
**Dispute Settlement Body
Special Session**

Original: English

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

Communication from Australia

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

Australia identified the following areas in TN/DS/W/8 where we consider that improvements and/or clarifications of the Dispute Settlement Understanding (DSU) are required:

- (a) The need to address anomalies in procedural time-frames for dispute settlement on safeguards compared to subsidies;
- (b) the need to ensure that the rights of non-parties to a dispute are respected, particularly in relation to compensation arrangements;
- (c) the need to ensure that the actual level of retaliation imposed by a complaining party is consistent with the level of retaliation authorized by the Dispute Settlement Body (DSB);
- (d) the potential for possible time savings in the dispute settlement procedure;
- (e) the usefulness of adopting a consolidated understanding on agreed procedures under Articles 21 and 22 of the DSU to replace the current need for ad hoc bilateral agreements.

Further to Australia's proposal TN/DS/W/8, we offer the following draft legal texts of possible clarifications and improvements of the Dispute Settlement Understanding. Australia considers that these improvements and clarifications of the DSU can be put in place through adoption of decisions on agreed practice by the DSB (rather than formal treaty amendments to the DSU). Below is an example of the form that such a DSB decision may take.

Preamble to DSB Decision

Members,

Acknowledging the importance of the WTO dispute settlement rules and procedures in ensuring stability and predictability in international trade relations,

Considering that paragraph 30 of the Doha WTO Ministerial Declaration of 2001 mandates negotiations on improvements and clarifications of the Dispute Settlement Understanding based on work in recent years and new proposals,

Emphasizing that members should aim to agree on such improvements and clarifications by May 2003,

Hereby agree, unless the parties to a dispute agree or have agreed otherwise, that the procedures set out in Annex A will apply to the Dispute Settlement Understanding.

ANNEX A

(a) Anomalies in procedural time-frames for dispute settlement on safeguards compared to subsidies

- Expedited procedures will be instituted for dispute settlement on all safeguard matters brought under the DSU, including:
 - A request for establishment of a panel may be made 30 days (rather than 60 days) after the request for consultations if the consultations fail to settle the dispute on safeguard action.
 - The panel will be established at the first DSB meeting following the request for establishment of a panel in a dispute on safeguard action.
 - All time-frames in the Working Procedures in Appendix 3 will be halved for disputes on safeguard action, unless the parties otherwise agree.
 - If one or more of the parties to a dispute on safeguard action is a developing country, then the developing-country party may request and receive the application of standard DSU time-frames.

(b) Compensation arrangements and rights of non-parties to a dispute

- Members will fully observe the requirement in Article 3.7 of the DSU that the provision of compensation is a temporary measure pending the withdrawal of a measure found to be WTO-inconsistent.
 - Members will not enter into compensation arrangements that in effect constitute a waiver of their obligations.
- Members will observe the requirement in Article 22.1 of the DSU that compensation must be consistent with the covered agreements.
 - In acknowledging that any compensatory measures need to be available on an *erga omnes* basis, Members will seek, to the extent feasible, to agree on measures that are generally available to other WTO Members.
- Members agree that, in circumstances where it is not feasible to apply compensatory measures that are generally available, a non-implementing Member will, on request, agree to expedited arbitration under Article 25 of the DSU that would serve to determine the right of a third party to negotiate compensation, as well as the level of that compensation.

(c) DSU surveillance of retaliation

Further to the procedures set out in Article 22.6 and 22.7 DSU:

- Members agree that, once an arbitrator has determined that the concessions or other obligations proposed for suspension by a complainant are equivalent to the level of

nullification or impairment, they will refrain from varying this list except to correct technical errors or in response to unforeseen circumstances.

- In cases where a complainant does nonetheless seek to vary its concessions or other obligations suspended, a respondent retains the right to seek arbitration under Articles 22.6 and 22.7 of the DSU.
- (d) Proposals for saving time on the dispute settlement procedure
- Unless the parties to a dispute agree otherwise, a panel will be established at the first DSB meeting following the request by the complainant.
 - Complainants will lodge their first written submissions at the same time as they first request the establishment of a panel on a particular matter.
- (e) "Sequencing" the relationship between Article 21.5 and Article 22
- Members agree that the following procedures under Articles 21.5 and 22 of the DSU will apply to all disputes.
 - The procedures under Article 21.5 will be initiated before the procedures in Article 22.
 - If on the basis of the results of proceedings under Article 21.5 the complainant decides to initiate proceedings under Article 22, the respondent will not assert that the complainant is precluded from obtaining DSB authorization under Article 22 because the complainant's request was made outside the time-period specified in the first sentence of Article 22.6.
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