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**Dispute Settlement Body  
Special Session**

Original: English

**CONTRIBUTION TO CLARIFY AND IMPROVE THE DISPUTE SETTLEMENT  
UNDERSTANDING: PANEL SYSTEM**

Communication from Thailand

The following communication, dated 15 January 2003, has been received from the Permanent Mission of Thailand.

**I. INTRODUCTION**

1. One of the proposals made by the European Communities and its Member States for the Improvement of the WTO Dispute Settlement Understanding, contained in document TN/DS/W/1, is the establishment of a system of permanent panelists as an alternative to the current system for panel composition under the DSU.

2. Taking account of views expressed by Members in formal and informal discussions, Thailand's proposal combines various elements of current system with the EC's suggested modality, which may or may not be used for a more gradual evolution of the current system, based on the demonstrated preferences of WTO members participating in disputes.

3. The impact of this proposed alternative system would be minimal, as the current indicative list of candidates for panelists would be maintained in order to facilitate the selection of suitable experts to serve as panelists. In addition, a Roster of Panel Chairs would be established comprised of experienced individuals who are available to serve as chairs of panels on a regular basis.

**II. OVERVIEW**

4. The proposed system would provide parties with a greater range of options for panel composition. In addition to retaining the current practice (i.e. mutual agreement on a complete panel based on nominations proposed by the Secretariat, or panel composition by the DG at the request of either party), a further option will be provided that allows a party to request that the Panel Chair be appointed by lot. Following appointment of the Panel Chair, the parties can continue with the process of panel composition based on nominations proposed by the Secretariat or DG appointment of the remaining panelists.

5. This system would have the following benefits:

- (a) Parties will have greater control over the panel composition process, and will retain the right to have the panel composed within 30 days of panel establishment.

- (b) Parties retain the possibility of agreeing on panelists nominated by the Secretariat, and have the option of a more flexible automatic system for panel composition, supplemented by a more dedicated and experienced pool of Panel Chairs.
- (c) Parties have the added option of having an experienced Panel Chair appointed at any stage during the panel composition process, while retaining the ability to agree on panelists with necessary expertise in the subject matter of the relevant covered agreements.

### **III. PROPOSED NEW PANEL COMPOSITION PROCESS**

6. The DSB will approve a "Roster of Panel Chairs" comprised of individuals who may be appointed as Chair of a Panel by lot. The number of individuals on the Roster shall be adjusted according to the level of demand for appointments from the Roster. An indicative list of potential candidates for inclusion in the Roster shall be prepared by the Director-General, all of whom should have the particular qualifications, experience and expertise as envisaged in Article 8 of the DSU, as well as prior experience as panelist; and should be available to serve as a Chair upon request.

7. An individual listed in the Roster shall not be nominated by the Secretariat to serve as a panelist pursuant to Article 8.6 of the DSU. An individual listed in the Roster may be included in a panel composed by the Director-General pursuant to Article 8.7 of the DSU, provided the individual is selected by drawing lot.

8. As provided under Article 8 of the DSU, the parties to a dispute may agree on a panel, or on individual panelists, based on nominations proposed by the Secretariat pursuant to Article 8.6 of the DSU.

9. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, any of the parties to the dispute may make a request to the Director-General to take the necessary action, within 10 days of the date on which the request is received, to:

- (a) appoint the Chair of the panel, by drawing lot, from the Roster of Panel Chairs mentioned in paragraph 6 above; or
- (b) determine the composition of the panel as provided for under Article 8.7 of the DSU, giving full effect to the prior appointment of a Panel Chair and/or any agreement by the parties on a panelist nominated by the Secretariat.

10. In situations where the Director-General has received concurrent requests from the parties to a dispute for the appointment of a Chair and the composition of the panel, the Director-General shall, in consultation with the parties, proceed to determine the composition of the panel as provided for under Article 8.7, including, where the Director-General considers it to be appropriate, through the selection, by drawing lot, of a Chair from the Roster of Chairs.

### **IV. PROPOSED DRAFT LEGAL TEXT**

11. The current provisions of Article 8 of the DSU appear to provide sufficient flexibility for the proposed changes to be introduced without an amendment to the DSU. It is therefore proposed that the DSB take a decision based on the elements set out under Section III above.