

Dispute Settlement Body
19 November 1999

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TERM OF APPOINTMENT OF APPELLATE BODY MEMBERS

Proposal by India

The following proposal addressed to the Chairman of the Dispute Settlement Body, dated 8 November 1999, has been received from India with the request that it be circulated to Members.

A. BACKGROUND

Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) provides for the appointment of a Standing Appellate Body comprising seven persons. It is further provided in paragraph 2 of the said Article that the DSB shall appoint persons to serve on the Appellate Body for a four-year term and that each person may be re-appointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years.

As the Chairman of the DSB noted in his statement on 22 September 1999, the first seven Appellate Body members were appointed in late 1995 after a lengthy and difficult process. Then, in June 1997, the DSB decided to reappoint three Appellate Body members whose term was coming to end by December 1997, to a final four-year term of office, i.e. till December 2001. The term of office of the other four of the original Appellate Body members will expire on 11 December 1999. Out of these four, two have cited personal reasons and decided to leave at the end of their term. The other two, however, have expressed willingness and interest in being reappointed for a second four-year term and the DSB has, at its last meeting, decided to reappoint these two members for a second term of four years i.e. up to December 2003.

B. ISSUE

The present system provides for the possibility of reappointment of Appellate Body members, who express their willingness and interest in being reappointed, for a second four-year term on the basis of a decision to that effect by the members of the DSB i.e. Members of the WTO. It is obvious that the DSB can accept or reject a request for a second term by an Appellate Body member. This situation in which the Appellate Body members are dependent on the WTO Membership for getting a second four-year term is not keeping in with the dignity of the high office the Appellate Body members hold. India also believes that the present system is not conducive for the absolute independence the Appellate Body members are required to exercise in the discharge of the duties. It is India's view that in order to enable Appellate Body members to discharge their duties independently, WTO Members have a responsibility to ensure that the Appellate Body members, after having been appointed to their high office, are not dependent on the indulgence of the WTO Members for securing a second term.

C. PROPOSAL

In order to maintain and enhance the dignity of the high office the Appellate Body members hold, and in order to ensure that the Appellate Body members do not have to depend upon WTO Membership for securing a second term, India proposes that all future appointments of Appellate Body members (i.e. any appointment which would be effected on or after 1 January 2000) should be for a non-renewable fixed term. India feels that this non-renewable fixed term should be five or six years. This approach would ensure that the Appellate Body members once having entered office will not be obliged to seek any support for their reappointment from the Membership and thereby promote an atmosphere conducive for impartial and independent functioning of the Appellate Body.

D. CLARIFICATIONS

- I) India's proposal will not in any manner affect the terms of office of the Appellate Body members who are currently holding office. India's proposal covers only future appointments.
 - II) A concern has been expressed by some delegations that India's proposal should not result in a situation where all the Appellate Body members leave at the same time. Out of the seven Appellate Body members currently holding office, two are likely to leave by 31 March 2000. The term of office of three other members will expire by December 2001. The term of office of the two remaining members will expire by December 2003. Therefore, it is unlikely that a decision to make all future appointments for a fixed term of five or six years, will anyway result in a situation that all Appellate Body members would leave at the same time.
 - III) It is true that India's proposal would involve an amendment to paragraph 2 of Article 17 of the DSU. However, it may be mentioned that if the proposal is approved by consensus in the DSB, there should be no difficulty in effecting the necessary amendment following the prescribed procedure.
 - IV) India feels that this is the right time of take a decision on its proposal to have a non-renewable fixed term for future appointees to the Appellate Body. By doing this at this point of time, the Membership of the WTO can de-link a decision based on principle from considerations as to how such a decision could impact on individuals.
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