

WORLD TRADE ORGANIZATION

TN/DS/W/47
11 February 2003

(03-0887)

Dispute Settlement Body
Special Session

Original: English

DISPUTE SETTLEMENT UNDERSTANDING PROPOSALS: LEGAL TEXT

Communication from India on behalf of Cuba, Dominican Republic, Egypt,
Honduras, Jamaica and Malaysia

The following communication, dated 7 February 2003, has been received from the Permanent Mission of India on behalf of Cuba, Dominican Republic, Egypt, Honduras, Jamaica and Malaysia.

Article 3.6 of DSU:

"6. **Terms of settlement of** mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified **by a party to the dispute within 60 days after the date of such agreement and in sufficient detail** to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto."

Footnote to Article 13 of the DSU.

"Seek" shall mean any information and technical advice that is sought or asked for, or demanded or requested by a panel. A panel shall not accept unsolicited information.

The first sentence of Article 17. 2 of the DSU

2. The DSB shall appoint persons to serve on the Appellate Body for a ~~four year term, and each person may be reappointed once~~ **six-year term and such persons shall not be eligible for reappointment.**

Article 17.4 of the DSU

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of substantial interest in the matter pursuant to paragraph 2 of Article 10 ~~may make written submission to, and be given an opportunity to be heard by, the Appellate Body~~ **shall have an opportunity to be heard by the Appellate Body and to make written submissions to it. These submissions shall be reflected in the Appellate Body report.**

Footnote to Article 17.6

A notice of appeal, which initiates the appeal process, shall identify the issues of law covered in the panel report and legal interpretations developed by the panel sufficiently clear enabling the other party and the third parties to a dispute to understand the issues under appeal.

Further footnote to Article 17.6 of the DSU

The Appellate Body shall neither seek nor accept information from anyone other than the parties and third parties to a dispute.

Paragraph 10 of Appendix 3 of the DSU:

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, shall be made available to the other party or parties. **Any document, notes, information, etc., other than case summaries, submitted by the Secretariat to the panel shall be provided promptly to the parties to the dispute, whose views on such documents, notes, information, etc., shall be taken into consideration by the panel.**

S&D Provisions

Article 22. 3bis of the DSU:

“Notwithstanding the principles and procedures contained in paragraph 3, in a dispute involving a developing country Member as complaining party and a developed country Member as a party complained against, the complaining party shall have the right to seek authorization for suspension of concessions or other obligations with respect to any or all sectors under any covered agreements, if the party complained against fails to bring its measures into compliance with the rulings and recommendations of the DSB or a covered agreement.”

Article 3bis: Litigation Costs:

In a dispute involving a developing country Member and a developed country Member as a complaining party and as a party complained against, respectively, or vice versa, and where that dispute does not end with a panel or the Appellate Body finding against the former, the panel or the Appellate Body shall award litigation costs to the developing-country Member to the tune of US\$500,000 or actual expenses, whichever is higher¹. The litigation costs shall include lawyers' fees, charges and all other expenses for, preparation of necessary documents² and participation in, the consultations, panel and the Appellate Body proceedings. The litigation costs shall also include travel, hotel, per diem and other expenses for a reasonable number of the Capital based officials.

Article 4.10

During consultations Members ~~should~~ **shall** give special attention to developing-country Members' particular problems and interests **in the following manner:**

¹ The expenses shall be calculated for each stage of dispute settlement proceedings, which include consultation, panel and the Appellate Body proceedings as well as the proceedings under Articles 21.3(c), 21.5, 22.6 and 25 of the DSU. The original panel and the panel established pursuant to Article 21.5 of the DSU shall take into account the expenses relating to the consultations preceding those panel proceedings for award of litigation costs. The award of litigation costs is binding on the parties and not subject to appeal.

² The documents include request for consultations, oral or written submissions and all other documents necessary for preparation and participation in the dispute settlement proceedings. They shall also include oral or written advice rendered prior to, during or after consultations, panel or the Appellate Body proceedings relating to the dispute.

(a) if the complaining party is a developed country Member and if it decides to seek establishment of a panel, it shall explain in the request for establishment of panel as well as in its submissions to panel and the Appellate Body as to how it had taken into account or paid special attention to the particular problems and interests of the developing country Member concerned;

(b) if the developed country Member is a defending party, it shall explain in its submissions to the panel as to how it had taken into account or paid special attention to the particular problems and interests of the developing country Member concerned;

(c) the Panel, while adjudicating the matter referred to it, shall make a ruling on this issue.

Article 12.10 of the DSU

In the context of consultations involving a measure taken by a developing-country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. ~~If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing-country Member, the panel shall accord sufficient time for the developing Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.~~ If, after the relevant period has elapsed, the parties fail to agree that the consultations have concluded, the Chairman of the DSB shall, at the request of the developing country Member concerned, decide to extend the relevant period for not less than 15 days, in cases of urgency as envisaged in paragraph 8 of Article 4, and not less than 30 days in all other cases. In addition, in examining a complaint against a developing-country Member, the panel shall allow sufficient time, not less than two additional weeks in normal circumstance, for the developing-country Member to prepare and present its first written submission and one additional week thereafter at each stage of written submission or presentation. The additional time taken above shall be added to the time-frames envisaged in Article 20 and paragraph 4 of Article 21.

Article 21.2 of the DSU

Notwithstanding anything contained in this Article, particular attention ~~should~~ shall be paid to matters affecting the interests of developing-country Members with respect to measures which have been subject to dispute settlement in the following manner:

(a) if the party complained against is a developing country Member and the complaining party, a developed country Member,

(i) the reasonable period of time under paragraph 3 this Article below should normally not be less than 15 months. If the measure at issue requires change of statutory provisions or change of long held practice/policy, the reasonable period of time should be at least two years. The arbitrator under paragraph 3 (c) of this Article may indicate, where the situation warrants, the requirement of a reasonable period of time beyond two years;

(ii) the complaining party should request consultations with the party concerned prior to seeking recourse to the proceedings under the terms of paragraph 5 of this Article. The time for completion of such proceedings should be increased from 90 days

to 120 days. The panel should give consideration as may normally be given to the particular situation of developing country Members.

(iii) Filing of status report under the terms of paragraph 6 of this Article should be in alternative meetings rather than in every regular meeting of the DSB.

(c) if the complaint is by a developing country Member against a developed country Member:

reasonable period of time under the terms of paragraph 3 below should not exceed 15 months . Existing 90 days time limit for proceedings in accordance with paragraph 5 of this Article should be observed strictly. In case of delay the developed country Member concerned should offer mutually acceptable compensation for continuing trade loss to the developing country complainant.
