

**PROPOSAL TO REVIEW ARTICLE 17.1 OF THE UNDERSTANDING  
ON RULES AND PROCEDURES GOVERNING  
THE SETTLEMENT OF DISPUTES**

Communication from Thailand

The following communication, dated 15 March 2002, is being recirculated to Members at the request of the Permanent Mission of Thailand. The original communication can be found in WT/MIN(01)/W/2 and Corr.1.

**I. RATIONALE**

1. In the Royal Thai Government's view, the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) is a workable instrument that provides predictability and stability to the WTO multilateral trading system. This instrument, however, may be further improved by the Members so as to enhance and strengthen its multilateral character.

2. One area of immediate concern to the Royal Thai Government is the capability of the Appellate Body to meet its workload, which has constantly been on the increase since the first report of the Appellate Body came out in early 1996. So far 44 dispute cases have reached the Appellate stage: four cases in 1996; five in 1997; eight in 1998; nine in 1999; 12 in 2000 and six so far in 2001.

3. At present, there are seven Appellate Body members and under Article 17.1 of the DSU three of them will serve on any one case. This results in practice in a situation where the Appellate Body can hardly consider more than two appeals at the same time, especially when there may be a conflict of interest in an appeal. Recent practice shows that there can be a delay in appeal proceedings resulting in the report being circulated more than 90 days after the date of the notice of appeal.<sup>1</sup> This has so far happened in five cases.<sup>2</sup> In two of these cases, the Appellate Body report was circulated as late as 140 days after notice of appeal.<sup>3</sup> In the Royal Thai Government's view, it is high time that the Members seriously ponder over this problem.

4. During the review of the DSU that expired on 31 July 1999, the Kingdom of Thailand made a proposal to increase the number of the Appellate Body members by at least two to four persons, keeping the odd number nature of the Organ.<sup>4</sup> Due to time constraints and to the numerous issues put on the table at that time, this proposal was not and still has not been subject of a thorough discussion

<sup>1</sup> It would be useful here to draw the Members' attention to Article 17.5 of the DSU, last sentence.

<sup>2</sup> These are DS26, DS48, DS122, DS135 and DS138. Cases in which the actual time-period between the notice of appeal and the circulation of report is 91 days have not been included.

<sup>3</sup> DS122 and DS135.

<sup>4</sup> See Job No. 6645/Rev.3, paragraphs 263-267.

and consideration by the Members. Subsequent practice has reinforced the Royal Thai Government's conviction that there is a need to seriously consider increasing the number of the Appellate Body members, and the recent debate among the Members on the question of remuneration of the Appellate Body members has again highlighted the importance of this issue. It is therefore the Royal Thai Government's view that work should begin as soon as possible on a possible amendment of Article 17.1 of the DSU to increase the number of the Appellate Body members, preferably in the context of a new review of the DSU.

## **II. PROPOSAL**

5. A review of the DSU shall be mandated with a specific time-frame to consider an amendment to paragraph 1 of Article 17 of the DSU with a view to increasing the number of the Appellate Body members.

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