossible. Kenya's proposal was merely asking the Chairman to bring into the open the process of trying to find consensus on Mr. Supachai. This was consistent with transparency.

The representative of Lesotho said that his delegation wished to put on record its support for the process agreed, including the results of the consultations undertaken as part of this process. As a developing country, Lesotho needed the support and assistance of a properly functioning WTO. His delegation supported the Chairman's proposal.

The representative of Nicaragua supported the statements by Uruguay, Colombia, Chile, the United States, Venezuela, Bolivia and Peru, and reiterated his delegation's support and confidence in the Chairman and the facilitator and in the way they were conducting the process agreed to. The rules of this process deserved the full respect and consideration of all Members in order to ensure the credibility of the organization. His delegation appealed for reflection and urged all to join in a consensus on the basis of the only proposal that existed, which was the Chairman's. There was only one process and only one proposal.

The representative of the Dominican Republic reiterated his delegation's willingness to join in a consensus if one could be achieved; however, there had been no consensus. Kenya had made a proposal in conformity with Rule 28 of the rules of procedure. In light of India's lucid clarifications on the scope of the objections to the Chairman's proposal, Members had no recourse but to follow the rules of procedure and to consider Kenya's proposal. His delegation hoped it would be possible to reach a consensus on that proposal, and would join in it.

The representative of Bulgaria said that his delegation did not agree with the view of some delegations that the process that had been going on for some six months had not been agreed to by all Members. Kenya's proposal conflicted with the Chairman's proposal and therefore could not be considered as part of the agreed process. His delegation had been prepared to join a consensus on whatever proposal the Chairman might make. The possibilities of reaching consensus on the Chairman's proposal had not been exhausted. There could be only one consensus candidate resulting from this process. Proposals that did not come out of this process could not have equal standing with the Chairman's proposal. While there could be other formal and legitimate proposals, they would be outside of the agreed process. His delegation fully supported the statement by the Chairman at the present meeting and the proposal it contained.

The representative of Hong Kong, China said that his delegation did not think there was a need to have agreement to consider Kenya's proposal, which had equal status with the Chairman's proposal. Proposals from Members were considered routinely in WTO meetings, and the rules of procedure clearly envisaged the possibility of more than one proposal on a given agenda item. Some delegations had objected to Kenya's proposal on the basis that it was not the fruit of the process to which Members had committed themselves. However, his delegation had never agreed to abide automatically to any proposal resulting from this process, since to have done so would have been to abrogate its rights. Furthermore, there had been no consensus on the Chairman's proposal, and his delegation had never bound itself to exclude all other options and avenues for reaching consensus on the basis of the Chairman's reports. Kenya's proposal clearly emanated from those reports. The final decision on this matter would have to be made by the Members, and it would thus be illogical to deny Members the right to make proposals.

The representative of Costa Rica said that no delegation seemed to have specifically objected to the candidature of Mr. Moore. This was a positive element that should not be lost sight of. This issue had taken up tremendous resources, and WTO rules had been twisted to fit the arguments made. A specific procedure and mandate for the Chairman and the facilitator had been agreed to, and progress had been made. The specific rules for this process could not be forgotten. This was why Costa Rica could not agree that Kenya's proposal was a faithful application of the agreed procedures.

Procedurally, Kenya's proposal was untimely. It was also paradoxical, because if the Chairman had, on 30 April, proposed Mr. Supachai as the consensus candidate, Costa Rica would have supported that proposal. The only valid proposal before the General Council was that of the Chairman.

The representative of Cameroon said that the final figures reached by the Chairman – 62 for Mr. Moore and 59 for Mr. Supachai – should have represented an average of figures for the three criteria used for the selection of the consensus candidate. This had been a minor error in approach. There had been no consensus on the Chairman's proposal, and this fact had to be faced. Therefore, Members could use the other option for taking decisions contained in Article IX:1, which was a vote, or could follow Kenya's proposal, which had been supported by several delegations including Cameroon.

The representative of Turkey proposed that Members pause and reflect, since there was no consensus on anything at present.

The representative of Mexico, speaking on a point of order, said that a formal proposal had been made by Kenya and that no decision had been taken on it. The General Council had to find out whether there was consensus on this proposal.

The representative of Turkey, speaking on a point of order, said that it was not his intention to prevent discussion of any proposal, but that such discussion should be deferred to a future meeting.

The representative of Japan supported Turkey's proposal on the understanding that there was no consensus on the Chairman's proposal and that when the meeting resumed it would take up Kenya's proposal.

The representative of Malaysia, on behalf of the ASEAN Members, supported Mexico's proposal and reiterated that these countries had consistently maintained that the Chairman's proposal was no longer valid as there was no consensus on it.

The representative of Turkey, speaking on a point of order, said that the Chairman's proposal was still valid.

The Chairman said that there was a need for time to reflect. While there was not yet consensus on his proposal, it was still on the table. There was another proposal, and Members needed to reflect on how to deal with it. He proposed that the meeting adjourn and that Members reflect and consult.

The representative of Brazil clarified that his delegation had suggested that there be a pause after discussing Kenya's proposal.

The representative of Kenya said that his country's proposal had been made with the aim of moving the process forward and merited consideration by the General Council. In his delegation's consultations with the Chairman and the facilitator, it had always said that both candidates were acceptable, even though its preferred candidate was Mr. Supachai. Thus, it would have been willing to join a consensus, should there have been one, on Mr. Moore. It was in this spirit that Kenya was making its proposal.

The representative of Australia wondered whether the Chairman would be able to make a ruling on Kenya's proposal at the opening of the next meeting of the General Council.

The representative of Japan said that Rule 28 of the General Council's rules of procedure provided that when a proposal was introduced in writing not later than 12 hours before the start of the meeting, it was automatically on the table.

The representative of Bolivia said that Members were working in a framework of an agreed process with established rules adopted by consensus in July 1998. The General Council was therefore considering the Chairman's proposal.

The Chairman said that Kenya's proposal was on the table, but that delegations needed to consult on how to proceed. He had already explained why, according to the rules, Mr. Supachai could no longer be a candidate, and there had been discussion about this. He proposed that the General Council adjourn and that Members consult on how to proceed.

The General Council so agreed.

At the resumed meeting on 6 May, the Chairman made a statement⁵ in which, in response to requests from several delegations, he explained how he had come to the view – expressed in his statement at the General Council meeting on 4 May – that the candidacy of Mr. Supachai had to be regarded as eliminated from the race. He had been mandated by the General Council to propose a single name as the candidate around whom there was the best chance of building a consensus, and he and Mr. Rossier had arrived at the name of Mr. Moore on the basis of the three criteria used throughout the process. This process had been one of reduction, in which the candidates who had seemed least likely to command a consensus had been eliminated from the process one by one. By coming forward with a single name, he had inevitably eliminated the other name. Thus, it had been in the context of the culmination of the process in his recommendation to the General Council, that Mr. Supachai's candidacy had been eliminated. A new factor had appeared on 3 May in the form of Kenya's proposal that the General Council try to build a consensus on Mr. Supachai, and on 4 May he had made his views clear on the status of that proposal in relation to the process he was required to conduct. That process was continuing, and his proposal relating to Mr. Moore remained before Members for decision. In proposing that the General Council build consensus on Mr. Moore, he was in no way trying to assume the power of decision that belonged to the General Council alone. The decision whether to follow his recommendation remained in the Members' hands. He was convinced that Members needed time to pause and reflect, and he would likely be consulting further with Members on this matter.

