

## The WTO Dispute Settlement System

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**Abstract:** The dispute settlement system has become increasingly important in the general agreement of taxes and trade. The need and the opportunity for fundamental reformation of the international system of trade are apparent. It is also clear that in this process an evaluation taking into account all countries of the world must play a crucial role in such reformation. Just as there can not be genuine development in all countries of the world without a just environment for them to grow, so there can not be a truly stable system of global relations without broad international development. Accordingly, the salient features of the international system we envisage are 2 folds: It should provide the framework for rational, coherent and democratic management of international economic and political relations that can ensure peace, stability, prosperity and human dignity within the global community as a whole. Its central objective should the support of the efforts of less developed countries to resume growth and to undertake a process of sustainable and self reliant development. To achieve these objectives, what is required is a fundamental reform of the international financial monetary trading systems, including the establishment of contingency mechanisms for resource flows to ensure the orderly development despite unforeseen problems. The international system of dispute settlement needs an overhaul of its mechanism to allow compromise according to the provisions and circumstances. It should be stated in a special agreement including general rules and principles regulating the relationship between the disputed members. The obedience to which it is enforced by the suggested committee of jurists and each party has the right to appeal its decisions, if necessary. In order that this above stated statements may materialize, however, there must be an explicit recognition of the establishment of a dispute settlement body and different elements of its structure. Other trends in the international sense shall be discussed in part 2. The dispute settlement its general rules and principles and main procedures that are necessary for its application.

**Key words:** International public law, world trade organization, the WTO dispute settlement system

### INTRODUCTION

The system of disputation settlement in the general agreement on tariffs and trade is regarded as one of the key aspects in creating an effective and fair international trading system. After It was reformed and made more efficient by a ministerial meeting that was held in Montréal in December 1998 to establish and appoint the tasks and form a jury board. Also these decisions will not depend upon the agreement of disputation members; therefore, there was a special body for compromising disputation which undertakes the responsibilities of the general council, councils and committees which are stated in these agreements. The agreement insists on the importance of counsels to ensure solutions and put an end to disputations. If the counsels failed to settle a dispute, there will be a need to form a jury and the disputing members could agree without any pressure to follow other means to dispute settlement among themselves.

Consequently any country will be forbidden to take a punishment procedure according to subjective decision to commit dissent and this is a very important achievement that strengthens the multilateral system and laws, if the members respected it.

But if the concerned countries do not amend their trading behaviors according to issued decision from the general council the disadvantaged country has the right to request compensation or signing commercial retributions on this member. The international trade organization will never undertake by itself to sign these retributions against the guilty countries, but it authorizes another member to sign this retribution. It was better that in the agreement stated that the retribution should be done by international trade organization itself or by all its members (Abed, 1994).

The dispute settlement system represents one of the main bodies for international trade organization; it covers completely all fields of trading of merchandises, services and intellectual property rights (Esawi and Abraham,

1995). All the disputants should follow the orders of this body through jury and any member has the right to appeal the decision of jury if there is a necessity to this procedure (Majdoob and Usama, 1996).

Therefore, the study of compromising disputations mechanism requested to determine the following: the principles and rules of dispute settlement and the function of compromising body. Methods, stages and procedures of compromising these disputations. The special rules of reciprocity retribution procedures and members of fewer developing countries.

### **THE PRINCIPLES AND RULES OF DISPUTE SETTLEMENT AND THE FUNCTION OF PANEL**

Before the Uruguay agreement dispute settlement the among countries in international trade was a lengthy process. The role of GATT's general management in solving these disputes was so limited due to its limited authority. It was limited to counseling disputing countries before forming a board to solve there disputes. Also the forming of this board to solve disputation requested GATT member's approval; therefore, the defendant could forbid or hamper forming board. In addition it could take months to form a board due to differences between disputing parties as to the boards membership. It often took years to solve disputes (Abed, 1994). Beside the absence of judicial board which supervises on executing rules (Esawi and Abraham, 1995) also some countries believed that solving disputations among countries was only running to big countries' benefits against small countries (Majdoob and Usama, 1996).

Therefore, the Uruguay Round negotiations was important in addressing the problems which upset the dispute settlement procedure. It gave authorization to the world trade organization to settle dual disputations between the concerning members. The rules of the board should be obligatory to all members and should be executed in a reasonable time (Hashad and Nabeel, 1995).

Therefore, there was a need to establish a judicial board and its procedure for executing rules on the one hand and apply a way and stages of compromising disputations that stated in the agreement from other hand. Also the development of a system to settle commercial disputations in world trade organization is regarded as one of the important achievements that emerged from Uruguay session. This forbid members of organizations to exchange the commercial retributions and took lonely single judicial procedures assuming to keep on economical or commercial advantages or to protect intellectual property rights and their commercial returns (Murad and Abed, 1997). It was designed to control all

fields of trade such as merchandises, services and intellectual property rights completely (Helal and Muhsen, 1998).

Dispute Settlement is subjects to some principles and rules and subjects to a body which runs its management.

**Principles and rules of dispute settlement:** The dispute settlement subjects to principles and rules that should be applied.

**Principles of dispute settlement:** Principles of dispute settlement embodies in the ethical framework of compromise rules and in principles of its management.

**The ethical framework of dispute settlement rules:** The body follows in its function a method of dispute settlement that mentioned in details in agreement's rules. The memo of understanding (Abed, 1994) placed an ethical framework to compromise international commercial disputations rules. The memo urges the members to avoid resorting to dispute settlement body unless they are sure that this is the last way to solving the disputation. In this case the defendant commits himself to go though all the procedures accepting that they will cause disadvantages to other members. Complainant can not ask for any compensation from the defendant. The concept of using dispute settlement is not indented to create disputation among members and it should not be regarded as a target to avoid disputation. Therefore, all members must practice this right to use these procedures in a very good intent and its top aim is to solve and settle the disputes (Esawi and Abraham, 1995).

