

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 CONTRIBUTIONS 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

Revision

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 may participate as a third party before a panel by notifying its interest to do so to the DSB and to each party to the dispute no later than 10 days after the establishment of the panel.

(b) A third party has the right 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;

(iii) make an oral statement to the panel, and respond to questions at a session of the first substantive meeting set aside for that purpose; and

(iv) respond in writing to questions arising out of such a session.

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

¹ Footnote as in the current DSU.

Article 10.3

(a) Each party to the dispute shall make available to each third party its submissions to the panel (other than any submission made subsequent to the issuance of the interim report to the parties) at the time such submissions are made[, except for [privileged] information designated as such by the party that submitted it].

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

Article 17.4

(a) Only parties to the dispute, not third parties, may appeal a panel report. Each third party shall have an opportunity to make written submissions to and be heard by the Appellate Body.

(b) Any other Member may participate in a proceeding before the Appellate Body by notifying its interest to do so to the Appellate Body, the DSB and each party to the dispute within 5 days after the date of circulation of the notification referred to in paragraph 5. Such Member shall have an opportunity to make written submissions to and be heard by the Appellate Body.

Consequential changes to the working procedures

Appendix 3

Paragraph 6

The panel shall invite in writing each third party 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 give each third party the opportunity to: make an oral statement and to respond to questions at a session of that meeting set aside for that purpose, and to respond in writing to questions arising out of such a 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.