The representative of Malaysia, on behalf of the ASEAN Members, reiterated their appeal for reflection and responsibility by all as the means to restore unity through genuine consensus-building. That unity had to be achieved through a process that was fair and seen to be fair, i.e. there had to be due process and fair play. The matter before the General Council was who would be the next Director-General. The Chairman had made a recommendation on which there was no consensus. The ASEAN Members reiterated their formal objection to that recommendation. Thus, it was definite that efforts towards a consensus had been exhausted. On the other hand, Kenya had made a formal proposal to form consensus around Mr. Supachai. This proposal pursued similar proposals made earlier from the floor, to which no formal objection had been made. In addition, many of those who had supported the Chairman's proposal had stated that they would have supported a proposal to form consensus around Mr. Supachai. Therefore, on this basis, the ASEAN Members saw no obstacle to the appointment by consensus of Mr. Supachai as the next Director-General and supported Kenya's proposal to this effect.

⁵ The statement was subsequently circulated to delegations in Job No.2719.

The representative of New Zealand recalled that a selection process, with deliberately consensus-orientated agreed rules, had been approved by Members; all Members had been given an equal opportunity to register their candidate preferences and comments on the degree of acceptability with the Chairman and the facilitator; and it was inherent in the process that it inevitably and properly involved a process of elimination. These elements were key foundations on which the selection process, its predictability and its fairness had been built. The recommendation made by the Chairman had been required of him, and was no more than the Chairman's reflection of the views of the membership. Thus, the membership was responsible for the substantive content of the Chairman's report of 30 April. The Chairman, assisted by the facilitator, was simply the vehicle for communicating back to Members their consolidated views. Some delegations had said it might not be possible to form a consensus around the Chairman's recommendation, but New Zealand could not see the basis for this, since any difficulties would already have been properly conveyed to the Chairman and the facilitator in advance of the final consultation deadline and before the Chairman made his final report and recommendation. New Zealand had participated in all of these consultations from the beginning, and had never indicated serious problems with any of the candidates because it did not have any. Even had his delegation wanted to register a reservation about any of the candidates, it would not have expected to be allowed to have such reservations recognized as valid by the membership, given that his delegation would have been acting as the spokesperson for one of the four candidates. The letter of 3 May from Kenya suggested that consensus be formed around the candidature of Mr. Supachai in the forthcoming meetings on this issue. This suggestion gave rise to a number of legal and procedural problems, as well as problems of fairness to the four candidates and to the wider membership. The legal and procedural problems were not limited to the specific points set out in Kenya's letter, and would apply to any proposal from any delegation that sought to modify the procedures agreed by the General Council for the selection of the next Director-General. Those procedures had been adopted in 1986 and had been further endorsed in July 1998 by the General Council. They established that the decision to appoint the Director-General should follow a process of consultations conducted by the Chairman of the General Council. They emphasized that Members would appoint the new Director-General on the basis of consensus.

Establishing the basis for this consensus was the task mandated to the Chairman and his facilitators who were to consult on nominations advised by a stated deadline. These consultations had been held on the basis of three known criteria that were aimed at identifying the most widely acceptable candidate for consensus endorsement by the General Council. These agreed procedures did not permit any Member to put forward a recommendation for consensus consideration. Rather, the task of putting forward a consensus recommendation had been specifically mandated to designated persons who were seen as having the necessary objectivity and impartiality to carry it out in a manner that ensured the integrity of the WTO institution and respect of all of its Members. The suggestion that a consensus candidate could be validly proposed by a Member ran counter to the agreed procedures, which set out the path for identifying the candidate around whom consensus was most likely to form. These agreed procedures had generated the recommendation from the Chairman. In a situation where there was no agreed procedure, Kenya's initiative might have been presented in accordance with the normal rules of procedure, but where specific procedures for dealing with an issue had been agreed, these specific procedures had to override the normal rules. Otherwise, the General Council would be faced with procedural chaos on any issue where there was an earlier specific agreement to proceed in a particular way. In addition, there had been longstanding recognition on the part of the membership that only one name would emerge as the recommendation of the Chairman at the end of this process. At the General Council meeting on 22 February 1999, the Chairman had said that "our guiding objective will be to build the necessary consensus around the most acceptable candidate". At the meeting on 31 March, when the selection process had been reduced to two candidates, the Chairman had referred to "overcoming the difficulties on either of the two candidates so that we might today propose to you one of the two candidates whom we think would enjoy the consensus of the membership". To allow agreed procedures to be cast aside would seriously undermine trust and confidence in the system of decision-making in the organization, and

would be especially damaging in relation to specific procedures developed to deal with sensitive issues. The multilateral trading system should not be allowed to rest on such a fragile basis. New Zealand had received from several small states – including Belize, Dominica, St Kitts/Nevis, Saint Lucia, St Vincent and the Grenadines, and Fiji – copies of letters recently sent to the Chairman reaffirming their support for the process he had followed.

The representative of Mexico said that his delegation wished to make four points: (i) throughout this process it had neither contradicted itself nor repudiated any agreement; (ii) the Chairman had neither the right nor the mandate to exclude any candidate; (iii) there was no proposal or recommendation from the Chairman before the General Council; and (iv) Kenya's proposal should be considered before any decision was taken. Regarding the first point, he had consulted all of the relevant documents and had found no contradiction, change of position, or lack of compliance with what had been agreed on the part of his delegation. The minutes of recent General Council meetings made clear that Members had not complied with the agreed deadlines for the selection of the next Director-General, when on each of those occasions it had been clear that Mr. Supachai had been the leading candidate. Regarding the claim by some delegations that the three criteria used in the selection process had been agreed by Members, he referred to the minutes of the December 1998 General Council meeting. Regarding the second point, legally there was nothing in the WTO rules that empowered the Chairman of the General Council to exclude a candidate for appointment to the office of Director-General. The mandate of the Chairman contained nothing to the effect of granting him such power. Members alone had the right to put forward a candidate and to carry out the selection of the Director-General. The example of Mr. MacLaren given in the Chairman's report of 4 May was not correct, as there had been no formal withdrawal of his candidature. Regarding the third point – that there was no proposal or recommendation from the Chairman – Rule 28 of the rules of procedure for the General Council stated that proposals were to be circulated in writing not less than 12 hours before the start of a meeting at which they were to be discussed. The purpose of making proposals in advance of a meeting was so that no delegation was taken by surprise and all were in a position to take a decision. The document in which the Chairman's final recommendation was contained was entitled "Note for Chairman", and there was no reference to a proposal. The Chairman had stated in his report of 30 April that the recommendation had been made on the basis of three criteria, one of which was the degree of tolerance; however, there had been a formal objection under Article IX of the WTO Agreement. Regarding the last point, Kenya's proposal had been presented in accordance with Rule 28, corresponded to the search for consensus and avoided having to resort to a vote.