**Principles of dispute settlement management:** The third DSU article of the memo of understanding summarizes the following principles:

The members should commit themselves by principles of compromising disputations which applied according to DSU articles 22, 23 of GATT agreement 1947 and by the amending detailed rules and procedures. The compromising disputations system which created by world trade organization is an essential element to spreading security and the ability to predicate multi member trade (Hashad and Nabeel, 1995). Also it upholds members' rights and their commitments to involved agreements. However, the recommendations and decisions which issued by this body should be similar to the rights and commitments stated in involved agreements. The immediate compromise for disputations which one member claims that another member has caused a disadvantage, proceeds directly or indirectly according to involved agreements. This is the basic way to achieve

better efficiency to world trade organization and keep on a balance among members' rights and their commitments. The body's recommendations and decisions aim to achieve an acceptable compromise to any problem according to mentioned rights and commitments in this understanding and in involved agreements. All solutions which issued official according to rules of counsels and compromising disputations and through agreements including arbitration decisions should correspond with those agreements and it should not cancel or delay any benefits of any member according to those agreements or prevent from achieving any aim of those agreements' aims. It should inform the process or the concerned councils or the committees about any solutions made by two members regarding any issues mentioned officially according to counsels rules and dispute settlement. Any member has the right to agitate any point related with these councils and committees. Each member should take due care before presenting his case at the advantage of prosecution according to these procedures. The aim of dispute settlement mechanism is to assure achieving a positive solution for this disputation. It is better to achieve an acceptable solution that will satisfy all members of disputation and agree with involved agreements. In case it failed to achieve an acceptable solution, then, the target of the compromise disputation mechanism is to cancel the concerned procedures if they oppose any rule of law. Finally, this understanding presents a possibility to suspense the application of liabilities or other commitments according o involved agreements on a base of discrimination against the member. In case there is a dissent in commitments mentioned in an involved agreement, this dissent regards an abolishment or abeyance. Any violation to the rules leads to negative effects on other members in that involved agreement. In this case, the member should plead himself against this dissent. These rules of understanding do not void members' rights to ask for an official reconciliation to rules of involved agreement through a rule and according to world trade organization agreement. It is known that asking for conciliation or using procedures of dispute settlement which are not regarded as hostile. When there is a disputation, all members should practice these procedures with good intent and aim to solve disputation. Also it is known that it is forbidden to connect this procedure with other complaints concerning with other different matters. This understanding can not be applied only with new requests to make counsels according to special rules of counsels in ongoing agreements which present at the ending of validity of world trade organization's acceptance or after it. But the disputations that result from counsels' requests

according to GATT agreement 1947 or according to any other agreement prior to involved agreements before the beginning of world trade organization's validity, still valid and applied to rules and procedures connected with dispute settlements which were valid directly before the beginning of world trade organization's agreement validity. Regardless DSU article 11, if a member from a developed country presents a complaint based on any involved agreements against a member from advanced country, the complainer could base on rules stated in resolution of 5th April (April 1966, BISD 18/145), rather than based on rules stated in DSU articles 4, 5, 6, 12 of understanding. But the period that stated in DSU article 7 could be extended in contrary with rules and procedures of DSU articles 4, 5, 6, 12 and rules and procedures that faced them in the resolution (Abed, 1994).

**The rules must be applied:** The rules and procedures of this understanding could apply on disputations according to rules of counsels and dispute settlement that mentioned in agreements in Appendix 1 of this understanding which called involved agreements (Abed, 1994) and on disputations that are done according to rules of counsels and dispute settlement among members regarding to their rights and commitments according to agreement of establishing world trade organization and rules of this understanding alone or common with any agreement mentioned in its scope (Esawi, 1995). The application of these rules and procedures of understanding will mention in limited involved agreements in Appendix 2 if there are no special rules and procedures (Majdoob, 1996). In study there are disputations that request rules and procedures according to more than one involved agreement and these procedures are incompatible, or if members of disputation fail to agree on the rules and procedures during 20 days from forming arbitration team, therefore, the manager of dispute settlement board whom his duty mentioned in paragraph 1 of DSU article 2, should determine with members of disputation the special rules and procedures which should be followed after ten days from his receiving a request from one member. The manager should follow the principle which obliged to use these special rules and procedures wherever it is possible. These rules and procedures mentioned in this understanding are used to avoid the disputation (Hashad and Nabeel, 1995). In one hand, this means that the priority should be paid to the application of special or additional procedures mentioned in involved agreement rather than rules and procedures of this understanding.

On other hand, if the procedures which existed in more than one applied involved agreement are

incompatible, the result will depend on the choice of disputation's members during 20 days from forming arbitration team and if they do not succeed in reaching an agreement among them, one of them must meet the manager of the board who can determines the obligatory applied procedures after 10 days from his receiving of the request with counsels with disputation's members. He should follow the principle of the priority of special or additional procedures if possible. These rules of understanding are used for a necessity to avoid the disputation.

**Functions of body:** The body of dispute settlement has been established according DSU article 2 for applying the rules, procedures, counsels and rules of dispute settlement mentioned in involved agreements, unless there is another text in involved agreement. Therefore, the body has the authority to establish an arbitration team and continue the process and adopt the reports of jurisprudence and control the execution of these rules, recommendations and authorization to suspend liabilities and other commitments which made according to involved agreements. If there are disputes emerging from application of multi commercial agreements compromised by the body, therefore, only the members of this agreement have the right to participate in rules and procedures which made by the body regarding these disputations.

- The body informs the specialized councils and committees in the World trade organization to resolve disputations according with rules of involved agreements.
- The body will meet whatever there is a necessity to do its tasks within the mentioned periods in the understanding.
- The body makes its decisions by corresponding opinions in the cases demanded rules and procedures of this understanding.

