

**Dispute Settlement Body
Special Session**

Original: English

**FURTHER CONTRIBUTION OF THE UNITED STATES TO THE IMPROVEMENT
OF THE DISPUTE SETTLEMENT UNDERSTANDING OF
THE WTO RELATED TO TRANSPARENCY**

Communication from the United States

The following communication, 10 February 2003, has been received from the Permanent Mission of the United States.

The United States has made proposals intended to help achieve a more open and transparent dispute settlement process (TN/DS/W/13). The United States is providing the following amendments to the Dispute Settlement Understanding or decisions of the Dispute Settlement Body to put into effect each element of those proposals.¹

1. Open meetings

US proposal:

The DSU should provide that the public may observe all substantive panel, Appellate Body and arbitration² meetings with the parties except those portions dealing with confidential information (such as business confidential information or law enforcement methods). The DSU could provide a basic set of procedures for this purpose with some flexibility for the relevant body to refine these in light of the particular circumstances of a specific proceeding. For example, the procedures could provide a number of options for allowing the public to observe the meetings, such as broadcasting meetings to special viewing facilities.

To reflect the proposal in the text of the DSU:

- (a) Article 18 of the DSU is amended by inserting the following new paragraph 3:

¹ Additional conforming amendments, such as corrections to Article references, may be needed or appropriate once the substantive text has been agreed upon.

² This would include arbitration under Articles 21.3(c), 22.6, and 25 of the DSU.

“3. All substantive meetings with the parties of a panel, the Appellate Body, or an arbitrator³ shall be open for the public to observe⁴, except for those portions dealing with confidential information.”⁵

- (b) Appendix 3 is amended by deleting paragraph 2.

Conforming changes to reflect the inclusion of arbitrators in Article 18:

- (c) Article 18 is amended by deleting in the title “with the Panel or Appellate Body”.
- (d) Paragraph 1 of Article 18 is amended by inserting “, arbitrator,” after “panel” both places that it occurs.

2. Timely Access to submissions

US proposal:

The DSU should provide that parties’ submissions and written versions of oral statements in panel, Appellate Body, or arbitration proceedings are public, except those portions dealing with confidential information.

To help facilitate public access to these documents, the Secretariat should maintain them in a central location that would be responsible for making these documents available to the public.

To reflect the proposal:

- (e) Paragraph 2 of Article 18 is amended to read as follows:

“2. A Member’s document⁶ provided to a panel, the Appellate Body, or an arbitrator shall be public, except for confidential information. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. A Member shall not disclose another Member’s confidential information. The Member submitting the confidential information shall provide within 15 days of the request of another Member a non-confidential summary of the information.”

- (f) Appendix 3 is amended by deleting paragraph 3 and renumbering the subsequent paragraphs accordingly.

- (g) A decision by the DSB:

³ As used in this Article, the expression “arbitrator” means any arbitrator under paragraph 3(c) of Article 21, paragraph 6 of Article 22, or Article 25. [NOTE: this list is intended to include all arbitration proceedings under the DSU and the references would need to be updated to reflect any amendments to the DSU.]

⁴ The expression “observe” does not require physical presence in the meeting.

⁵ For purposes of this Article, the term “confidential information” shall mean certain factual information designated as such by the party or third party to the dispute at the time that party or third party submitted the information.

⁶ The term “documents” does not include documents concerning an interim report or that are purely administrative in nature.

“The Dispute Settlement Body directs the Secretariat to maintain the documents referenced in paragraph 2 of Article 18 in a central location and make these documents available to the public, other than confidential information.”

3. Timely Access to Final Reports

US proposal:

The WTO should make a final panel report available to WTO Members and the public once it is issued to the parties, although only circulation would trigger the relevant DSU deadlines.

Text to reflect the proposal:

(h) A decision by the DSB:

“A final report issued by a panel to the parties shall be an unrestricted document, except for any confidential information (as defined in Article 18). Any interim report considered final by operation of the last sentence of paragraph 2 of Article 15 shall be unrestricted when considered final.

“This decision is without prejudice to the practice concerning the date of circulation of the report.”⁷

4. Amicus Curiae Submissions

US proposal:

In light of the experience to date with amicus curiae submissions to panels and the Appellate Body, Members may wish to consider whether it would be helpful to propose guideline procedures for handling amicus curiae submissions to address those procedural concerns that have been raised by Members, panels and the Appellate Body.

The United States notes with interest the procedures proposed by the European Communities for handling *amicus curiae* submissions (TN/DS/W/1) and looks forward to working with the European Communities and other Members on this issue. The United States does not believe that an amendment to the Dispute Settlement Understanding is necessary for this purpose.

⁷ That practice was established on a trial basis and under that practice a document is deemed to be circulated on the “date printed on the WTO document to be circulated with the assurance of the Secretariat that the date printed on the document was the date on which this document was effectively put in the pigeon holes of delegations in all three working languages” (WT/DSB/M/2).