The representative of Kenya said that for close to one week Members had failed to build a consensus around the candidature of Mr. Moore. With the hope of assisting the General Council to move the process forward, Kenya had made a formal proposal to build a consensus around Mr. Supachai. His delegation had expressed concern that the functioning of the WTO would be adversely affected by the lack of leadership, and had said that paralysis of the WTO's work would severely affect developing countries, and least-developed countries in particular, most of which were yet to benefit from the system. Since efforts to form consensus on Mr. Moore had failed, the General Council should try to build consensus on Mr. Supachai. He recalled that no Member had ever formally objected to Mr. Supachai. Kenya's proposal was supported by 26 delegations, or 65 per cent out of the 40 delegations that had expressed an opinion on this matter. Following the objection to the Chairman's recommendation on 30 April there had been a call for voting, which many delegations had opposed. Given that many delegations continued to want to resolve this matter by consensus, his delegation suggested that the Chairman put aside his recommendation for a while and take up Kenya's proposal in the General Council. The Chairman could then draw conclusions and see how to proceed. Kenya's proposal should be discussed on the basis of the substantive issue, and not on the procedural issues.

The representative of Colombia said that the process agreed upon and the Chairman's action deserved Members' full support. Unless Members adhered to that process there would be chaos. Legally, Rule 28 of the rules of procedure was not applicable to this process of selection of the Director-General. Those rules had been amended by the General Council and were applicable only insofar as there were no special provisions that had modified them. Two decisions related to this process of selection: the decision of the CONTRACTING PARTIES of November 1986 and the decision of the General Council of July 1998, in which specific guidelines had been agreed for the process of selection of the next Director-General. According to these decisions, the process was to be conducted in various stages, which she outlined in detail. In full awareness of the virtues and difficulties of a consensus decision, Members had agreed there would be no veto and no vote. Thus, it was clear that the General Council had adopted special procedures for this process, and that Rule 28 was therefore not applicable. Under the agreed process, it was up to the Members to nominate candidates for the post of Director-General and then to decide on one of these candidates. The Chairman's mandate had been to conduct consultations on the basis of certain objective criteria and to recommend to the General Council a candidate around whom consensus could be formed. The logic of this process was rooted in the need to have a clear, predictable and reductionist process, without which it would be impossible to select a Director-General by consensus. On delegation had voiced an objection to the Chairman's recommendation but without any explanation or justification. The only question before the General Council was whether Members could accept the Chairman's recommendation. Colombia supported that recommendation, and – out of respect for the process and because that recommendation reflected the views of Members – would have done so even had Mr. Supachai been named.

The representative of Chile recalled that at the outset Members had agreed to a process for the selection of the next Director-General in which the Chairman and facilitators would consult with all Members so as to be able ultimately to make a proposal to be decided by the Members. Delegations, the Chairman and the facilitators had faithfully complied with these procedures and had held consultations, the purpose of which had been to make it possible for the Chairman to propose one name as the consensus candidate. It was clear that in the course of the process, certain candidates would no longer be the focus of these consultations, and that this would be disappointing to some delegations. When the Chairman had made his recommendation some delegations had made objections – which they had never made before – to the criteria used in the selection process. It was not appropriate to make such objections at the present stage, nor was it appropriate to make proposals for a candidate whose name had not emerged in the context of the agreed procedures. A decision had to be taken on the Chairman's proposal and by consensus. It had to be made clear what objections there might be to building a consensus around Mr. Moore, and Members had to find out how to overcome such objections.

The representative of Lesotho, also on behalf of Mozambique, said that these Members were disappointed that the process all had committed to was under attack from those who argued that it had not delivered the right results. While some Members had not fully endorsed that process, none had made a formal objection to it at the start of the consultation process. Thus, consensus had been reached on that issue. Consideration of alternative proposals at the present stage would not lead to any timely resolution of this matter. Members should first concentrate their efforts on reaching consensus on the Chairman's recommendation and report of 30 April. Lesotho and Mozambique also supported the Chairman's report of 4 May. Both candidates were excellent and had the skills required to an effective Director-General.

The representative of Argentina said that the Chairman had conducted the General Council's discussions of this matter in a balanced and measured manner. Members seemed to be losing sight of their objective, but there was still room for negotiation and the possibility of agreement. However, if the differences were irreconcilable, this should be acknowledged. No delegation should try to impose its ideas at any cost. In July 1998 the General Council had agreed on the main lines of the selection

process for the next Director-General. It had also been agreed that the appointment would be based on consensus, and all had subsequently echoed the idea of no veto, no vote. The Chairman had inherited a mandate and had had no alternative but to carry it out. On 30 April the Chairman had informed Members of the conclusion he had reached, following a long period of consultation with all delegations wishing to express their views and on the basis of a balanced set of criteria. The Chairman had fulfilled the task entrusted to him and on 30 April had made his recommendation and report, which were a reflection of the consultations held. At the General Council meeting on 31 March when the list of candidates had been reduced to two names, the Chairman had said he would try to overcome the existing difficulties and to nominate one of the two candidates, and no one had proposed suspending the process or changing the established ground rules. As required, the Chairman had put forward the name of one of the four initial candidates. It was for the General Council to approve or reject that proposal. Argentina had been prepared to accept it at once, whichever name was recommended. Regrettably, not all delegations were equally broad-minded. Consensus did not imply unanimity, but meant the absence of formal objection. Malaysia had made a formal objection about the process, not about the candidate proposed. There had been no clear and rational explanation of the reasons that had prompted that objection to the process that had been under way for some months. That process was still ongoing, and Members were still studying ways of reaching consensus on the basis of the Chairman's proposal, in accordance with the terms of reference entrusted to him, which had been neither amended nor terminated. For these reasons, Kenya's proposal was not amenable to discussion. Rule 28 was not applicable within the current agreed process, since it related to different circumstances which had not yet been reached. Some delegations, after learning of the Chairman's conclusion, had called for a vote, and some had favoured a vote from the outset. However, the suggestion that the General Council proceed directly to a vote had not been accepted. The voting issue would have to be dealt with at another time and in another context. His delegation had not adopted a final position on this matter. In principle, it was not attracted by the idea of a vote, even on an administrative matter such as the selection of the Director-General. Consensus was an institution of the multilateral trading system; it transcended the bounds of negotiations on a particular issue and constituted a vehicle for the assertion of rights when a Member's position was in the minority and where a strategic national interest was affected. Regarding the possibility of holding a vote on this occasion, as an exceptional matter, without setting a precedent, it was illusory to assume there could be votes that did not set a precedent in an organization of a contractual nature where past decisions established practice, although they did not alter the fundamental rules.

