

PROPOSAL BY COSTA RICA - THIRD PARTY RIGHTS

Communication from Costa Rica

The following communication, dated 15 July 2002, has been received from the Permanent Mission of Costa Rica.

Costa Rica has identified a number of areas where improvements of the Dispute Settlement Understanding (DSU) are required in order to ensure that the interests of third parties are fully taken into account in a dispute, as stated by Article 10.1 of DSU.

1. Objectives

The proposed amendments should:

- Strengthen the rights of third parties while preserving the expeditiousness and effectiveness of the dispute settlement mechanism.
- Grant effective application to the existing Article 10.1 of the DSU.
- Build on past GATT/WTO practice and Public International Law in establishing rights of third parties.
- Achieve a better balance between the rights of the parties and those of the third parties in the dispute settlement system.

2. Proposed amendments to the DSU

Costa Rica proposes the following amendments to the DSU:

- Amend the provision that limits the right of third parties to join in consultations.
- Require the panel and the Appellate Body to accord due consideration to the arguments presented by third parties, instead of merely reflecting their views in the descriptive section of the report.
- Allow third parties access to all the submissions and other information submitted to the panel or the Appellate Body, both by the parties to the dispute and other third parties.

- Extend the right of third parties to be present at the first substantive meeting to all the subsequent meetings of the panel and the Appellate Body.
- Allow Members to reserve their right as third parties during the appellate review, irrespective of whether said Member had reserved its right as third party during the panel stage, pursuant to the existing article 4.11 of the DSU.
- Make available to the third parties the submissions of the party or parties to the dispute, as well as the panel and Appellate Body reports, at the same time as it is made available to the parties to the dispute. Third parties should also be allowed to present comments during the interim review stage.

Article 4

Consultations

11. Whenever a Member other than the consulting Members considers that it has a substantial ~~trade~~ interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements⁴, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, ~~provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.~~

Article 10

Third Parties

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB **within 10 days after the date of the establishment of the panel** (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report. **The panel shall endeavour to address in its findings the arguments and views expressed by third parties as related to the terms of reference of the panel**

3. ~~Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.~~ **Each third party shall receive a copy of all documents or information submitted to the panel, at the time of submission, except for certain factual confidential information designated as such by the disputing party that submitted it.¹ Third parties shall have the opportunity to be present at all stages of the proceeding.**

¹ Documents of an administrative or procedural nature need not be provided.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute. **This decision shall not limit the rights of third parties unless they have also been consulted.**
4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute **and the third parties**, to prepare their submissions.
5. Panels should set precise deadlines for written submissions by the parties **and the third parties**, and the parties **and third parties** should respect those deadlines.
6. Each party ~~to the dispute~~ **and third party** shall deposit its written submissions with the Secretariat for immediate transmission to the panel, to the other party or parties to the dispute **and to other third parties**. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute **and to the third parties**. Within a period of time set by the panel, the parties **and third parties** shall submit their comments in writing.
2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties **and third parties**, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received ~~from any party~~ within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

Article 17

Appellate Review

Standing Appellate Body

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body. **Any Member not having notified its interest pursuant to Article 10.2 but having subsequently notified its**

substantial interest to the Appellate Body and the DSB, within [x] days immediately following the date of the notice of appeal, may make written submissions as a third party to, and be given an opportunity to be heard by, the Appellate Body. The Appellate Body shall endeavour to address in its findings, the arguments and views expressed by third parties, as related to the matter of the appeal.

Article 18

Communications with the panel or Appellate Body

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute **and to the third parties**. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute **or third party** shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 21.5

(Amendment already contained in WT/GC/410/Rev.1)

During the reasonable period of time, each party to the dispute shall accord sympathetic consideration to any request from another party to the dispute for consultations with a view to reaching a mutually satisfactory solution regarding the implementation of the recommendations or rulings of the DSB. **When such consultations are entered into, the parties shall afford to any third party, which so requests, an adequate opportunity to express its views.**

**APPENDIX 3
WORKING PROCEDURES**

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party **or third party** to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute **or third party** submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during ~~a session of the first~~ **all the** substantive meetings ~~that~~ of the panel set aside for that purpose. ~~All such third parties may be present during the entirety of this session.~~ **Third parties shall have the opportunity to be present at all stages of the proceeding. In establishing the working procedures to be followed the panel may take into consideration the rights and any special circumstances of a third party that are closely related to the matter under dispute.**

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties **and third parties**. Moreover, each party's **and third parties'** written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties **and third parties**.

12. Proposed timetable for panel work:

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| (d) Date, time and place of second substantive meeting with the parties <u>and third parties</u> : | 1-2 weeks |
| (e) Issuance of descriptive part of the report to the parties <u>and third parties</u> : | 2-4 weeks |
| (f) Receipt of comments by the parties <u>and third parties</u> on the descriptive part of the report: | 2 weeks |
| (g) Issuance of the interim report, including the findings and conclusions, to the parties <u>and third parties</u> : | 2-4 weeks |
| (i) Period of review by panel, including possible additional meeting with parties <u>and third parties</u> : | 2 weeks |
| (j) Issuance of final report to parties to dispute <u>and third parties</u> : | 2 weeks |
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