#### **APPENDIX 1:**

##### **AGREEMENTS COVERED BY UNDERSTANDING**

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements on Trade in Goods

Annex 1B: General Agreement on Trade in Services

Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject

to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

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#### **APPENDIX 2:**

##### **SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS**

Agreement Rules and Procedures

Agreement on the Application of Sanitary and Phytosanitary Measures 11.2

Agreement on Textiles and Clothing 2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9,

6.10, 6.11, 8.1 through 8.12

Agreement on Technical Barriers to Trade 14.2 through 14.4, Annex 2

Agreement on Implementation of Article VI of GATT 1994 17.4 through 17.7

Agreement on Implementation of Article VII of GATT 1994 19.3 through 19.5, Annex II.2(f), 3, 9, 21

Agreement on Subsidies and Countervailing Measures 4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5,

footnote 35, 24.4, 27.7, Annex V

General Agreement on Trade in Services XXII:3, XXIII:3 Annex on Financial Services 4

Annex on Air Transport Services 4

Decision on Certain Dispute Settlement

Procedures for the GATS 1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined

by the competent bodies of each agreement and as notified to the DSB.

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#### **MATERIALS AND METHODS**

The agreement organizes the way of dispute settlement through a number of methods and stages starting from counsel and reconciliation, followed by alternated ways, then, arbitration, compensation and commercial facilities and lastly, procedures specialized with less developed members.

Therefore, there are many diplomatic methods, stages and procedures to dispute settlement from one hand and non diplomatic methods, stages and procedures-judicial from the other hand, as following:

**Diplomatic methods, stages and procedures of dispute settlement:** The diplomatic methods, stages and procedures to dispute settlement could be embodied in counsel and alternated ways such as conciliation, accommodation and friendship.

#### **The negotiation and reconciliation process**

**The negotiation process:** The disadvantage country (claimant) requests to hold dual counsels (according to comprehensive agreement) with the guilty country (defendant) so the latter should reply to this request (Esawi and Abraham, 1995) during 10 days, unless there is another contrary mutual agreement reached.

The negotiation and reconciliation with good intent should start within thirty days from the date of presenting the request to reach a suitable solution for both members (Majdoob and Usama, 1996). If the member do not reply within ten days after delivery of the request or he does not participate in these counsels within a period that should not exceed more than 30 days after delivery request, the member asking for holding counsels authorizes to shift directly to request for establishing arbitration team.

**Request of joining counsels:** If a non member of the counsel is regarded that he has an essential commercial benefit in holding counsels according to DSU article 22/1 CAT 1994 or DSU article 22/1 of general agreement concerning trade of services or paralleled rules in other comprehensive agreement (Hashad and Nabeel, 1995). The member authorizes to inform the counselors and the body during ten days from date of request generalization to hold counsels according to mentioned DSU article about his wish to join with counsels. This member will join the counsels if the member agrees that he has an essential benefit in his interference and the claim of essential benefit is based on correct level. In this case, both sides inform the body about this and if his request to join the counsels is refused, the member will be free to request holding counsels according to 22/1, 23/1 from CAT agreement 1994, or 22/1 of general agreement regarding trade of services or paralleled rules in other comprehensive agreements (Murad and Fatah, 1997).

**Rules of negotiation:** The members assure their determination to enforce and improve the efficiency of negotiation procedures which must followed by all members.

Both members should undertake to look at any requests presented by other members. Who is concerned about the effects of an arrangement? He also should give the enough chance to counsel between them about the best arrangements and their effects (Abed, 1994).

The members should try their best during the negotiations according to rules of comprehensive agreement and find a solution through compromise before taking any other procedure mentioned in this understanding.

The negotiations should be secret and must not corrupt any member's rights in any next procedures. Also the members should pay special attention and care to problems and advantages of members from developed countries during the counsels.

If the negotiation fails to compromise the disputation during the sixty days after the request date of counsels, the claimant has the right to ask for establishing an arbitration team during these 60 days if both negotiators believe the dispute can not be settled without one (Esawi and Abraham, 1995). Therefore if the concerned member does not respond with request of counsel in 10 days or in case the counsels fail to find a good solution after 60 days, the claimant has the right to ask from the body of ending disputations to establish an arbitration board to check the case (Majdoob and Nabeel, 1995).

If a dispute must be settled urgently it is possible for members including those which concerned with quickly spoiled merchandises to share in counsels within 10 days rather than 30 days in usual cases from request delivery. If the counsels failed to solve the disputation during twenty days after request deliver-rather than 60 days in usual cases-the claimant has the right to establish arbitration team (Hashad and Nabeel, 1995).

In the urgent cases including those which concerned with quickly spoiled merchandises, members of disputation and arbitration team and should try all efforts to hurry the procedures (Murad and Fatah, 1997).

**The alternated ways to dispute settlement:** The disputed members could agree among themselves to follow alternated methods to dispute settlement such as good offices, conciliation and mediation. We will consider good offices, conciliation and mediation as follows:

#### **Good offices, conciliation and mediation**

Good offices and conciliation and mediation are undertaken voluntarily if members of disputation agree to do so (Abed, 1994).

Any member of a dispute can ask for good offices, conciliation and mediation at any time. The general manager could show the good offices, conciliation and

mediation as a target to help the members to solve disputes. These means could start at any time and finish at any time.

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 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 days period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

These procedures of good offices, conciliation and mediation should be confidential especially with regard to members' situations and they should not be prejudice to any member's rights.

It is possible to continue the procedures of good offices, conciliation and mediation at the same time that witnessed the procedures of arbitration team if both members agree on this way.

When procedures of good offices, conciliation and mediation are finished, the claimer could shift to ask for establishing arbitration team.

**Non diplomatic methods, stages and procedures of dispute settlement:** The non diplomatic methods, stages and procedures to compromise disputation in arbitration can be classified as quick arbitration and usual arbitration.

