

WORLD TRADE ORGANIZATION

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Dispute Settlement Body
Special Session

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CONTRIBUTION BY THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU TO THE DOHA MANDATED REVIEW OF THE DISPUTE SETTLEMENT UNDERSTANDING (DSU)

Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 15 January 2003, has been received from the Permanent Representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

Following our proposals TN/DS/W/25 previously submitted on 12 November 2002 and presented orally at the last meeting of the DSB in December, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is hereby submitting the legal texts based on those proposals, with a view to their inclusion in the compilation to be circulated prior to the meeting at the end of January 2003.

Our proposed amendments to the DSU are as follows:

Article 4 *Consultations*

- * Maintain the existing content of Article 4 of the DSU.
- * In order to prevent arbitrary refusal of a third-party request for consultations, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu proposes that a third-party consultation guideline be added as Appendix 5 to the DSU. See the attached Appendix 5.

Article 10 *Third Parties*

2. Any Member having a substantial interest in a matter before a panel and having notified its interests 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 and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

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 submissions to the panel, at the time of submission, except for certain factual confidential information designated as such by the disputing party that submitted it. Without prejudice to paragraph 2 of this Article, a third**

party shall have the opportunity to be present at all stages of the proceeding except for portions of sessions when such factual confidential information is discussed.

Article 12

Panel Procedures

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 submissions.

6. Each party to the dispute **and any 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. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties **and third parties**, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports **shall be circulated in a timely manner** and shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

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. **Third parties shall likewise receive all submissions to the panel or Appellate Body at the time of submission, except for certain factual confidential information designated as such by the disputing party that submitted it.** Nothing in this Understanding shall preclude a party to a dispute 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 **or a third party** shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Furthermore, with regard to the Working Procedures in Appendix 3 we hereby wish to propose some additional changes, which were not included in our original proposals. These are as follows:

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 **or a third party** to a dispute 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 **or a third party** 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

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~~ **at all the** substantive meetings of the panel, ~~set aside for that purpose. All such third parties may be present during the entirety of this stage of the session.~~ **Third parties shall have the opportunity to be present at all proceedings.**

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 party's** 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 to third parties**.

12. Proposed timetable for panel work

- (b) Date, time and place of first substantive meeting with the parties **and third parties** ~~session:~~
- (d) Date, time and place of second substantive meeting with the parties **and third parties**:
- (e) Issuance of descriptive part of the report to the parties **and third parties**:
- (f) Receipt of comments by the parties **and third parties** on the descriptive part of the report:
- (g) Issuance of the interim report, including the findings and conclusions, to the parties **and third parties**:
- (h) Period of review by panel, including possible additional meeting with parties **and third parties**:
- (g) Issuance of final report to parties to dispute **and third parties**:

APPENDIX 5

THIRD PARTY PARTICIPATION IN CONSULTATION

1. Any Member having 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, shall be permitted to take part in the consultation as a third party after notifying the consulting Members and the DSB of its desire to be joined in the consultations as a third party within 10 days after the date of the circulation of the request for consultations.

2. A Member shall be considered as having a substantial trade interest if it has a principal supplying interest to one of the consulting Members or if the trade in dispute affects a major part of its total imports or exports.

3. A Member who has claimed a substantial trade interest shall be joined in the consultations as a third party unless the Member to which the request for consultations was addressed disagrees with the claim of substantial trade interest and provides the applicant Member and the DSB with reasons for the disagreement within 10 days after notification of the claim.

4. In the event that no response to the applicant Member's claim was conveyed by the Member to which the request for consultations was addressed, the applicant Member shall be entitled to be joined in the consultations as a third party until a rejection of the claim was conveyed to the applicant Member and the DSB pursuant to the preceding paragraph.

5. If the request to be joined in the consultations as a third party 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.
