

**NEGOTIATIONS ON IMPROVEMENTS AND CLARIFICATIONS  
OF THE DISPUTE SETTLEMENT UNDERSTANDING**

Communication from Paraguay

The following communication, dated 11 September 2002, has been received from the Permanent Mission of Paraguay.

Paraguay has identified one of the areas in which it considers that the Dispute Settlement Understanding (DSU) should be improved, namely Article 5 - *Good Offices, Conciliation and Mediation*.

**I. INTRODUCTION**

1. As established in some of the general provisions of Article 3 of the DSU, one of the basic objectives of the dispute settlement system is to restore the balance between the rights and obligations of Members through the *prompt settlement* of situations in which a Member considers that its rights have been nullified or impaired by measures taken by another Member.

2. The DSU is also regarded as the central element in providing security and predictability to the multilateral trading system. Consequently, it is necessary to promote the strengthening of the rules designed to expedite procedures for the settlement of trade disputes among Members, and one measure that would help strengthen such rules is to ascribe *mandatory status* to measures that are currently voluntary.

3. Another factor to be taken into account is the very high cost involved in a dispute settlement procedure, which developing – and least-developed – country Members are often unable to assume. This makes it even more necessary to promote measures for the prompt and amicable resolution of disputes.<sup>1</sup>

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<sup>1</sup> **Proposal by the EC (TN/DS/W/1):** "... It should be recalled at the outset that the purpose of a dispute settlement procedure is the amicable – and quick – resolution of a dispute. In this context, the WTO Members should always endeavour to solve the dispute at the earliest possible stage, if possible at the consultation stage but also via recourse to good offices or mediation by the Director-General, as provided in Article 5 of the DSU. The EC and its member States consider that any improvements of the DSU should contribute towards this overall goal of facilitating the earliest possible resolution of disputes. ..."

**Proposal by Ecuador (TN/DS/W/9):** "... In order to put our proposal in context, it is necessary to recall the basic principles underpinning the dispute settlement mechanism, which are set out in the General Provisions of Article 3 of the DSU as follows:

- (a) To provide security and predictability to the multilateral trading system;
- (b) prompt settlement;
- (c) settlement that is compatible with the covered agreements;
- (d) preference to be given to mutually acceptable solutions;

## II. PROPOSAL

4. Paraguay accordingly proposes the following amendment to Article 5 of the Dispute Settlement Understanding.

*Article 5*  
*Good Offices, Conciliation and Mediation*

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. ***In disputes involving developing country Members, and at the request of any of the parties, such procedures shall be mandatory.***

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. ***On no account may such procedures exceed a maximum period of 90 days.***

4. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel. ***If the parties to a dispute agree, and if one of the parties is a developing country Member, procedures for good offices, conciliation or mediation shall continue while the panel process proceeds.***

5. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

~~5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.~~

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- (e) voluntary compensation should only apply if the immediate withdrawal of the measure is impracticable;
  - (f) the last resort is the possibility of suspending the application of concessions subject to authorization by the DSB;
  - (g) presumption of nullification or impairment;
  - (h) good faith, it being understood that use of the dispute settlement procedure is not intended or considered to be a contentious act;
  - (i) special attention should be paid to the problems and interests of developing country Members. ..."

**Proposal by Korea (TN/DS/W/11):** "... It is generally accepted that the DSU has been functioning without serious problems during the last seven and half years since its entry into force. ... More specifically, the following basic principles would apply in this paper:

- Prompt settlement of a dispute situation (Article 3.3);
- prompt compliance with recommendations or rulings of the DSB (Article 21.1). ..."

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

7. *The use of the procedures under this Article as a means of promptly settling trade disputes that arise between Members and of maintaining the balance between the rights and obligations of Members shall be encouraged.*

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