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## **1 ARTICLE 24**

### **1.1 Text of Article 24**

#### **Article 24**

##### *Special Procedures Involving Least-Developed Country Members*

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

### **1.2 Article 24.1**

#### **1.2.1 Countries constituting "least-developed country Members"**

1. The WTO recognizes as least-developed countries (LDCs) those countries designated as such by the United Nations. As of December 2020, there were 46 least-developed countries on the UN list, of which 35 had become WTO members.

#### **1.2.2 Scope of Panel's duty to give "particular consideration" to the special situation of LDC Members**

2. In *US – Upland Cotton*, Benin and Chad, two least-developed country Members, were involved in the proceedings as third parties. The Panel stated that "[i]n accordance with Article 24.1 of the DSU, particular consideration was given to the special situation of these two Members."<sup>1</sup>

3. However, in the context of examining Brazil's claim of "serious prejudice to the interests of another Member" under Article 5(c) of the SCM Agreement, the Panel in *US – Upland Cotton* concluded that the serious prejudice under examination by a WTO panel is the serious prejudice allegedly suffered by the complaining Member only, and that it would take into account the serious prejudice allegations of other Members (including Benin and Chad) only to the extent these

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<sup>1</sup> Panel Report, *US – Upland Cotton*, para. 7.54. See also Panel Report, *US – Upland Cotton (Article 21.5 – Brazil)*, para. 8.29.

constitute evidence of the serious prejudice suffered by Brazil. The Panel considered that Article 24.1 of the DSU provided no basis for adopting a different approach:

"While this provision seems to us primarily to address a situation where a least-developed country Member would be the Member complained against in a particular WTO dispute settlement proceeding, the first sentence of the provision is sufficiently generally worded to encompass the situation where least-developed country Members are involved as third parties in a Panel proceeding. This requires that at all stages of the dispute settlement procedures, which includes this Panel process, particular consideration shall be given to the situation of least-developed countries. We understand this direction, contained in the *DSU*, to address the procedural aspects of the dispute settlement process, rather than our substantive examination under the covered agreements. ...

As we have already observed, by the terms of Article 10.1 of the *DSU*, we are already bound to take the interest of *all* WTO Members – naturally including least-developed country Members – *fully* into account in our substantive examination under Part III of the *SCM Agreement*. In taking such full account of all Members' interests, we do not view it as conceptually or practically possible to take certain Members' interests *more fully* into account than those of other Members.

Nor, in the course of our substantive examination of the merits of Brazil's claims in this dispute, do we believe that this full 'taking into account' of *all* Members' interests would entitle us to alter the terms of the treaty text which determines the substantive rights and obligations of Members."<sup>2</sup>

4. As third participants in the appeal in *US – Upland Cotton*, Benin and Chad asked the Appellate Body to give meaning to Article 24.1 of the DSU by acknowledging that the increase in the United States' world market share caused serious prejudice to Benin and Chad by reducing their market share. After referring to Article 24.1, the Appellate Body explained that it was not in a position to grant Benin and Chad's request:

"We fully recognize the importance of this provision. However, we recall that Benin and Chad request us to find that their interests have suffered serious prejudice in the sense of Article 5(c) of the *SCM Agreement*, if we find Brazil has suffered serious prejudice as a result of an increase in the United States' world market share in upland cotton in the sense of Article 6.3(d) of the *SCM Agreement*. As we do not find it necessary to rule on Brazil's appeal regarding the interpretation of the phrase "world market share" in Article 6.3(d), we therefore are not in a position to accede to Benin and Chad's request to complete the analysis and to find that, in addition to Brazil, Benin and Chad also have suffered serious prejudice to their interests in the sense of Articles 6.3(d) and 5(c) of the *SCM Agreement*. We note that Benin and Chad's request to complete the analysis was predicated upon us reversing the Panel's interpretation of the phrase 'world market share' in Article 6.3(d) of the *SCM Agreement*. This condition is not met."<sup>3</sup>

### **1.2.3 Members' duty to exercise "due restraint"**

5. In *US – Upland Cotton*, the Panel stated that a Member's "comprehensive right to bring dispute settlement actions" is "subject to Articles 3.7, 3.10 and 24.1 of the DSU".<sup>4</sup>

6. As of June 2020, no WTO Member has invoked dispute settlement procedures against a least-developed country (LDC) Member. However, several LDC Members have participated in

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<sup>2</sup> Panel Report, *US – Upland Cotton*, paras. 7.1410-7.1412.

<sup>3</sup> Appellate Body Report, *US – Upland Cotton*, para. 512.

<sup>4</sup> Panel Report, *US – Upland Cotton*, paragraph 7.318 and fn 440.

proceedings as third parties.<sup>5</sup> To date, one LDC Member has invoked dispute settlement procedures against another Member; that case was settled through a mutually agreed solution.<sup>6</sup>

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Current as of: December 2020

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<sup>5</sup> E.g. Bangladesh (DS243); Benin (DS267); Chad (DS267); Madagascar (DS27, DS265, DS266, DS283); Malawi (DS265, DS266, DS283); Tanzania ((DS265, DS266, DS283)).

<sup>6</sup> *India – Anti-Dumping Measure on Batteries from Bangladesh*, WT/DS306/3, dated 23 February 2006.