**Quick arbitration:** Quick arbitration in the framework of world trade organization is an alternate way to dispute settlement because it helps to solve some problems that are determined by both members.

The ability to resort to arbitration depends on whether disputation's members can agree on the procedures with which to follow. The other members should not be interfering in the arbitration unless they get the approval of both members who agree to resort to arbitration.

Both members should commit themselves to arbitration's decisions and the arbitration's decisions will be sent to compromise disputation body and to a council or a committee of any concerned agreement.

Both DSU articles 21 and 22 of this understanding should be applied on arbitration's decisions (Abed, 1994).

**Normal arbitration:** The arbitration panel could be established by a request that leads to formation, determine its elements, functions and specifications and

show its procedures and the stage of temporary review and depend the reports of the arbitration team. These reports should be checked during the appellate body to check the execution of the recommendations and rules issued by compromise disputation body.

**Establishment of arbitration panels:** A panel will be formed due to claimer's request; it must be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB agenda, unless at that meeting the DSB decides by consensus not to establish a panel.

There should be a written request to establish the arbitration panel. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

**Procedure for multiple complainants:** It is possible in some cases that more than one member request to form an arbitration team concerned with one matter to study these complaints with deference to all members' rights. Therefore, it is necessary to form an arbitration panel to study these complaints.

The team organizes its study and presents its results to the body in way that ensuring the respect of all rights heard by members of disputation. The arbitration team should present separated reports concerning with the disputes if one member asks for this.

There should be an enough knowledge to the written memorandums which presented by any member of complaint to other members. Each member has the right to attend during hearing the claimer's attitudes before the team.

When there is more than one team to look at the complaints concerned with one matter, the same persons should be members in all these separated teams and there should be a coordination of appointments of these disputes.

**The case of join or interference:** During the panel process the interests of the parties involved in a dispute and of all other members should be taken into account under a covered agreement.

Any member has an essential interest in any matter at hand; the panel should be informed about this interest. In this understanding they will be referred to as the third party and shall have the opportunity to speak before the panel and make written submissions. These imputes will be given to the parties involved in the dispute and shall be mentioned in the panels report.

The members have the chance to look at the memorandums of disputations members which be presented during the first session of the panel.

Any third member who regards that there is a procedure which abolish or cancel his advantages according to any covered agreement could refuge to usual procedures to compromise the disputations according to this understanding. They have the choice to resort to normal dispute settlement procedures. If possible, this dispute will present to the original panel.

**Composition of panels and responsibilities of secretariat:  
Composition of arbitration panels**

**The academic and practical experience in world trade field:** The arbitrators' team will be formed according to a request of disputation's member. This team should be consisted of governmental and non governmental persons, including some persons who participated earlier cases were a panel was used, worked as representatives of a contracted member in GATT agreement 1947, or as representatives of council or committee of a comprehensive agreement, or they worked in the trusteeship or practiced teaching international trade law or its policy, or they engaged top levels as a trade policy officer or of a member.

**Independency, competence and neutralism:** Arbitrators should be chosen who are independent of the members and they should be well educated and have a broad field of experience and high level of professionalism. The team should not include in its members some citizens of disputation's members unless there is a prior agreement about this matter.

**Number and neutralism:** Arbitration teams consist of three persons unless the members of disputation agree during ten days of establishing arbitration team, they will consist of five persons and members should be informed about forming the team without any delay. Members should practice their job personally and not as representatives for their governments or any organization in order to prove the neutralism and independency of their decisions and rules (Abed, 1994). The members should promise-as a general base-to allow their officials to work as members in panels. Panels are to work as individuals and not as representatives of any country or organization. Members are forbidden to give orders to them or try to affect on them as individuals regarding the concerned matters of a panel.

The secretariat shows its nominations for the panel to the disputations' members it suggests three names of representative 7 members of the enlisted names of

professional persons. The disputations' members may only object to this nomination for urgent reasons.

If it is impossible to make an agreement among members of the team during 20 days of its establishing date, the general manager forms a team according to a request of both members and after counsel with body manager and counsel manager or concerned committee. The manager will appoint the professional persons according to special or additional rules and procedures that are related with comprehensive agreement or involved comprehensive agreements after counsel with disputation's members. The body manager will inform the members about the formation of arbitration team in this way in a period not exceeding 10 days after delivery of the request to the manager. Therefore, the board will be formed during 30 days from its establishment (Esawi and Abrahaw, 1995).

When the disputation happens between a member from a developing country and a member from an advanced country, there should be at least one member from developing countries member in the panel if the member requests this from developed countries.

The costs of arbitration team's members including expenditures of travel and stay will paid from balance of world trade organization according to some standards adopted by the general council according to some recommendations of balance and commercial committee and the management.

**Responsibilities of the secretariat:** The secretariat undertakes the responsibility of helping arbitration teams especially in legal, historical and procedural sides for matters. Also it supplies the written and technical support.

The secretariat helps the members to compromise the disputations according to members' request and also it supplies the help and counsel to members of developed countries. The secretariat may offer a professionalized legal expert from the technical department of the world trade organization to any member of developing countries in way that ensures the continuation of secretariat neutralism.

The trusteeship hold special training classes for interested members in fields of procedures and practice of dispute settlement to increase the knowledge of those experts.

**The function of panels:** The function of the panel is to help the Dispute Settlement Body (DSB) discharging its responsibilities according to this understanding and comprehensive agreements. Therefore, it is necessary to any team to draw an objective evaluation for the matter

including evaluation of case's facts and achieve the results which help the body to present the recommendations or suggest the rules in comprehensive agreements. The panel shall assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreement. The panel should counsel with disputation's members regularly and provide the environment to achieve a suitable solution for both members.

**The competences of arbitration teams:** The team has the following terms of reference unless the disputation's members disagree about them during 20 days from its formation.

To examine in light of the relevant provisions in (name of the covered agreement (s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement.