His delegation understood Brazil's statement that a vote might be less traumatic than a never-ending sterile discussion. One could not a priori disregard a vote for the purposes of future selection of a Director-General, but Members should think carefully before taking a position on this subject. It would be necessary to clarify a range of issues in order to be sure of the scope and consequences of a vote. His delegation could not go along at the present meeting with those suggesting a vote. Argentina appealed to all delegations to return to the path of constructive dialogue and to consider how to resolve the differences in a climate of harmony and fairness. His delegation was concerned about the future of the WTO if Members were incapable of adhering to what they had agreed, and did not see how it would be possible to reach agreement on truly substantive issues where national interests and the future of many people were at stake, if they could not do so on this relatively minor and bureaucratic issue. The discussion of recent months served to underscore the importance of accepting and enforcing agreed rules.

The representative of Hong Kong, China asked for clarification of the Chairman's suggestion regarding further consultations. There had been a consultation process up to 30 April. Since then, Members had been in a decision-making process in the formal meetings of the General Council. Was the Chairman now proposing a new round of consultations, and if so, on what and how? If consultations were to be on the basis of the Chairman's report of 30 April, was the latter a formal proposal, or just a proposal, or a final recommendation, or just a recommendation? Would consultations also be on Kenya's proposal, on which thus far there had been no procedural or

substantive objections? Would consultations be informal, open-ended, plurilateral, or individual? His delegation disagreed with New Zealand's interpretation of the November 1986 decision that only the Chairman could say who the candidate would be around whom consensus would be formed. To the contrary, the 1986 decision referred only to the carrying out of consultations by the Chairman. The decision on whom to appoint was clearly left to the Members after such consultations. In the present context, the consultations carried out by the Chairman had come to an end on 30 April. Furthermore, it had never been suggested that in entrusting the task of conducting consultations to the Chairman, Members had forfeited their right either to make formal proposals or to take decisions, nor had they agreed to any modification of the rules of procedure for formal General Council meetings.

The representative of Japan, referring to the Chairman's statement on 4 May that Mr. Supachai was out of the race, recalled that the Chairman himself had stated in his report of 30 April that his mandate was merely to present a name to the General Council. The Chairman had never been given a mandate to eliminate any candidate from the race, and Mr. Supachai remained in the race. New Zealand had said that Kenya's proposal was not on the table, but that was inconsistent with what the Chairman had said. It was important to distinguish between the consultation stage and the decision-making stage of this process, and the former had ended on 30 April. His delegation did not agree that the rules of procedure of the General Council had been waived in favour of those of the selection process, and these rules, including Rule 28, applied whenever the General Council was taking decisions. Thus, Kenya's proposal was fully valid. Normal practice in the General Council was not to stick to one proposal when there was no agreement on it, but to move on to other matters. The fact that there was no agreement on the Chairman's proposal had been most apparent at the General Council meeting on 4 May when 27 delegations had supported Kenya's proposal and only 13 had supported the Chairman's proposal. Members had a duty to build consensus around the selection of the next Director-General. Since it was clear there was no consensus on the Chairman's proposal, Members had to make every effort to build consensus around Mr. Supachai on the basis of Kenya's proposal. His delegation hoped the Chairman could soon move to that proposal, instead of repeating the same arguments on his own recommendation.

The representative of Korea said that Kenya's proposal should be considered by Members and that it offered a viable way out of the current impasse. The fact that the Chairman's recommendation had failed to achieve a consensus had been evidenced by the statements of many delegations. In the light of this situation, it would only be fair to consider building a consensus on the candidature of Mr. Supachai. Kenya's proposal had been submitted in accordance with Rule 28 of the rules of procedure. The current leadership crisis in the WTO hampered not only the conduct of normal business, but also threatened to inflict serious damage on the credibility of the organization. Every avenue to end the crisis should be explored, and Kenya's proposal presented a viable and realistic option.

The representative of the United States said that the consensus being discussed was the consensus to be reached on the Chairman's proposal of 30 April. A proposal that was not based on the agreed process could not be accepted. A mandate had been given to the Chairman, who had made a proposal based on consultations with Members. Her delegation would not agree to voting in the General Council on either procedural or substantive issues. Kenya's proposal could not be considered because the General Council had never agreed that it was procedurally acceptable for any Member to table proposals in favour of its preferred candidate, or that supporters of one of the candidates not chosen by the membership could propose that candidate's name to the General Council at the end of the process. Equally, it should not be procedurally acceptable for Kenya to base its proposal on Malaysia's attempt to block the candidature of Mr. Moore because it had concerns over the process that had yielded his name. Members had not asked the Chairman to conduct consultations over a period of six months so that at the end of the process there would be a different set of rules and procedures. The United States would not agree to consider a proposal from the floor put forward by those who had been supporters of Mr. Supachai from the start, and put forward in direct opposition to

the Members' proposal. Mexico's statement that the Chairman's proposal was not on the table was not correct; that proposal was the Members' proposal, and was the only one on the table. It was the Members who had requested that their consultations with the Chairman and the facilitators be, and remain, confidential. The minutes of the July 1998 General Council meeting made it clear that Members had adopted a Chairman-led consultative process. Article XVI:1 of the WTO Agreement and paragraph 1(b)(iv) of GATT 1994, which incorporated the decision in document L/6099 into GATT 1994, as well as the records of the General Council's deliberations since July 1998, confirmed how Members were to proceed. The process of the past six months became a joke if Members were to conclude now that it had no purpose and that any delegation was free to introduce or re-introduce the name of one of the four initial candidates or some other candidate. On legal and procedural grounds, Kenya's proposal had to be deemed inadmissible in the context of the agreed procedures for selecting the next Director-General.

The representative of India said that his delegation shared the views expressed by Mexico and Hong Kong, China. There had been some discussion of whether the Chairman's report should be necessarily accepted by the Members. The decision of November 1986 clearly stated that the new Director-General should be appointed by the CONTRACTING PARTIES, and that the Chairman of the CONTRACTING PARTIES should conduct consultations on that appointment. There was nothing new in this, as the Chairman consulted on many matters; in some cases he was able to get consensus, and in other cases – as most recently on the matter of derestriction of WTO documents – he was not. He quoted from the minutes of the July 1998 General Council meeting (WT/GC/M/29) to the effect that the selection of the next Director-General was the responsibility of the Members and not a task that could be delegated to the Chairman or to a group of persons. This point had been consistently reiterated by the Chairman himself, most recently at the General Council meeting on 14 April. Agreeing to a proposal by consensus meant that no Member formally opposed the proposal. Imposing a consensus was the antithesis of the spirit of consensus. It would be wrong to assume that without the involvement of the membership, a unilateral decision could be taken to eliminate any candidate. This was not in the spirit of the agreed process. Nor had there ever been any decision or any implication in any document that whatever the Chairman proposed should be accepted *ipso facto* by the Members. His delegation was objecting to the process and not to the individual candidate. India respected the Chairman's report, but felt that in light of the lack of consensus on Mr. Moore it was only fair and reasonable to try to form a consensus on Mr. Supachai. His delegation therefore supported Kenya's proposal.

The representative of the Dominican Republic said that Members should reflect on the implications of the delays being caused by the impasse on the selection of the Director-General. His delegation had taken note of New Zealand's statement that on 30 April Members had received a recommendation on which a decision should be taken. The consultation phase had culminated with the Chairman's recommendation in his report of 30 April. During this decision-making phase Kenya's proposal had been supported by 65 per cent of delegations who had spoken and was an option that should be considered, given the lack of consensus on the Chairman's recommendation. His delegation asked for clarification regarding which proposal was now before the General Council.

