

SPECIAL SESSION OF THE DISPUTE SETTLEMENT BODY

The following communication is circulated at the request of the delegations of Argentina, Brazil, Canada, India, Mexico, New Zealand and Norway.

**TEXTUAL CONTRIBUTION TO THE NEGOTIATIONS
ON IMPROVEMENTS AND CLARIFICATIONS OF THE
DISPUTE SETTLEMENT UNDERSTANDING**

Non-Paper presented by Argentina, Brazil, Canada,
India, Mexico, New Zealand and Norway

In the attachment we are presenting a draft of a systemic issue that has been part of the DSU review for some time. This text consolidates the work on this issue by a number of countries undertaken in the last several months. It is presented in the interests of transparency. Like the previous non-paper contributions, we believe it represents a useful step forward in our negotiations.

This is presented as a stand-alone document and is independent of the other contributions presented previously. However, it could well form an element in a wider package of issues that should be dealt with.

We continue to work on other important issues that need to be addressed in the context of DSU Review, including: improving compliance, participation of developing countries in the dispute settlement system and transparency. We hope to present these issues in the form of non-paper contributions in the course of future DSB Special Sessions.

Third parties

Article 4.11

(a) Whenever a Member other than the consulting Members considers that it has 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 agreements¹, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations.

(b) Such Member shall be joined in the consultations, unless the Member to which the request for consultations was addressed notifies the DSB within 10 days after the date of receipt of the request for consultations that it will not accept requests to join consultations from any Member.

(c) If requests to be joined in the consultations are not accepted, applicant Members 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.

Article 10.2

(a) Any Member having a substantial interest in a matter before a panel shall notify its interest to the DSB and the disputing parties no later than 10 days after the establishment of the panel (such Member is referred to in this Understanding as a "third party").

(b) The panel shall give third parties the opportunity to:

- (i) be present at the substantive meetings of the panel with the parties to the dispute preceding the issuance of the interim report to the parties, except for portions of such meetings when [privileged] information designated as such by the party that submitted it is discussed;
- (ii) make a written submission prior to the first substantive meeting; and
- (iii) make oral presentations to the panel at a special session of the first substantive meeting.

(c) The panel may grant third parties rights additional to those listed in paragraph (b) only upon agreement by the disputing parties.

Article 10.3

(a) Each party to the dispute shall make available to third parties a copy of its submissions to the panel at the time such submission is made, except for [privileged] information designated as such by the party that submitted it. Third parties shall not receive any submission made subsequent to the issuance of the interim report to the parties.

(b) Each third party shall make available a copy of its submissions to the parties to the dispute and to the other third parties at the time such submission is made. The panel shall reflect the submissions of third parties in its report.

¹ Footnote as in the current DSU.

Article 17.4

- (a) Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10, shall have an opportunity to be heard and to make written submissions to the Appellate Body.
- (b) Any Member not having notified its substantial interest pursuant to Article 10.2, but having subsequently notified its substantial interest to the Appellate Body, the DSB and the disputing parties within 5 days after the date of circulation of the notice of appeal, shall also have an opportunity to be heard and to make written submissions to the Appellate Body.
- (c) Each third party shall make available a copy of its submission to the parties to the dispute and to the other third parties at the time such submission is made.

Consequential changes to the working procedures

Appendix 3

Paragraph 6

The panel shall invite in writing all third parties that have notified their interest in the dispute to the DSB to make a written submission to the panel and to be present at the first substantive meeting of the panel with the parties. The panel shall also give third parties an opportunity to present their views at a special session of that meeting.

Paragraph 7

Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first, to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

The panel shall invite in writing the third parties to be present at the second and any subsequent substantive meetings prior to the issuance of the interim report.