Therefore, the panel check whether the subject that presented to compromise body is related to mentioned rules in the comprehensive agreement so as to achieve the results that help the body to suggest the recommendations.

The team should discuss the related rules in any agreement or agreements mentioned by disputation's members.

When the panel will be formed, the body will authorize its manager to place the competence of the panel by counseling with disputation's members according to paragraph one. And generalize the competences that placed in such way on all members.

### **Procedures of arbitration panel**

#### **The procedures, appointments, reports**

**Types of procedures:** The panel applies procedures of labor enlisted in Appendix 3 unless the team decides the opposite after counsel with disputation's members.

The working procedures that listed in Appendix 3 are:

The panel shall follow the relevant provisions of this understanding and procedures of labor should be followed too. The panel shall meet in closed session. The parties to the dispute and the interested parties, shall be present at the meetings only when invited by the panel to appear before it. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another member to the panel which that

member has designated as confidential. Where a party to a dispute submits a confidential. Where a party to a dispute submits a confidential version of its written submission to the panel, it shall also, upon request of a member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttal to the panel. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing. The parties to the dispute and any third party invited to present its view in according its views in accordance with DSU article 10 shall make available to the panel a written version of their oral statements In the interest of full transparency, the presentations, rebuttals and statements. Referred to in paragraphs 5-9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel shall be made available to the other party or parties. Any additional procedures specific to the panel. Proposed timetable for panel work:

- Complaining party: \_\_\_\_\_ 3-6 weeks.
- Party complained against: \_\_\_\_\_ 2-3 weeks.
- Date, time and place of first substantive meeting with the parties; third party session: \_\_\_\_\_ 1-2 weeks.
- Receipt of written rebuttals of the parties: \_\_\_\_\_ 2-3 weeks.
- Date, time and place of second substantive meeting with the parties: \_\_\_\_\_ 1-2 weeks.
- Issuance of descriptive part of the report to the parties: \_\_\_\_\_ 2-4 weeks.



- Receipt of comments by the parties on the descriptive part of the report: \_\_\_\_\_ 2 weeks.
- Issuance of the interim report, including the findings and conclusions, to the parties: \_\_\_\_\_ 2-4 weeks.
- Deadline for party to request review of part(s) of report: \_\_\_\_\_ 1 week.
- Period of review by panel, including possible additional meeting with parties: \_\_\_\_\_ 2 weeks.
- Issuance of final report to parties to dispute: \_\_\_\_\_ 2 weeks.
- Circulation of the final report to the Members: \_\_\_\_\_ 3 weeks.

The table could be changed due to the unexpected developments and any new additional meeting will be listed in this table (Abed, 1994).

Consequently, the board will determine a schedule of its work after counseling with concerned members during one week after the agreement on its authorities and formation. Each member should inform the board about the facts of the case before the first actual meeting. During this meeting, the board asks the claimer firstly to show his case and the second member will show his defense. Also the board will listen to the third members' attitudes with relation to the disputation officially during the second meeting.

The board will ask the members questions at any time, asking them about detailed reconciliations. The board has the right to assign experts to present a consultation report in this regard.

Whereupon, the board will present its descriptive parts of its report (the actual and dialectician parts) to the concerned members, giving them two weeks to comment them.

The board will present a comprehensive temporary report for the achieved results and their summaries to the concerned members, giving them one week for reference. The reference time will not exceed two weeks, in which time the board will held additional meetings with disputation's members.

The board will present its final report to the members and will distribute the report to organization's members after three weeks.

The memo of understanding states that the procedure should correspond with agreement of organization and it emphasizes on execution of recommendations (Abed, 1994).

The procedures should have enough flexibility to ensure the goodness of team's reports without leading to delay the case.

**The schedule:** The arbitration team's members place a schedule for the case progressing after counseling with

disputation members in the soonest time with deference to, or during one week after its formation and in agreement with its specializations.

**Enough time for memorandums:** The team should give the enough time for disputation's members to make their written memorandums. And present them. And keep them in trusteeship. to deliver them to the team and to the member or other members of disputation. to become familiar. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable and after consultation with the parties to dispute, that the parties should submit their first submission simultaneously. There sequence arrangements to keep the first submission, the arbitration team will determine a period to receive the submission of the responding member and then all written submissions will be presented at the same time.

**Reports:** When the parties to a dispute fail to find a satisfactory solution. The panel should present its conclusions in a written report addressing the dispute settlement body about the failure of disputation's members to find a suitable solution for both members; the report should include facts, related rules, essential justifications for each result and arbitration team's recommendations.

When achieving a compromise among disputation's members, the report will be limited on a short description for the case and declaration of a solution.

Therefore, the report will be short in case there is a kind compromise between the members, but the report will be detailed if they fail to achieve a kind compromise. It includes the facts, rules, justifications and recommendations. But does this mean-necessarily-that the team does not precede any arbitration in its accurate technical meaning?

**Period of issuing final report or its extent:** From the agreement date of team formation and its specifications and authorizations, until the date of issuing final report for disputation's members as a general pattern, the period of studying a case should not exceed more than 6 months or three months in urgent cases such as those cases related to perishable goods. If there is a delay, the team should inform the body in a written document to explain the reasons of delay and mention the estimated period of delay to issue the report. This period should not exceed more than nine months from team formation date to the generalization of report.

**One of disputation's members from developed countries:**

It is possible during the dispute settlement process with one member from developed countries that both members agree to determine limited periods in DSU articles 4 paragraphs 7 and 8. If the period is finished without achieving any agreement by the consultants, the body manager should extend the period or refuse to extend it after counseling with disputation's members. If he extends the period, he will determine this period and when he looks at a complaint against a member from developed countries, he should give him a free time to make his defense.

When one member or more are from developed countries, the team's report will refer frankly to the shape in which the relevant provisions on differential and more favorable treatment for developing country members that form part of the covered agreement which have been raised by the developing country member in the course of the dispute settlement procedures.