The representative of Romania reiterated that his delegation would have considerable difficulty in accepting Kenya's proposal, since the presentation of this proposal was an attempt to change the rules of the game at the last minute. He clarified that the flexibility his delegation had said it could show had been with respect to whatever name the Chairman would propose as the consensus candidate. That position had been linked to the established procedures. Kenya's proposal had not been made in the context of the agreed procedures, but rather in the context of changing the agreed rules. The starting-point of that proposal was that there was no consensus on the Chairman's recommendation; however, only one delegation had voiced an objection to that recommendation, and Romania was not convinced of the fairness of that objection since it had been made by a Member speaking on behalf of a Member with a candidate. Members needed to find a common ground of

understanding, to reflect further and to show flexibility, as there were other important issues that needed their attention. Careful thought should be given to the idea of starting up another process.

The representative of Nigeria said that many delegations had expressed their confidence in the Chairman and the facilitator and had then disagreed with the Chairman's conclusion and proposal. Members had entrusted the Chairman and Mr. Rossier with the complex task of coming up with a suitable name for the next Director-General on the basis of agreed procedures, and they had carried out this task in a transparent, flexible and balanced manner. At no time had any delegation questioned or challenged the process, or the credibility of the Chairman or the facilitator. That had meant to Nigeria that the Chairman's proposal would be adopted by consensus. The current deadlock was disturbing. Members needed to pause and to reflect on whether the Chairman's proposal for consensus had assumed a divisive but avoidable dimension. Nigeria had difficulties accepting Kenya's proposal for several reasons. One was procedural, in that the General Council had approved a procedure that constituted the legal platform on which the Chairman and the facilitator had operated. Upholding the institutional image and integrity of the WTO required that there be no deviation from the agreed procedure. The Chairman's proposal was on the table, and that was what the General Council should discuss and approve by consensus. To agree to consider Kenya's proposal at the present juncture would divert attention away from the substantive proposal made by the Chairman and would open the door to other proposals.

The representative of Norway said that rules of procedure were one thing, and political necessity and the rule of reason was another. At some stage the two should be combined. There was no logic in following rigidly the rules of procedure without common sense. There were three facts: (i) the Chairman's proposal was on the table until the Chairman said it was not, and there could be no questioning of this; (ii) there was no consensus on that proposal yet; and (iii) Kenya's proposal had been made, and his delegation saw no great danger in considering it, provided it remained clear that the Chairman's proposal was still on the table and that the agreed procedures applied also to Kenya's proposal. Regarding the statements by Japan and Hong Kong, China that Members were now in the decision-making stage, there had never been any agreement on that distinction. In a consensus-building process the consultation stage was the decision making. Members now had to consider how to move forward instead of repeating their positions and arguments.

The representative of the Czech Republic reaffirmed his delegation's full support for the Chairman's proposal of 30 April and reiterated that it would have supported that proposal whichever candidate had been named. A vast majority of delegations had expressed their support for the process and for its result, or had shown their readiness to go along with it. However, there was no consensus. It was necessary to know what the difficulties were that some delegations had with the Chairman's proposal. No delegation had said it was not yet ready to join a consensus because of the candidate himself, but rather that there were difficulties regarding the process. These difficulties had to be discussed and clarified, and any doubt dispelled. It would only be logical and fair to continue efforts to reach a consensus instead of inventing new mechanisms. The rules of the game should not be changed or deviated from in the final stage of the process. This was a systemic and legal issue, and a matter of principle. Voting was not a viable option, as the aim was to have a Director-General who would have the support of all Members. The only way to achieve this would be to identify the new Director-General by consensus.

The representative of Bolivia said that the Chairman's proposal was the result of six months of consultations and the expression of the joint will of the Members. Unity based on diversity was fundamental to ensuring the functioning of the organization. Kenya's proposal gave rise to legal and practical problems. The rules of procedure of the General Council were general rules that applied when specific rules had not been adopted. However, the General Council had adopted specific rules of procedure for the selection of the next Director-General, which were contained in the decision of the CONTRACTING PARTIES of November 1986 and the decision of the General Council of

July 1998. The process had gone through several phases and had reached the phase where the Chairman had presented his recommendation to the General Council. There was no legal distinction between a consultation phase and a decision-making phase. The General Council had adopted an ad hoc procedure for the selection of the next Director-General which set out two main points: (i) it mandated the Chairman and the facilitator, on behalf of the General Council, to carry out consultations in a reductionist process, and (ii) it provided alternative decision-making rules different from Rule 28, which was to promote decision by consensus. Members were now in a decision-making phase of that ad hoc process, i.e. consideration of the Chairman's proposal in order to build a consensus around Mr. Moore. Had the consensus-seeking phase of this process concluded, there would be no point in asking the Chairman to carry out consultations on a candidate other than the one he had recommended, because the Chairman would no longer be empowered to carry out such consultations. The present phase of reaching a consensus on the Chairman's proposal was governed by the same rules that had governed the entire procedure, and excluded the presentation of proposals to find a consensus different from that proposed by the Chairman and resulting from the consultations held. The objections raised to the Chairman's proposal had to be explained, as that was the only way progress would be made. Respect for the process, for the rules and for consensus was the only way to find a solution that would ensure the stability of the organization.

The representative of Cuba said that consensus had to be built with the will of all and could not be imposed. The two candidates were very close in support, and that was why doubt had been cast on the process. His delegation agreed with Mexico and Hong Kong, China that on 30 April the consultation phase had concluded, and that Members were now in the decision-making phase. It was clear there was no possibility of reaching consensus on the Chairman's proposal. Kenya's proposal had solid support and should be considered. Were no consensus possible on either candidate, the General Council should apply Article IX:1 and hold a vote.

The representative of Colombia said that her delegation wished to clarify what seemed to be misunderstandings on three issues. First, among the many issues that had been discussed, such as voting and objections to the process, the Chairman's proposal had not been one of them, and the one objection that had been raised had not been explained or justified. Second, Members had not renounced their responsibility to decide on this matter simply because they had mandated the Chairman to present a consensus candidate. It was the preferences expressed by Members that had led to the Chairman's proposal, which was in fact the Members' proposal. Third, it was wrong to attempt to divide the process into consultation phases and decision-making phases, as both were part of a single package.

The representative of Costa Rica supported Colombia's statement. The trading system under the WTO was based on the rule of law, and that continued to be one of the fundamental elements of the WTO. For a developing country like Costa Rica, the predictability and security of the system existed because of the respect for the rules, whether dealing with dispute settlement or the selection of a Director-General. It had been in this spirit that his delegation had agreed to the procedures established for this process, which ultimately had enabled the Chairman on 30 April to propose the name of a consensus candidate for the post of Director-General. That process was still underway. Some delegations seemed to be trying to create a selection process on parallel lines. This was not acceptable. From the legal point of view, Kenya's proposal departed from the agreed rules and was thus not acceptable, and from the point of view of justice it was equally unacceptable, as the candidates and the Members had counted on the rules of the process being respected. The Chairman's proposal stemmed from an agreed procedure and from lengthy consultations, while Kenya's proposal came from the floor and was not part of that agreed procedure.

