

**AMENDMENTS TO THE UNDERSTANDING ON RULES AND PROCEDURES
GOVERNING THE SETTLEMENT OF DISPUTES
PROPOSED TEXT BY MEXICO**

Communication from Mexico

The following communication, dated 21 January 2003, has been received from the Permanent Mission of Mexico.

Article 3

General Provisions

1. - 6. (...)

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis *vis-à-vis* the other Member, subject to authorization by the DSB of such measures, **as well as the possibility of transferring this right of suspending the application of concessions or other obligations under the covered agreements to other Member(s).**

8. - 12 (...)

Article 6

Establishment of Panels

1 (...)

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the

establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. **If the complaining Member requests the panel to take actions under Articles 12.6 bis and 12.6 ter, it shall explain why one or more of the measures at issue are causing or threatening to cause damage difficult to repair. It shall also indicate what actions might stop or counteract the damage or threat thereof, including the actions it intends to take, as well as the expected trade impact of such actions.**

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

"To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s). **If so requested, the panel shall also determine the level of nullification or impairment and may take actions under Articles 12.6 bis and 12.6 ter.**"

2. - 3. (...)

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. **If so requested, panels shall determine the level of nullification or impairment and may take actions under Articles 12.6 bis and 12.6 ter.** Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. - 6 (...)

6 bis. A complaining party that has indicated that one or more of the challenged measures is causing or threatening to cause damage difficult to repair, shall submit in its first written submission the arguments and evidence thereof. It shall also submit arguments and evidence supporting its assertions of what actions might stop or counteract the damage or threat thereof, particularly those referring to the actions it intends to take, as well as the expected trade impact of such actions. In such cases, the panel shall decide, at its first substantive meeting with the parties, whether the claims of the complaining party concerning such damage are sufficiently

substantiated and, in exceptional circumstances, shall request the responding party to take actions to stop or counteract the damage or threat thereof to such complaining party.

6 ter. Within 30 days, unless the responding party demonstrates that it has taken the actions to stop or counteract the damage or threat thereof to such complaining party, as requested by the panel, the panel shall authorize the complaining party to take actions to stop or counteract the damage or threat thereof. In doing so, the panel shall indicate what actions the complaining party is allowed to take and shall determine the maximum trade impact that those actions may have. The actions taken pursuant to paragraph 6 bis and this paragraph shall be maintained until the panel or the Appellate Body decide to terminate such actions or, in the absence of such a decision, until the DSB authorizes suspension of concessions or other obligations pursuant to Article 22, provided that if no such authorization is requested within 60 days of the date of adoption of the panel or the Appellate Body reports, the actions under paragraphs 6 bis and this paragraph shall be removed immediately.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes, including those relating to actions under paragraphs 6 bis and 6 ter. If a determination of the level of nullification or impairment has been requested, the panel report shall also contain such determination. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. - 12 (...)

Article 15

Interim Review Stage

1. (...)

2. 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, 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, without prejudice to the provisions contained in paragraph 4 the interim report shall be considered the final panel report and circulated promptly to the Members.

3. (...)

4. After the issuance of the interim report, any party may request the panel to determine the level of nullification or impairment pursuant to Article 22.7. The determination of the level of nullification or impairment shall form part of the final panel report.

Article 17

Appellate Review

1. - 5. (...)

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel. **However, if the panel report includes a determination of the level of nullification or impairment, such determination may also be the subject of an appeal.**

7. The Appellate Body shall be provided with appropriate administrative, **technical** and legal support as it requires.

8. - 12. (...)

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel, **as well as the action taken under Articles 12.6 bis and 12.6 ter, and the determination of the level of nullification or impairment.**

14. (...)

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented **immediately within a reasonable period of time**. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings **immediately within the reasonable period of time determined pursuant to paragraph 3 of Article 21**, such Member shall, if so requested, ~~and no later than the expiry of the reasonable period of time~~, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days **there** ~~after the date of expiry of the reasonable period of time~~, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

~~3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:~~

~~(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;~~

~~(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;~~

~~(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;~~

- ~~(d) in applying the above principles, that party shall take into account:~~
- ~~(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;~~
- ~~(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;~~
- ~~(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;~~
- ~~(f) for purposes of this paragraph, "sector" means:~~
- ~~(i) with respect to goods, all goods;~~
- ~~(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;⁴~~
- ~~(iii) with respect to trade related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;~~
- ~~(g) for purposes of this paragraph, "agreement" means:~~
- ~~(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;~~
- ~~(ii) with respect to services, the GATS;~~
- ~~(iii) with respect to intellectual property rights, the Agreement on TRIPS.~~

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment **from the date of [imposition of the measure] OR [request for consultations] OR [establishment of the panel].**

5. (...)