This means that if one opponent is from developed countries, there should be a reference in the panels report as to the details of the differential provisions given to developed countries as well as permission period of 10 years for developed countries to join these comprehensive agreements.

**Work suspension:** The team could suspend its work-if the claimer requests this-at any time which not exceed than 12 months and limited periods in DSU article 12/8, 9 and DSU article 20/1 and DSU article 21/4 should be able to extend through a suspension period. If the suspension period exceeds more than one year, the authority for establishment of the panel shall.

**The right to information and technical counsel:** Each team of arbitration teams has the right to ask for information and counsel from any suitable person or body it deems appropriate. However, it must first inform the member's authorities in advanced. It is forbidden to reveal secret information unless there is an official permission from a person or a board or member's authorities who provides this information.

It is possible for the team to ask for information from any related source and it could counsel some experts to obtain there opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. The rules of establishing consultation experts group and its procedures is mentioned in Appendix 4 (Abed, 1994).

**Confidentiality and method of writing report:** In such important matters confidentiality of those involved and related information is vital. The panel deliberations must be kept confidential.

Reports will be written according to available data and information without presence of disputation's members.

All opinions expressed by different members of the panel shall be anonymous.

**Communication with arbitration team:** It is forbidden to make any communication from one member of the panel (or appellate body) regarding the interested matters by the panel.

The written memorandums presented to the team (or to appellate body) are regarded as results of disputation's members. The members should respect the secret information presented by a member to the team (or to appellate body)1).

**Temporary review stage and arbitration team's recommendations and complaints**

**Temporary review stage:** After looking at and considering rebuttal submissions and oral arguments, the panel can issue the descriptive (the facts and proofs) of his report to disputation's members. The members present their written commentaries during a limited period by the panel (Esawi and Abraham, 1995).

When the limited period of receiving commentaries from disputation's members is finished, the team issues a temporary report for both members including the descriptive parts and team's conclusions and results.

Any member could present a written request during a limited period by the team, asking the team to review the temporary report before generalization of final report to the members. The team will hold an additional meeting according to member's request to discuss some concerned matters in the written commentaries.

If there are no commentaries by any member during the limited period of commentaries, the temporary report will be regarded as a final report and will generalize on all members without any delay.

The team final report includes discussing the presented proofs in temporary review stage during the limited period in DSU article 12/8.

**Panel recommendations (Majdoob and Usama, 1996):** If a panel discovers that there is a procedure which disagrees with covered agreement, the panel will advise the member to amend this procedure to correspond with the agreement. The panel could suggest in addition to its

recommendations, other ways by which the member could execute these recommendations. But the panel cannot in its conclusions or recommendations add to or diminish some rights and obligations mentioned in according to DSU article 3/2.

### **Complaints (Hashad and Nabeel, 1995)**

**Non violated complaints described in paragraph 1:** From DSU article twenty three of GATT agreement 1994, the panel (or appellate body) while applying rules of paragraph (B) does not have the right to issue new rules or recommendations only when the members think that there is a direct or indirect benefit according to a comprehensive agreement will be cancelled or be delayed. Or the member or the arbitration team (or the appellate body) thinks that the case will not oppose any rules of a comprehensive agreement, therefore, the rules of paragraph (B) of DSU article twenty two of GATT agreement 1994 will be applied on the following procedures of this understanding:

The claimer will present a detailed justification for any complaint concerned with a procedure which does not oppose with related comprehensive agreement.

The panel (or the appellate body) advises that the member should compromise the dispute in a friendly way in case there is a procedure which cancel there advantages or delay them.

Regardless of rules of DSU article 21, it is possible that the arbitration mentioned in paragraph 3 of DSU article 21, will include the determination of benefits that be cancelled or delayed according to the member's request. It is also possible to suggest ways or means for a suitable compromise between members. These suggestions will not be obliged for dispute's members.

Regardless of rules of paragraph 1 from DSU article 22, it is possible that the compensation will form a part of a suitable compromise for members to achieve the final solution.

**Complaints described in paragraph (C) of 23 of GATT agreement 1994:** It is not possible for any arbitration team in cases that apply the rules of paragraph (C) of DSU article 23 of GATT agreement 1994 to issue rules or recommendations which will benefit one member and not another.

All rules and procedures of dispute settlement that are mentioned in the rule dated 12th April 1989 (BI SD 365/61-67) will be applied on recommendations and decisions to adopt, check and execute them. Also this rule will be applied on the following:

The claimer presents a detailed justification to confirm any available argument regarding the questions which are enlisted under this paragraph.

If the arbitration team find that the concerned issues include matters which are related to dispute settlement except those which are listed in this paragraph, so the team should present a report to the dispute settlement body to explain these matters and another detailed report about the matters which be included in this paragraph.

**Adoption of arbitration teams' reports:** The dispute settlement body will not adopt the reports until twenty days after they have been circulated the members to study them in very good enough time. The members will be able to state their objection with any report in written form 10 days before the meeting of body to check the report. Whereupon, the requested period to adopt the report will be increased to be 60 days (Abed, 1994).

The dispute's members have the right to participate in studying carefully the panels report during the set time, unless one member will inform the body that he decide to present a appellate body or the body decides with the agreement of members that the report is unacceptable (Abed, 1994).

If one member informs the body about his appellate body decision, the body will not adopt the report unless the appellate body is complete. The members have the right to express about their ideas about the team's report.

### **The reference during appellate body**

**Body establishment and appellate body:** The standing appellate body shall be established by the DSB, it shall here appeals from panel cases. Only parties to the dispute, not third parties may appeal a panel report. The third member does not have the right to continue the appellate body unless he informed the body of compromise about his essential benefit in this matter by written memorandums or by talking before the panel. Which is known as principle of appellate body relativism.

