

**Dispute Settlement Body
Special Session**

Original: English

**CONTRIBUTION OF BRAZIL TO THE IMPROVEMENT OF THE
WTO DISPUTE SETTLEMENT UNDERSTANDING**

Communication from Brazil

Revision

The following communication, dated 28 February 2003, has been received from the Permanent Mission of Brazil.

I. INTRODUCTION

1. Brazil understands that one of the drawbacks of the current dispute settlement mechanism is the necessity for a Member to litigate a case *de novo* through all the established phases and time-frames even if the same measure nullifying or impairing benefits of this Member has already been found WTO inconsistent in previous panel or appeal proceedings initiated by another Member. Brazil believes that a “fast track” or an “expedited procedure” in such cases would streamline the system and render it more efficient. It would be a positive way of strengthening the institutional and legal framework of the DSU. Developing countries, moreover, have a special and clear interest in a rational and faster use of the system.

2. The idea of a fast track or expedited procedure has been presented, in other contexts, by Australia (safeguard measures, access to compensation through Article 25 DSU) and Japan (“hit and run” situations in case of discretionary measures).

3. In the present instance, Brazil seeks to provide an adequate manner to prevent the need of complete, long and costly litigation about measures already ruled as inconsistent by adopted reports. This proceeding would have the effect of providing an incentive for full implementation of reports, since no longer there would be the possibility of “playing with the time periods” of the complete panel proceedings as they stand today for regular cases. Furthermore, several cases that today only “stress the system” could be channelled to the new fast track and less resources would be spent with cases already clearly decided by a panel or by the Appellate Body.

II. THE PROPOSAL

4. The basic concept is that whenever a Member considers it is being affected by a measure that has already been declared inconsistent by an adopted panel or Appellate Body Report, it would have the right to request the establishment of a “fast track panel” that would be composed, if possible, of the same panelists that served in the original panel that considered the matter. The requesting Member would have first to demonstrate, in its submission, that the measure at issue is the same as the one already subject of a panel or appeal proceeding. The other party, then, could object this allegation by showing differences between the measure at issue and the measure previously declared inconsistent. To ascertain this question, the first element to be taken into consideration by the panel would certainly be the request for the establishment of a panel and its terms of reference.

5. When requested, the panel would announce its decision on the basic question of “same measure or not” in a limited period of [10-15] days after receipt of the rebuttal submission of the party complained against. If the panel confirms that the measure is the same, the fast track panel would continue its work to the maximum time period of 90 days. The panel findings could, as with any other panel procedure, still be subject to an appeal, which would be performed within 45 days. In case the panel does not find that the measure is the same, it would finalize its work and the requesting party, if it so wishes, could start regular panel procedures.

III. THE TEXT

6. Accordingly, Brazil suggests the inclusion of a new article, after Article 20, as follows:

Article [21]

Procedures Related to Measures Already Held Inconsistent with a Covered Agreement

1. A Member may request the establishment of a panel by the DSB under an expedited procedure whenever its rights are being nullified or impaired by the same Member taking a measure¹ that has already been found to be inconsistent with a covered agreement by an adopted report. The panel shall be established at the same DSB meeting where it first appears on the agenda, unless the parties agree otherwise. Prior consultations are not required.
2. This panel shall be composed, whenever possible, by the same panelists having served in the panel that has already ruled on the measure at issue. In any case, the panel shall be composed within [10] days of the establishment of the panel.
3. The complaining party shall deposit its written submission within [x] days from the composition of the panel. The responding party shall submit its rebuttal within [x] days from the receipt of the complaining party’s submission.
4. Within [15] days after receipt of the rebuttal submission, the panel shall issue a decision to the parties declaring whether the measure at issue is the same as the measure previously declared WTO inconsistent.
 - 4.1 In special circumstances and if the panel considers it necessary in order to reach this decision, it may convene a hearing in order to clarify aspects of the measure at issue.
5. If the panel finds that the measure at issue is different from the measure previously declared WTO inconsistent, the expedited procedure is terminated, and the complaining party may start panel procedures provided in Article 4 et seq of this Understanding.
6. If the panel finds that the measure at issue is the same as the measure previously declared WTO inconsistent, a hearing shall be held within [x] days in order for the parties to present their oral arguments related to the facts concerning the measure at issue.

¹ For the purpose of this Article, “measure” shall mean any law, rule, regulation, policy, administrative guidance, methodology, practice or action carried out by a government or on behalf of a government.

7. The panel shall issue its report within [90] days after the date of the establishment of the panel.
 8. Within [15] days after the date of circulation of the final report to the Members, the report shall be considered for adoption by the DSB meeting unless a party to the dispute formally notifies the DSB of its intention to appeal.
 9. The Appellate Body proceedings in this case shall be conducted in accordance with Article 17 of this Understanding but shall not exceed 45 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report.
 10. Where the panel or the Appellate Body concludes that the measure at issue is nullifying or impairing a Member's rights, it shall take into account, in its report, the recommendations made by any report of the original case and, when appropriate, the time period determined for the implementation of the measure previously declared WTO inconsistent.
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