The representative of Ghana said that one fact was clear – that there was no consensus on Mr. Moore and that it was not likely that there would be one, given that consensus did not exist where there were any objections. Many Members had objected to the Chairman's proposal. Positions were

being repeated and were becoming more and more entrenched. Kenya's proposal, which his delegation supported, was one way out of the current impasse, and Ghana requested that the Chairman put it forward for consideration.

The representative of Mexico noted that some delegations had said that the rules of procedure of the General Council did not apply to the selection process for the Director-General because other rules had been specifically adopted for this process. However, for a specific rule to take precedence over a general rule there had to be a dispute or a discrepancy as to the rules to be applied, as provided in Article 1 of the Dispute Settlement Understanding. It did not seem that in the present case there was either. In the minutes of the July 1998 meeting of the General Council (WT/GC/M/29) the Chairman stated that "[T]he selection of the next Director-General was the responsibility of the Members. It was not a task which could be delegated to a Chair or a group of persons. It was important that Members not confuse the management of the process with the responsibility to select and appoint the next Director-General." The General Council had taken note of the statements and had agreed to the procedure outlined by the Chairman. In the minutes of the October 1998 meeting of the General Council (WT/GC/M/31) the Chairman stated that "[He] must continue to accept responsibility for the overall management of the process...". The General Council had taken note of the statements and had agreed to the process set out by the Chairman. In the minutes of the December 1998 meeting of the General Council (WT/GC/M/32) the Chairman made a summing up of the points made during the discussion, which included that "...the question or questions to be addressed by the facilitators to Members in their next round of consultations should be put in a very clear way so as to elicit clear answers, and that one formulation might be the following....". The proposed questions, but not the criteria, had then been circulated to Members by fax. In his statement of 22 February 1999 the Chairman had said that "[a]s Chairman of the General Council I shall take full charge of the consultations leading to the appointment of the new Director-General. As you are aware, the procedures for future appointment of the Director-General approved by the CONTRACTING PARTIES of GATT on 26 November 1986 provide that ...". Thus, the Chairman was operating in the context of agreed procedures and not on the basis of any particular criteria. Progress should be possible on this legal basis. Even if the specific and general procedures applied simultaneously, both asked for consensus. Since Kenya's proposal also asked for consensus, he wondered where the legal impediment was to considering that proposal.

The representative of Pakistan said that delegations had to ensure that their positions and arguments were designed to facilitate decisions rather than make them more difficult. The Chairman himself had stated on 24 March that his role was merely to indicate at the end of the consultation process his sense of who the most acceptable candidate was. It would then be up to the Members to take a decision. The General Council was now holding discussions in order to reach agreement. It had never been his delegation's understanding that the methodology adopted for this selection process had replaced the rules of procedure. From the outset, his delegation had stated repeatedly that if consensus could not be reached there would have to be resort to the rules of procedure. The process decided upon had come to an end, and one could not override the rules of procedure. As the Chairman had said, the General Council would decide whether or not to follow his recommendations. Contrary to what Colombia had stated, Members were beyond the stage in which the Chairman would propose a candidate to be the next Director-General, and were in a stage requiring the collective decision-making of the entire membership. It was evident that in this stage of decision-making, the same rules of procedure applying to the Chairman's proposal required the consideration of Kenya's proposal. It was not in the spirit of consensus-building to say that Kenya's proposal was not acceptable. The Chairman had stated that that proposal was on the table, and Pakistan hoped that delegations would take a position on the substance of that proposal rather than dismiss it on procedural grounds. His delegation agreed that further consultations were necessary, but there should be no preconditions set, or options – particularly those envisaged in the rules of procedure – ruled out, before those consultations even began. The selection process had to be revised, and Pakistan

construed the Chairman's proposal for further consultations as a desire to see if this process could not be made easier and more efficient.

The representative of Guatemala expressed his delegation's concern that discussions on this matter were dividing Members, when in the near future they would have to take decisions of even greater importance. The Chairman had fulfilled his mandate upon making his recommendation on 30 April. Difficulties had been expressed regarding the process and not the candidate proposed. That process had to be improved. Regarding Kenya's proposal, his delegation supported Colombia's statement. The specific procedures agreed for the selection of the next Director-General took precedence over all other rules; thus, Rule 28 was not applicable. Guatemala fully supported the Chairman and his proposal. Members had to work to facilitate consensus and not to make it more difficult.

The representative of Malaysia, on behalf of the ASEAN Members, made three points: (i) by agreeing to consultations Members had not suspended or modified the rules of procedure. The consultation was part of the procedure, and was a phase that had been terminated; Members were now in the decision-making stage; (ii) the provisions of the Marrakesh Agreement could not be amended by a General Council decision except through the procedure specified; and (iii) the ASEAN Members disagreed that the Chairman's recommendation was the Members' recommendation, and noted that the Chairman himself had said that it was for the Members to decide. The item on the agenda was the appointment of the Director-General; therefore, the relevant decision that had to be taken was a response to the question of who the next Director-General would be. Decision-making was a dynamic process. The consultations undertaken earlier by the Chairman and the facilitator had been a separate phase of that process, and had culminated in the Chairman's report of 30 April. Such consultations had not resulted in a consensus, and the matter at issue was now squarely in the hands of the membership. The first sentence of Article IX:1 of the WTO Agreement required Members to take decisions by consensus. If consensus was not achieved, Article IX:1 provided for decision-making by voting. There were thus two methods authorized. But before considering decision-making by voting, Members were required to make every possible effort to exhaust the avenue of decision-making by consensus. The dynamics of decision-making by consensus were different from those of decision-making by voting. The starting-point of consensus-building was always a proposal, or several proposals. The practice had been, and had to continue to be, to assess each and every proposal and to determine whether or not there was consensus on it. Where there was no consensus on a specific proposal, a vote was not immediately taken or even considered, as this would be contrary to Article IX:1. Instead, one moved to other proposals and similarly determined whether or not there was consensus on them. This was not only consistent with Article IX:1, but was the practice. There was no consensus on the Chairman's recommendation. Therefore, pursuant to Article IX:1 Members had to move on to consider Kenya's proposal. Furthermore, by considering Kenya's proposal in a formal meeting, Members would be rendering the selection process more transparent. If there were objections to forming consensus around Mr. Supachai notwithstanding earlier manifestations to the contrary, Members would at least be informed openly of the so-called serious obstacles which had prevented the formation of a consensus around him at the time he had been undisputedly in the lead. It seemed that at that time, there had been an anonymous veto. Divergence of views was not unusual, and in an organization like the WTO it was the norm. The only way to arrive at genuine consensus was through transparency. If there were objections to the candidature of Mr. Supachai, those objections should now be made transparent, in order for the process of consensus-building to move forward.