The body consists of seven persons-who represent the members of World trade organization (Majdoob and Usama, 1996) each three persons shall serve on any one case. The members of appellate body work alternately and body will determine this alternation procedures.

**Members appointment and their periods:** The appellate body will appoint its members for 4 years and it is possible to appoint them again. However, the period of appointment of 3 of the 7 members who were appointed immediately after the entry into the force of the WTO Agreement shall expire at the end of 2 years, to be determined by lot.

**Specifications of members:** The appellate body consists of well famous persons of high ranks who have had wide

experience in law, international trade and comprehensive agreement. They should not follow any government. Their membership should reflect the true picture of the world trade organization and they should represent only the organization. Those members should be ready to work at anytime without any advanced urgent notice and they should follow the activities of dispute settlement and other activities of world trade organization. They should not involve themselves in any cases which cause direct inconsistency to organization's advantages.

**Expenditures of members:** The council will adopt certain standards to cover the expenses of persons serving on the appellate body according to recommendations of budget, financial and management committee.

**The role of body and its support:** The role of body will be limited to legal sides-without objective sides-That mentioned in arbitration team report and the legal reconciliations which are achieved. The appellate body shall be provided with legal support and administrative support. This means, there should be correspondence among recommendations and rules of arbitration team with legal rules that are mentioned in related agreements. Also there should be an accurate reconciliation for these rules which means that the body will accept or refuse the report of jurists from its formal and legal sides without resorting to objective sides (Abed, 1994). Therefore, the appellate body will be regarded as a legal court and not regarded as an objective court.

**Its authorities and recommendations:** The appellate body has the right to authorize, amend or cancel the results and conclusions of the panel as soon as the body will finish its works at any case, the dispute settlement body will adopt its report which all members should be obliged to admit it without any conditions unless the appellate body will decide to disagree the decision of jurists (Esawi and Abraham, 1995).

The appellate body will plan the procedures of work after counseling with the Chairman of the DSB and the director General. These procedures will be sent to all members for reference. These works should be secret.

As a general rule, the period of these procedures should not exceed 60 days from the date of disputation member's notice about his decision of appellate body to the date of appellate body report generalization.

After planning a time schedule, the appellate body will take in its consideration the rules of DSU article 4/9 if they will apply. If the appellate body decides that it could present its report within 60 days, it should inform the compromise body by written reasons of delay with estimating the required period to present the report.

All in all, the procedures period should not exceed more than ninety days. All reports of appellate body will be confidential without the presence of disputation's members according to available information and data. All opinions of appellate body members will be listed in reports of appellate body as anonymous. The appellate body will deal with all problems according to paragraph (6) during the procedures of appellate body. The appellate body should not add or omit in its recommendations from the rights and duties of agreements, however, it will show its final recommendations to amend or cancel the procedures according to rules of these agreements (Majdoob and Usama, 1996).

**Appellate body's reports adoption:** The dispute settlement body will adopt the reports of appellate body and all members will accept them without any conditions-unless the DSB rejects the appellate body report-within 30 days after its generalization by all members. The members will have the right to express their opinions freely to each report.

**Obligatory power for appellate body's rules:** All procedures of dispute settlement, arbitration and appellate body are based on member's commitments to rules of body. But what will the position will be if one member refuses to commit to the rules issued by dispute settlement body against him and confirmed by appellate body? This means that they become final and obligatory.

In this study, the member in whom rules are issued against should enter in negotiations during a rational period with any member calling for application of dispute settlement so as to achieve a suitable compensation for both members. If this does not happen within 20 days after the ending of rational period, the member has to write to ask the compromise disputation to stop the application of liabilities or commitments of agreements<sup>1</sup>).

**Time framework for dispute settlement body's reports:** The extended period from establishing the panel by the DSB from the time of looking at the report of the team or the appellate body to adopt it, is 9 months in case the report has not been appealed and 12 months in case the report has been appealed unless the members agree to something else.

In cases of extending specialized periods to present the reports from the panel or appellate body according to DSU article 12/9 or DSU article 17/5, the extending period will be added to the mentioned periods.

**Surveillance of implementation of recommendation and rulings**

**Immediate obedience:** The obedience without any delay to recommendations and decisions of dispute settlement

body is very essential matter to assure the active solutions for all disputations to the benefit of all members.

**The special attention and advantages for members from developed country:** There should be a special attention to the advantages of members from developed countries regarding all procedures of compromise disputation.

- Immediate obedience or obedience in rational period which suggested by the concerned member (Abed, 1994) or which agreed by disputation's members. The concerned member should explain to the dispute settlement body during the meeting held by the body within thirty days (Esawi and Abraham, 1995) after the adoption of team report or appellate body body's report, about his intents regarding execution of dispute settlement body's recommendations and decisions. If it is impossible for the immediate obedience of recommendations and decisions, the concerned member has a chance for rational period of time to obey these decisions (Majdoob and Usama, 1996).

This period is:

- The period which suggested by the concerned member and confirmed by compromise disputation body, but if the body does not confirm this period, it will be:
- The period in which disputation's members will agree during 45 days after date of adoption of recommendations and decisions, if not, it will be:
- The period which determined by obligatory arbitration during ninety days after date of recommendations and decisions (Hashad and Nabeel, 1995). It is very essential in arbitration, that one of the guidance for the jurists is the necessity of avoiding any excess in the rational period to implement appellate body or panel recommendations. This time should not exceed 15 months from the date of addition of panel or appellate body's report. It is possible to increase or decrease this period according to circumstances (Murad and Abed, 1997).
- The period of dispute settlement from date of establishment to the date of determining the rational period, should not extend more than fifteen months. Disputation's members will agree on something else. Only the panel or the appellate body has the right to extend the period of report according to paragraph (9) of DSU article (12) (Helad and Muhsen, 1998) or paragraph (5) of DSU article (17). In case of extending

the period of presenting the report from the panel or the appellate body, the extent period will be added to the period of fifteen months, but the total period should not exceed eighteen months unless disputation's members agree to something else due to exceptional conditions?

