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1 ARTICLE 5

1.1 Text of Article 5

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.
2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.
3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.
4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.
5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.
6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

1.2 Article 5.6: Assistance by the Director-General

1. On 13 July 2001, the WTO Director-General¹ addressed a communication to the Members expressing his views that "Members should be afforded every opportunity to settle their disputes through negotiations whenever possible".² In this communication, the WTO Director-General noted that Article 5 of the DSU, which provides for the use of good offices, conciliation and mediation, had not been used and reminded Members that he was ready and willing to assist them as is envisaged under the terms of Article 5.6. The communication included a set of procedures for Members to use to request assistance under Article 5. The communication notes that these procedures are intended "purely to help Members resolve their differences and do not limit their treaty rights in any manner." It also assures Members that these procedures would not in any way limit the Director-General's availability to assist delegations more generally whenever they request help.³

¹ The WTO Director-General issuing this communication was Mr Mike Moore.

² WT/DSB/25.

³ Ibid.

1.3 Mediation outside of Article 5

2. On 10 October 2002, the WTO Director-General⁴ issued a communication informing the Members that on 4 September 2002, the Philippines, Thailand and the European Communities had jointly requested mediation by himself or by a mediator appointed by him with their agreement. The purpose of the mediation was "to examine the extent to which the legitimate interests of the Philippines and Thailand are being unduly impaired as a result of the implementation by the European Communities of the preferential tariff treatment for canned tuna originating in ACP states. In the event that the mediator concludes that undue impairment has in fact occurred, the mediator could consider means by which this situation may be addressed."⁵

3. Although the requesting Members considered that the matter at issue was not a "dispute" within the terms of the DSU, they agreed that the mediator could be guided by procedures similar to those envisaged for mediation under Article 5 of the DSU, as described in a communication by the Director-General on Article 5 of the DSU. The mediation resulted in an amicable outcome reached by the parties based on an advisory opinion of the mediator.⁶

Current as of: February 2018

⁴ The WTO Director-General issuing this communication was Dr Supachai Panitchpakdi.

⁵ WT/GC/66 and WT/GC/66/Add.1.

⁶ WT/GC/71.