The representative of Brazil said that his delegation supported consensus and supported the process under way, but that something had gone wrong with that process. Brazil supported Mr. Supachai but had no objection to Mr. Moore, and would gladly join a consensus when and if one formed. However, seven delegations had objected and there was thus no consensus. The Chairman had made a recommendation, not a decision or a diktat, on which there was no consensus. Based on

that fact, Kenya had made a proposal. The Chairman had stated that that proposal was on the table; therefore, it had to be considered. The slogan "no veto, no vote" had not held true, because there had been closet vetoes and at least one public veto, and there had effectively been a vote, since the Chairman had cited numbers in his report of 30 April. The Chairman's recommendation should continue to be considered as a possible basis for consensus, as should Kenya's proposal. Members should also devote their attention to matters that were substantively more important for the organization as a whole.

The representative of Australia said that a lot of time had been spent discussing the Chairman's report of 30 April but that there had been no consensus on it. If necessary, Members could return to that recommendation at a later date. Kenya had made a proposal that provided an avenue for possible consensus. The procedural questions being discussed about that proposal raised major issues of concern regarding the correct procedures to be followed in the organization. Accordingly, he associated his delegation with Hong Kong, China's statement on this matter. The process of facilitation undertaken by the Chairman and Mr. Rossier had finished on 30 April when the Chairman had presented his recommendation. Members were now in the normal decision-making mode of the General Council to which the standing rules of procedure applied. Kenya had made its proposal in conformity with those rules, and the General Council was thus obliged to consider it. Should consensus not be possible on that proposal, Members should pause and reflect on how to proceed.

The representative of Canada said that the legal and procedural arguments that had been made were unlikely to lead to a conclusive result. No Member had objected to any of the candidates. It was the Members who would decide on the next Director-General, but this was not likely to happen at the present meeting. His delegation supported calls for a pause for reflection, during which time the Chairman might consult with Members on how to proceed.

The representative of Uganda agreed with Norway that Members had to face up to the objective reality that despite the Chairman's best endeavours there was no consensus. He recalled that his delegation had been willing to go along with the Chairman's recommendation if there were consensus on it. Kenya had made its proposal in light of the need to explore other options. In the absence of a manifest consensus on the first recommendation, it was only prudent to look at the next candidate and to go through the same process. Further consultations should include Kenya's proposal. His delegation could not accept – and would find it a dangerous precedent – that a Member could not propose an alternative recommendation to the Chairman's. Arguments that Kenya's proposal was not acceptable were legally untenable. There were two proposals on the table, and Members needed to pause and reflect on how to proceed.

The representative of Panama said that his delegation was pleased that no Member had made a formal proposal for a vote. The July 1998 agreement regarding the selection process for the next Director-General contained a number of elements, one of which was the mandate for the facilitators who were to help Members to take a decision. It also included the principle that the recommendation or proposal of the facilitators should not be a substitute for a decision by the Members. It was subsequently agreed that the selection would be made from among the four candidates nominated. All of these rules and principles continued to apply, despite the fact that the Chairman had made his recommendation, and the process would not be completed until the Members reached a decision. That decision would have to be based on consensus. Nevertheless, the general rules could supplement the specific rules. For example, any decision to have a vote would have to be taken by consensus. If the specific rules agreed upon for this process were supplemented, there was a possibility of considering Kenya's proposal, which provided an opening in the search for consensus. His delegation could agree to consider that proposal on the understanding that the Chairman's proposal was still on the table.

The representative of Haiti reiterated his delegation's appeal for a consensus decision on this matter. It was evident there was not yet consensus on Mr. Moore, and once all possibilities for consensus on Mr. Moore had been exhausted, Kenya's proposal should be considered. That proposal had been made in accordance with Rule 28 of the rules of procedure and therefore had a legal basis.

The representative of Turkey expressed his delegation's concern that selective quotations from the Chairman's statements had been made both by supporters of Mr. Supachai and by those of Mr. Moore in support of their respective arguments. This would lead to a lengthy discussion that would go nowhere. While Turkey respected Kenya's proposal, it was not the product of some six months of work and did not have the same weight as the Chairman's proposal. If there was no legal basis for Kenya's proposal, that proposal could not be sustained on procedural arguments. Some delegations had said the process was flawed, but while every Member had a right to make objections to that process, this could not be done in the final hour. Consensus-building rested on the effort of all to understand the position of others and to be flexible. It was not fair that the objection to the Chairman's proposal had come from a delegation representing, among others, Thailand. Personal vetoes could not be accepted, and Members had to try to solve this matter without an acrimonious debate.

The representative of Uruguay said that it was clear that Rule 28 of the rules of procedure did not apply to the process of appointment of the next Director-General, and the General Council could only be guided by the decision of the CONTRACTING PARTIES of 26 November 1986 and the General Council decision of July 1998 until such time as Members decided otherwise. Any deviation from the agreed procedures – to consider Kenya's or any other proposal – would lead to chaos. There were relevant principles behind the legal and procedural objections to this proposal that related to justice and equity, and to the consequences of departing from agreed rules. For these reasons, Kenya's proposal had no chance of achieving a consensus. Recent discussions on the appointment of the next Director-General had already harmed the institution, in paralysing the process and in deteriorating the climate of trust and solidarity. The process had not reached an end, and objections had been made to the process but not to Mr. Moore. Those objections should have been made much earlier. It was not legitimate to accept the result of what one considered an imperfect process when that result was the one desired, and to challenge it when the result was not. The fact that it had been agreed there would be no vote and no veto meant implicitly that the Chairman's recommendation should be endorsed by all. For these reasons, Uruguay appealed to all to support the Chairman's proposal, which was the way to settle this matter and the crisis facing the organization.

The representative of Honduras wondered why the General Council was discussing whether to consider Kenya's proposal, since the Chairman had said on 4 May that it was on the table. It was clear that there was no consensus on the Chairman's recommendation. The November 1986 decision said that the decision to appoint the Director-General should be taken after a process of consultation; that process was over. The decision on the next Director-General was to be taken by the Members. His delegation supported Kenya's proposal because it was an equitable and democratic alternative to reaching a consensus and to ending these interminable discussions.

The representative of Nicaragua said that the legality of the process of selection of the Director-General – which had been adopted by consensus – could not be challenged at the present stage. It would be both illegal and unjust to modify that process now. On the basis of legality, justice and principles, his delegation could not accept Kenya's proposal. Nor could his delegation join in a vote, because it had been agreed there would be no veto and no vote. Only the Chairman's proposal of 30 April had a legal basis.

The representative of Hungary said that Members had to take stock of the situation. The organization had been six days without a Director-General and without any Deputy Directors-General during a crucial period. There had been a systematic political assassination of the two candidates, and

for a week an internationally respected institution had engaged in self-destruction. This had to stop, and Members had to face the political reality that there were two candidates with more or less equal support, neither of whom would disappear. His delegation appealed to Members to think before speaking, and to reflect on how to proceed.

The representative of the United States suggested that Members read all of the minutes of meetings relating to this matter so as to get a clear picture. It was useless to engage in a negative discussion of what rule applied. The point was that it made nonsense of the Chairman's consultations if, at the end of that process, any Member could make any proposal it wished, without any of the elements that had formed the basis of the Chairman's recommendation. The two proposals could not have equal status. While it was true that it was the Members who would take the decision on the next Director-General, the Chairman's recommendation was the Members' recommendation. She said that in the history of the GATT/WTO, the membership had never not agreed to a recommendation for the Director-General at the end of an agreed process.

