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1 ARTICLE 16

1.1 Text of Article 16

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.
2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.
3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.
4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting⁹ unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

(footnote original) ⁷ If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

1.2 Article 16.4: 60-day deadline for adopting or appealing a panel report

1.2.1 Extension of 60-day deadline by the DSB

1. In several disputes, the DSB has agreed, at the joint request of the parties to the dispute, to extend the 60-day deadline set forth in Article 16.4 of the DSU.¹

2. In July 1999, the European Communities proposed, and the DSB agreed by consensus, to extend the 60-day deadline in three disputes. According to the minutes of the DSB meeting held on 26 July 1999:

"The representative of the European Communities drew attention to the fact that the time-periods under Article 16.4 of the DSU in respect of three Reports of Panels in which the EC was a complainant would expire in August. These Panel Reports were the following: (i) "Chile – Taxes on Alcoholic Beverages" (WT/DS87/R – WT/DS110/R); (ii) "Argentina – Safeguard Measures on Imports of Footwear" (WT/DS121/R); and (iii) "Korea – Definitive Safeguard Measure on Certain Dairy Products" (WT/DS98/R). In order to comply with the requirements of Article 16.4, the EC would have to request three special DSB meetings during the month of August. To avoid problems

¹ WT/DS381/9, WT/DS405/5, WT/DS384/11 and WT/DS386/10.

which such meetings could create for the WTO's work, the EC would be prepared to accept the postponement of consideration of these Panel Reports and the extension of the corresponding time-periods for appeal to a future meeting of the DSB at the beginning of September. He underlined that such extension would be granted by the DSB on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of these Panel Reports were preserved, as if such adoption had been requested within the 60-day period specified in Article 16.4 of the DSU. In order to do so it would be necessary for the DSB to agree by consensus to extend the time-periods in question."²

3. No Member objected. The DSB took note of the statements and agreed to the European Communities' proposal to postpone the consideration of the three panel reports.³

4. In *EC – Export Subsidies on Sugar*, the DSB agreed to a joint request by the parties to extend the 60-day deadline under Article 16.4.⁴ The parties' request to the DSB included the following procedural agreement reached by the parties concerned:

"1. In order to take account of the end of year period, and to avoid inconveniencing the appeal procedure, the above parties agree that the 60 day time-period in Article 16.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) as applicable to the above disputes will be extended to 31 January 2005, and that the agreement of the Dispute Settlement Body (DSB) to this extension will be sought at a meeting of the DSB to be requested for 13 December 2004.

2. This extension is agreed on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of the panel reports are preserved, as if such adoption or appeal had been requested within the 60 days specified in Article 16.4 of the DSU.

3. The European Communities (EC) will file its notice of appeal of the panel reports in these disputes on 13 January 2005, provided the DSB agreement set out in paragraph 1 is obtained.

4. If for any reason the EC does not file its notice of appeal on 13 January 2005, the complainants may, individually or jointly, request a DSB meeting for adoption of the panel reports within the extended 60 day period.

5. The parties also agree that the complainants will request a second meeting of the DSB for 14 December 2004 for the adoption of the panel reports within the original 60 day period should this prove necessary, but that this request will be withdrawn should the DSB agreement set out in paragraph 1 above be obtained."⁵

5. *Brazil – Retreaded Tyres* is another example of another case in which the DSB agreed to a joint request by the parties to extend the time period for adoption of the Panel Report.⁶ In that case, the request to the DSB by Brazil and the European Communities included the following procedural agreement:

"1. In order to take into account certain scheduling difficulties concerning the appeal procedure, the above parties agree that the 60 day time-period in Article 16.4 of *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) as applicable to the above dispute will be extended to 20 September 2007, and that a decision of the Dispute Settlement Body (DSB) on this extension will be sought at a meeting of the DSB to be requested for 10 August 2007.

2. This extension is agreed on the understanding that the rights of the parties to the dispute with respect to adoption or appeal of the panel report are preserved, as if

² WT/DSB/M/65, p. 19.

³ WT/DSB/M/65, p. 20.

⁴ Appellate Body Report, *EC – Export Subsidies on Sugar*, para. 5.

⁵ WT/DS265/24, WT/DS266/24 and WT/DS283/5.

⁶ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 6.

such adoption or appeal had been requested within 60 days specified in Article 16.4 of the DSU.

3. The European Communities (EC) will file its notice of appeal of the panel report in this dispute on 3 September 2007, provided the DSB decision set out in paragraph 1 is obtained.

