

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

Proposal by Ecuador

The following communication, dated 17 January 2003, has been received from the Permanent Mission of Ecuador.

We propose that Article 21 be amended as follows:

Article 21

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.
2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.
3. At a DSB meeting held within 30 days¹ after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time² shall be:
 - (a) The period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval;
 - (b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement;

¹ If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

² For the purposes of this Understanding, the "reasonable period of time" shall include the time-period specified under paragraph 7 of Article 4 of the Agreement on Subsidies and Countervailing Measures.

- (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.³ In such arbitration, a guideline for the arbitrator⁴ should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

3 bis Where the Member concerned cannot comply immediately with the recommendations and rulings of the DSB, at any moment prior to the invocation by a complaining party of Article 22.2 and as from the meeting of the DSB referred to in paragraph 3 above in which the Member concerned informs the DSB of its intentions in respect of implementation of the recommendations and rulings, a complaining party may request arbitration to determine the annual level of nullification or impairment caused by the non-compliance of the Member concerned. To that end the complaining party shall indicate, in its request for arbitration, the annual level of nullification or impairment which, in its view, results from the non-compliance with the DSB recommendations and rulings by the Member concerned. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator⁵ appointed by the Director-General, and shall be completed within 60 days after the date on which the arbitrator is summoned. If the complaining party has requested such arbitration before the reasonable period of time for compliance with the recommendations and rulings of the DSB has been set and the parties to the dispute have not reached an agreement on such reasonable period of time, the arbitration may also determine the reasonable period of time within the 90 days stipulated in paragraph 3(c) above. If the complaining party is a developing country and the Member concerned is a developed country, the complaining party may request that the arbitrator, in addition to determining the level of nullification or impairment on the basis of the trade affected by the challenged measures, make an estimate of the impact of those measures on its economy. That estimate shall include the determination of the level of injury and the recommendation that the Member concerned take account thereof in its prompt compliance with the recommendations and rulings adopted by the DSB - and in case of non-compliance, that the said estimate be taken into account in proceeding with the compensation or suspension of concessions or other obligations under Article 22.

3 ter. The annual level of nullification or impairment may be definitively revised by the arbitrator responsible for its determination at the request of one of the parties to the dispute, and only on the basis of the determination of compliance made under Article 21 *bis*. Such arbitration shall be requested within the 20 days following the circulation of the determination of compliance made under Article 21 *bis*. The arbitrator shall have a period of 45 days to issue its decision. The parties shall accept the said decision as definitive, and shall not try to obtain a second arbitration.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. 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

³ If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

⁴ The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

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rulings of the DSB. When such consultations are entered into, each party to the dispute shall afford to any third party, which so requests, an adequate opportunity to express its views.

6. (a) The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption.
- (b) The Member concerned shall report on the status of its implementation of the recommendations or rulings of the DSB at each DSB meeting⁶, where any Member may raise any point pertaining thereto, beginning at the half point of the length of the reasonable period of time or six months after the date of adoption of the recommendations or rulings of the DSB, whichever is the earlier, until the parties to the dispute have mutually agreed that the issue is resolved or until the DSB finds pursuant to Article 21*bis* that the Member concerned has complied. At least ten days prior to each such DSB meeting, the Member concerned shall provide the DSB with a detailed written status report concerning its progress in the implementation of the recommendations or rulings.
- (c) (i) Upon compliance with the recommendations or rulings of the DSB the Member concerned shall submit to the DSB a written notification on compliance.
 - (ii) If the Member concerned has not submitted a notification under subparagraph (c)(i) by the date that is 20 days before the date of expiry of the reasonable period of time, then not later than that date the Member concerned shall submit to the DSB a written notification on compliance including the measures that it has taken, or the measures that it expects to have taken by the expiry of the reasonable period of time. Where the notification refers to measures that the Member concerned expects to have taken, the Member concerned shall submit to the DSB a supplementary written notification no later than the expiry of the reasonable period of time, stating that it has, or has not, taken such measures, and indicating any changes to them.
 - (iii) Each notification under this subparagraph shall include a detailed description as well as the text of the relevant measures the Member concerned has taken. The notification requirement of this subparagraph shall not be construed to reduce the reasonable period of time established pursuant to paragraph 3 of Article 21.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

We propose that Article 22.2 be amended to read as follows:

⁶ The parties to the dispute may agree to waive this requirement for a particular DSB meeting.

Paragraph 2 of Article 22 shall be amended to read as follows:

- "2. If:
- (i) the Member concerned does not inform the DSB pursuant to paragraph 3 of Article 21 that it intends to implement the recommendations or rulings of the DSB;
 - (ii) the Member concerned does not submit within the required time-period a notification pursuant to paragraph 6(c) of Article 21 stating that the Member concerned has complied; or
 - (iii) the Compliance Panel or the Appellate Body report pursuant to Article 21*bis* finds that the Member concerned has failed to bring the measures found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations or rulings of the DSB;

such Member shall, if so requested by the complaining party, enter into consultations with a view to agree on a mutually acceptable compensation.

Within 30 days from the request, the Member concerned shall submit to the other Member a proposal for mutually acceptable compensation. Such compensation may be partly or entirely monetary. When an arbitration referred to in Article 21.3 *bis* has taken place, such proposal shall be consistent with the award of the arbitrator. If the parties reach a compensation agreement, they shall so inform the DSB. If no proposal for compensation has been submitted within the time-period referred to in the previous subparagraph or if no agreement has been reached within 30 days from the submission of the proposal for a mutually acceptable compensation, the complaining Party shall be entitled to request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements equivalent to the level of nullification and impairment. A meeting of the DSB shall be convened for this purpose 10 days after the request, unless the complaining party requests that the meeting be held at a later date.⁷

If the complaining party is a developing country and the Member concerned is a developed country, during the consultations held between the parties to the dispute with a view to reaching a compensation agreement they shall bear in mind the provisions of Article 21.8. If, in the above situation, no compensation agreement is reached and the complaining party asks the DSB for authorization to suspend the application to the Member concerned of concessions or other obligations under the covered agreements, the DSB shall authorize such suspension, taking account of the level of nullification or impairment indicated by the complaining party or established by the arbitration under Article 21.3 *bis* concerning trade affected by the challenged measures, including, in addition, the level of impact of the said measures on the economy of the developing country in question as estimated by the arbitrator."

⁷ In the case of paragraph 2 (ii) above, such DSB meeting shall not be convened before the expiry of the reasonable period of time.