

Understanding on Rules and Procedures Governing the Settlement of Disputes

The dispute settlement system of the GATT is generally considered to be one of the **cornerstones of the multilateral trade order**. The system has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules, which include greater automaticity in decisions on the establishment, terms of reference and composition of panels, such that these decisions are no longer dependent upon the consent of the parties to a dispute. The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will further strengthen the existing system significantly, extending the **greater automaticity** agreed in the Mid-Term Review to the adoption of the panels' and a new Appellate Body's findings. Moreover, the DSU will establish an **integrated system** permitting WTO Members to base their claims on any of the multilateral trade agreements included in the Annexes to the Agreement establishing the WTO. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council and the Councils and committees of the covered agreements.

The DSU emphasizes the importance of **consultations** in securing dispute resolution, requiring a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a **panel**, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference will apply unless the parties agree to special terms within 20 days of the panel's establishment. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General. Panels normally consist of three persons of appropriate background and experience from countries not party to the dispute. The Secretariat will maintain a list of experts satisfying the criteria.

Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within **six months** or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

The **concept of appellate review** is an important new feature of the DSU. An Appellate Body will be established, composed of seven members, three of whom will serve on any one case. **An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel.** Appellate proceedings shall not exceed 60 days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally

accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus against its adoption.

Once the panel report or the Appellate Body report is adopted, the party concerned will have to **notify its intentions with respect to implementation of adopted recommendations**. If it is impracticable to comply immediately, the party concerned shall be given a **reasonable period** of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved.

Further provisions set out **rules for compensation or the suspension of concessions** in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization **within 30 days of the expiry of the agreed time-frame for implementation**. **Disagreements over the proposed level of suspension may be referred to arbitration**. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

One of the **central provisions** of the DSU reaffirms that **Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU**.

The DSU contains a number of provisions taking into account the specific interests of the developing and the least-developed countries. It also provides some special rules for the resolution of disputes which do not involve a violation of obligations under a covered agreement but where a **Member believes nevertheless that benefits are being nullified or impaired**. Special decisions to be adopted by Ministers in 1994 foresee that the Montreal Dispute Settlement Rules which would otherwise have expired at the time of the April 1994 meeting are extended until the entry into force of the WTO. Another decision foresees that the new rules and procedures will be reviewed within four years after the entry into force of the WTO.