The representative of Venezuela said that since consensus was a dynamic process, Members had to go step by step to overcome the objections some delegations had. This was the task that lay ahead, and it would take time. Consensus had to be established on one proposal and not on several simultaneously; otherwise, the process undertaken by the Chairman would not have been necessary. If the current process of consensus-building failed, another methodology would have to be adopted. Consensus would not be possible without consultations, and Members had to make every effort to maintain unity.

The representative of Sri Lanka said that the process seemed to be drifting aimlessly, with delegations repeating their well-known and entrenched positions. A proposal had been put on the table for a consensus on Mr. Supachai, because it was clear there was no consensus on the Chairman's proposal. Sri Lanka supported Kenya's proposal, which the General Council should take up, since Mr. Supachai had been the most acceptable candidate in the process up to 30 April. Fair play and democracy demanded that consensus be sought on his name.

The representative of Egypt said that his delegation maintained its position that in view of the failure to achieve consensus on the Chairman's proposal, Members should try to build consensus on Kenya's proposal. Should there be no consensus on that proposal, there was no alternative but to proceed to a vote in accordance with Article IX. If that was not acceptable, Members had to consider how to proceed, and those who objected to a vote should make suggestions to this effect.

The representative of Hong Kong, China said that the discussion had added to procedural clarity. Under the November 1986 procedures, the decision to appoint the Director-General was to be taken after a process of consultation to be conducted by the Chairman; or, as the Chairman himself had put it on 24 March 1999 (WT/GC/M/36/Add.2), his role was merely to indicate at the end of the consultation process his sense of who the most acceptable candidate was. The Chairman had fulfilled his role in indicating, at the end of the consultation process on 30 April, his sense of who the most acceptable candidate was. It followed that the consultation process envisaged in the November 1986 decision had come to an end six days earlier, on 30 April. Further consultations could still be held, but Members had to know their parameters and context before they took place. In the meantime, Kenya's proposal was clearly on the table in the formal General Council decision-making process.

The representative of Jamaica said that his delegation fully supported the Chairman in whatever manner he decided to proceed, and asked the Chairman to give Members some clear direction.

The representative of India said that his delegation agreed with Mexico that the General Council's rules of procedure applied to the selection process for the next Director-General. Past

practice in the GATT had been to develop consensus on one candidate in advance of the formal proposal being made, or to ask one of the candidates – if there were two – to withdraw. Therefore, it was not correct to say that whenever a name had been proposed, it had been accepted. In the current situation the two candidates had almost equal support, and this had created difficulties. If the slogan "no vote, no veto" had been respected, there would have been no reason for the criterion of degree of tolerance. It was not fair to say that supporters of one candidate or the other were not following the rules. At no point in the past had a Chairman declared any candidate out of the race, and there was no mandate for this now. Kenya's proposal was on the table, and it could not be ignored on procedural grounds.

The representative of Zimbabwe said that all avenues for achieving consensus had to be exhausted. There had been no consensus on the Chairman's recommendation, and Kenya's proposal was on the table. His delegation agreed that there was a need for consultations and a cooling off period; however, such consultations should clearly include Kenya's proposal as a possible way to achieve consensus.

The representative of Japan supported the statements by India and Hong Kong, China. He asked the United States to explain the basis for its claim that the Chairman's proposal and Kenya's proposal had a different status.

The representative of the United States said it was clear from the discussion that while some delegations continued to maintain that – for reasons that were not clear – they could not yet join a consensus on the Chairman's proposal of 30 April, it was also clear there was no consensus that it was procedurally appropriate to consider Kenya's proposal, or that a unilateral proposal could be given a status equivalent to that of the Chairman's proposal. From the outset, her delegation had said that the consensus was to act on a proposal to be put forward by the Chairman.

The representative of Japan said that he did not understand the United States' response. He could accept that this was a political argument, but on a matter as important as the selection of the next Director-General, the rules of procedure had to be followed. He asked under which of those rules different proposals could have a different status.

The representative of Brazil said that a discussion of the status of the two proposals would lead nowhere. The fact was that Kenya's proposal was on the table. He clarified that in his earlier statement he had not meant to indicate that the process was flawed, but that the conclusion taken from that process, based on the elements described by the Chairman in his report of 30 April, would not ensure a clear conclusion in favour of the Chairman's recommendation. For many delegations, the elements described by the Chairman did not lead to a clear picture of a developing consensus. In light of this, the Chairman should proceed with further consultations, which should include Kenya's proposal as well as the candidate who had not officially withdrawn.

The representative of Jamaica asked the Chairman to indicate what he had gathered from the present meeting and how he intended to proceed, which his delegation would support.

The representative of the Kyrgyz Republic said that as a newcomer, his delegation was disappointed to see what was happening in the organization. The exercise of selecting the next Director-General had been going on for some time, and a solution had to be found as soon as possible in order to get out of the present crisis situation. His delegation maintained that the decision should be taken by consensus and with no vetoes, and was ready to follow whatever procedures the Chairman would suggest.

The representative of Costa Rica, in reply to Japan's question, said that his delegation agreed with the statement by the United States. One of the proposals was a product of the agreed process and

had a legal basis, and the other was not based on that process. Accepting a proposal that was not the product of the agreed rules would have ethical and moral consequences within the organization.

The Chairman said that this had been a useful discussion, and that it was clear that his proposal of 30 April had not yet been decided upon and that he was continuing to work for a consensus on it. Kenya had made a proposal that was on the table and had been exhaustively discussed, both procedurally and substantively. It was clear that Members needed to pause in order to reflect on how to proceed, and that further consultations were necessary. Those consultations would be in the usual GATT/WTO spirit. He appealed to all delegations to be ready to consult. When the atmosphere was right he would call a further meeting of the General Council.

The representative of Jamaica said that his delegation supported the Chairman's statement. He suggested that the WTO Secretariat staff might be informed that Members expected WTO business to continue as usual, and that Members try to meet soon in order to discuss substantive issues and to restore the unity necessary to tackle the important issues ahead.

The representative of Malaysia, on behalf of the ASEAN Members, asked for clarification on two points: was it the Chairman's understanding that the discussion of Kenya's proposal had not been concluded? And when did the Chairman intend to resume the present meeting, and would it be formal or informal?

The representative of Hungary asked for some indication of when the Chairman intended to continue the preparatory process for the Seattle Ministerial Conference.

The representative of Mexico said it would be useful to know roughly when the formal meeting of the General Council would start again.

The Chairman said that the schedule of preparatory meetings for the Ministerial Conference had had to be rearranged, and that the meeting scheduled for 10 and 11 May had been postponed to 20 and 21 May. It was his understanding that the discussion of Kenya's proposal had concluded, but delegations could certainly come back to it. He reiterated that there was a need to pause and reflect so that future discussions would be fruitful. He hoped to reconvene the General Council, at the latest, by the end of the following week.

The General Council took note of the statements and adjourned.