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of **such request** ~~the expiry of the reasonable period of time~~ unless the DSB decides by consensus to reject the request. However, **if a determination of the level of nullification or impairment pursuant to Articles 15 or 17 has not been issued and** the Member concerned objects to the level of suspension proposed, ~~or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c),~~

the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator appointed by the Director-General and shall be completed within 60 days after its referral. Concessions or other obligations shall not be suspended during the course of the arbitration, except for those actions authorized by the panel pursuant to Articles 12.6 bis and 12.6 ter.

7. The arbitrator² acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment, measuring such nullification or impairment from the date of [imposition of the measure] OR [request for consultations] OR [establishment of the panel]. If actions have been authorized under Articles 12.6 bis and 12.6 ter, the trade impact of such actions shall be accounted for in the calculation of the nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. ~~However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3.~~ The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. However, if the level of nullification or impairment has changed, in order to conform to this change, parties may request the DSB to modify its authorization or a new arbitration may be sought. The DSB shall be informed promptly of the decision of the arbitrator or the determination pursuant to Articles 15 or 17 and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator or the determination pursuant to Articles 15 or 17, unless the DSB decides by consensus to reject the request.

7 bis. The right to suspend concessions or other obligations may be transferred to one or more Member(s). In that case, the Member(s) transferring the right to suspend concessions or other obligations and the Member(s) acquiring such right shall jointly request the DSB that it authorize the latter to suspend concessions or other obligations. In that case, the DSB shall grant each acquiring Member authorization to suspend concessions or other obligations within 30 days of such request, unless the DSB decides by consensus to reject the request. In no case shall the transfer(s) exceed the level of suspension authorized by the DSB.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. However, the suspension of concessions or other obligations may remain in force thereafter until such time as which such suspension becomes equivalent to the level of nullification or impairment from the date of [imposition of the measure] OR [request for consultations] OR [establishment of the panel] to the date on which the authorization by the DSB to suspend was granted. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented. In such cases, Members which have been granted the right to suspend concessions or other obligations shall notify the DSB and the relevant WTO bodies of all the measures taken as suspension of concessions or other obligations within three months after the DSB has granted such authorization and thereafter every six months, until such suspension may no longer be applied

9. (...)

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

- (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;
- (b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and
- (c) **without prejudice to Articles 12.6 bis and 12.6 ter**, follow the procedures set forth in Article **15 or Article 22** to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings ~~within that reasonable period of time~~ **immediately**.

APPENDIX 3

WORKING PROCEDURES

1. – 4. (...)

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view. **At the end of the first substantive meeting with the parties, the panel shall issue its decision pursuant to Article 12.6 bis.**

6. – 9. (...)

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. Moreover, each party's written submissions, including any comments on the descriptive part of the report, ~~and~~ responses to questions put by the panel **and the documents relevant to the determination of nullification or impairment pursuant to Article 15**, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:

(1) complaining Party:	_____	3-6 weeks
(2) Party complained against:	_____	2-3 weeks

(b) Date, time and place of first substantive meeting with the parties; third party session, **action by the panel under Article 12.6 bis**: _____ 1-2 weeks

(c) Receipt of written rebuttals of the parties: _____ 2-3 weeks

(c bis) Action by the panel under Article 12.6 ter: _____ **30 days from (c)**

(d) Date, time and place of second substantive meeting with the parties: _____ 1-2 weeks

(e) Issuance of descriptive part of the report to the parties: _____ 2-4 weeks

(f) Receipt of comments by the parties on the descriptive part of the report: _____ 2 weeks

(g) Issuance of the interim report, including the findings and conclusions, to the parties: _____ 2-4 weeks

(h) Deadline for party to request review of part(s) of report, **and request for the procedure to determine the level of nullification or impairment**: _____ 1 week

(i) Period of review by panel, including possible additional meeting with parties: _____ 2 weeks

(I bis) Deadline for submissions concerning the level of nullification or impairment: _____ **2 weeks**

(I ter) Hearing of the procedure to determine level of nullification or impairment: _____ **2-3 weeks**

(j) Issuance of final report to parties to dispute: _____ 2 weeks

(k) Circulation of the final report to the Members: _____ 3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.
