

**PROPOSAL BY COSTA RICA - THIRD PARTY RIGHTS**

Communication from Costa Rica

Revision

The following communication, dated 5 March 2003, 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, *inter alia*, the following amendments to the DSU:

- Amend the provision that limits the right of Members 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 and participate at the first substantive meeting to all the substantial meetings of the panel and the Appellate Body with the parties in the dispute.
- 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 all the documents or other information submitted to the Panel and the Appellate Body, at the same time as it is made available to the parties to the dispute.

### 3. Proposed legal text

#### *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 agreements<sup>4</sup>, 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, to make written submissions to the panel and to **be present and participate at all the substantive meetings of the panel with the parties to the dispute.** 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.<sup>1</sup> Without prejudice to paragraph 2 of this Article, a third party may participate at any of the substantive meetings of the panel with**

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<sup>1</sup> Documents of an administrative or procedural nature need not be provided.

**the parties, except for portions of sessions when such factual confidential information is discussed.**

#### *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 under this Understanding and the WTO Agreements.**
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. *(The proposal regarding this paragraph has been withdrawn)*

#### *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 10 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 **or third party** 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 shall also, upon request of a Member,~~ **A party and a third party to a proceeding shall also, if requested by a Member,** provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public, **not later than 15 days after the date of either the request or the submission, whichever is later, or such other deadline as is agreed by the party and the requesting Member.**

*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 to a dispute **or third party** 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 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.~~ **Each party and third party to a proceeding shall also, if requested by a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public, not later than 15 days after the date of either the request or the submission, whichever is later, or such other deadline as is agreed by the party and the requesting Member.**

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** of the panel **with the parties to the dispute** ~~set aside for that purpose.~~ ~~All such third parties may be present during the entirety of this session.~~ **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.**

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party **and third parties**. The parties shall submit, prior to that meeting, written rebuttals to the panel. **The third parties shall submit, prior to that meeting, written versions of their interventions to the panel.**

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:

(b) Date, time and place of first substantive meeting with the parties **and third parties**: ~~third party session:~~ 1-2 weeks

(d) Date, time and place of second substantive meeting with the parties **and third parties**: 1-2 weeks

(e) Issuance of descriptive part of the report to the parties **and third parties**: 2-4 weeks

(f) Receipt of comments by the parties **and third parties** on the descriptive part of the report: 2 weeks

(g) *The proposal regarding this point has been withdrawn (see Article 15.2)*

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| (i) Period of review by panel, including possible additional meeting with parties <b><u>and third parties</u></b> : | 2 weeks |
| (j) Issuance of final report to parties to dispute <b><u>and third parties</u></b> :                                | 2 weeks |
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