4. If for any reason the EC does not file its notice of appeal on 3 September 2007, the parties may request a DSB meeting for adoption of the panel report within the extended period."⁷

6. In several cases, the 60-day deadline has been extended on account of serious constraints faced by the Appellate Body at times of multiple on-going appeals. For example, in *Thailand – Cigarettes (Philippines)*, the DSB agreed to the parties' joint request to extend the 60-day deadline. The parties made this request "taking into account the current workload of the Appellate Body".⁸

7. In *US – Tuna II (Mexico)*, "[t]he DSB agree[d] that, upon a request by Mexico or the United States, the DSB shall, no later than 20 January 2012, adopt the Report of the Panel in the dispute: *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, contained in document WT/DS381/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notified the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."⁹

8. In *EU – Footwear (China)*, "[t]he DSB agree[d] that, upon a request by China or the European Union, the DSB shall, no later than 22 February 2012, adopt the Report of the Panel in the dispute: *European Union – Anti-Dumping Measures on Certain Footwear from China*, contained in document WT/DS405/R, unless (i) the DSB decides by consensus not to do so or (ii) China or the European Union notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."¹⁰

9. In *US – COOL*, "[t]he DSB agree[d] that, upon a request by [Canada/Mexico] or the United States, the DSB shall, no later than 23 March 2012, adopt the Report of the Panel in the dispute: *United States – Certain Country of Origin Labelling (COOL) Requirements*, contained in document WT/DS384/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."¹¹

10. In *India – Agricultural Products*, "[t]he DSB agree[d] that, upon a request by India or the United States, the DSB shall no later than 26 January 2015 adopt the Report of the Panel in the dispute: *India – Measures Concerning the Importation of Certain Agricultural Products* contained in document WT/DS430/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."¹²

11. In *Peru – Agricultural Products*, "[t]he DSB decide[d] that it shall, no later than 25 March 2015, adopt the Panel Report in the dispute: *Peru – Additional Duty on Imports of Certain Agricultural Products* contained in document WT/DS457/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) Guatemala or Peru notifies the DSB of its decision to appeal the Report pursuant to Article 16.4 of the DSU."¹³

12. In *China – HP-SSST (Japan)*, "[t]he DSB agree[d] that, upon a request by China or Japan, the DSB shall no later than 20 May 2015 adopt the Panel Report in the dispute: *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan* contained in document WT/DS454/R, unless: (i) the DSB decides by consensus not to

⁷ WT/DS332/8.

⁸ WT/DS371/7; WT/DSB/M/290, paras. 53-58.

⁹ WT/DSB/M/306, paras. 6-7.

¹⁰ WT/DSB/M/308, paras. 100-101.

¹¹ WT/DSB/M/310, paras. 9-12.

¹² WT/DSB/M/352, paras. 6.5-6.6.

¹³ WT/DSB/M/353, paras. 6.6-6.7.

do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."¹⁴

1.2.2 Dispute settlement workload

13. At the DSB meeting held on 28 October 2015, the Director-General made a presentation regarding high level of dispute settlement activity.¹⁵ Since then, the Chairman of the DSB has been reporting to the DSB on the Appellate Body's workload, the number of disputes at the panel stage, and the ability of the Secretariat to meet expected demand¹⁶

Current as of: February 2018

¹⁴ WT/DSB/M/359, paras. 8.6-8.7.

¹⁵ WT/DSB/67, para. 11.10; WT/DSB/M/369. See also, WT/DSB/M/350; WT/DSB/M/359; WT/DSB/M/367; WT/DSB/M/368.

¹⁶ WT/DSB/M/370, para. 8.1; WT/DSB/M/373, para. 7.1; WT/DSB/M/375, para. 7.1; WT/DSB/M/376, para. 10.1; WT/DSB/M/377, para. 10.1; WT/DSB/M/379, para. 7.1; WT/DSB/M/380, para. 13.1; WT/DSB/M/383, para. 12.1; WT/DSB/M/384, para. 10.1; WT/DSB/M/385, para. 11.1; WT/DSB/M/387, para. 12.1; WT/DSB/M/389, para. 12.1; WT/DSB/M/390, para. 9.1; WT/DSB/M/391, para. 9.1; WT/DSB/M/392, para. 12.1; WT/DSB/M/394, para. 10.1; WT/DSB/M/396, para. 7.1; WT/DSB/M/397, para. 14.1; WT/DSB/M/399, para. 6.1; WT/DSB/M/402, para. 9.1; WT/DSB/M/404, para. 8.1.