- In case of disagreement about the existence or consistency with the covered agreement of measures taken to comply with the recommendations and rulings, the disputation will be solved by procedures of dispute settlement or by the original panel. Therefore, the team should circulate its report during ninety days after receiving the case. If the report decides that it could not present its report within the required period, it should inform the dispute settlement body by writing the reasons behind the delay with estimating of the required period to present the report. So it is possible to return back to the original report of arbitration as well as dispute settlement procedures if there is a disagreement between members such as cancellation of the dissent procedures that do not correspond with decisions and recommendations of a comprehensive agreement.
- The compromise body supervises the implementations of recommendations and decisions. The dispute settlement body supervises the execution of recommendations and decisions. The DSB has the right to raise issues as to the matter of implementation of recommendations and decisions at any time. The implementation of recommendations and decisions will be placed on the agenda in the meeting of dispute settlement body after 6 month of determining the rational period according to paragraph (3). This matter will be listed in the programs of meeting till it will be solved, unless the body will decide something else. The concerned member should provide the dispute settlement body with a written report explaining the immediate case and showing the progress that achieved in implementation of recommendations and decisions, at least ten days before meeting of body (Adeb, 1994).
- Adoption of additional procedures if he matter which is raised is by a developing country. The dispute settlement body should look for additional procedures which are suitable with circumstances if the member is from developed countries.
- If the case is brought up by a developing country member in considering the best course of action the DSB will take into account the trade coverage of measures complained of and their affects on the Economy of developing countries. The dispute settlement body should put in its consideration the

commercial effects of the procedures and complaint subject on the economies of developing countries, in case it deals with such matters.

### **APPENDIX 3:**

#### **WORKING PROCEDURES**

1. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.
2. The panel shall meet in closed session. The parties to the dispute and interested parties, shall be present at the meetings only when invited by the panel to appear before it.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.
5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.
6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.
7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.
8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.
9. The parties to the dispute and any third party invited to

present its views in accordance with

Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

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12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:

(1) complaining Party: \_\_\_\_\_ 3-6 weeks

(2) Party complained against: \_\_\_\_\_ 2-3 weeks

(b) Date, time and place of first substantive meeting with the parties; third party session: \_\_\_\_\_ 1-2 weeks

(c) Receipt of written rebuttals of the parties: \_\_\_\_\_ 2-3 weeks

(d) Date, time and place of second substantive meeting with the parties: \_\_\_\_\_ 1-2 weeks

(e) Issuance of descriptive part of the report to the parties: \_\_\_\_\_ 2-4 weeks

(f) Receipt of comments by the parties on the descriptive part of the report: \_\_\_\_\_ 2 weeks

(g) Issuance of the interim report, including the findings and conclusions, to the parties: \_\_\_\_\_ 2-4 weeks

(h) Deadline for party to request review of part(s) of report: \_\_\_\_\_ 1 week

(i) Period of review by panel, including possible additional meeting with parties: \_\_\_\_\_ 2 weeks

(j) Issuance of final report to parties to dispute: \_\_\_\_\_ 2 weeks

(k) Circulation of the final report to the Members: \_\_\_\_\_ 3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

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### **APPENDIX 4:**

#### **EXPERT REVIEW GROUPS**

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.
3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore, not give them instructions with regard to matters before an expert review group.
4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.
5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.
6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

#### **THE SPECIAL RULES OF RETALIATION PROCEDURES AND RULES OF LESS DEVELOPED COUNTRIES MEMBERS**

Firstly the report shall take a look at the special rules of cross retaliation procedures. Secondly we will study the effects of the procedures on less developed countries' members.

#### **The retaliation procedures**

**The compensation and suspension of concessions or the commercial facilities and promotion of multilateral system:** The special rules of cross retaliation procedures consist of compensation and suspension of concessions (first part) and promotion of multilateral system (second part).

#### **The retaliation procedures**

**(The compensation and suspension of concession):** To prevent the member from losing his rights during suspension of concessions and to stop the dissident from causing more problems to the claimer, the agreement issued a new principle which was not applied before in the international commercial system, called cross retaliation. This means that any member whose rights will be defected, has the right to suspend his commitments against the dissident in many fields and sectors even those which do not witness any dissension.

#### **The agreement determines many stages for these procedures as following:**

- The claimer has the right to suspend his commitments against the dissident according to agreement of dispute settlement body. If the violation occurs in sector of agricultural merchandise trading, for example, the claimer could suspend his commitments against the dissident in this sector particularly. If this procedure is not active in having a deterrent effect on the dissident, the claimer could suspend his commitments against the other member in all sectors of trade, agricultural or industrial merchandise. Also, if this procedure is not effective, the claimer has the right to suspend his commitments against the dissident at any sector even if it is not related to the sector of dissension, therefore he suspends his commitments in all sectors of services or intellectual property rights. Therefore, it is an attacking procedure and its target is work towards the benefits of claimer (Abed, 1994).

The DSU article 22 of memo of understanding states the following:

- The compensation and suspension of concessions or other commitments are only temporary procedures which used only in case of refusing the executing of recommendations and decisions in a rational period of time. However, neither the compensation nor liabilities suspense or other commitments are better than the complete execution of the will or to amend the procedure to make it corresponds with the

comprehensive agreements. The compensation is a voluntary and if the compensation would be forbidden, it should be consistent with the covered agreements.

- Failure of material compensation will lead to request a suitable compensation or the member will ask for suspension of concessions (Stop the execution of commitments).

If the concerned member fails to amend the procedure that regarded as none corresponding with a comprehensive agreement within rational period of time determined by paragraph (3) of DSU article (21), the member should participate in the negotiations with another member who requests to apply the dispute settlement procedures so as to achieve a suitable compensation for both members. The negotiations should be within the rational period of time. However, if the agreement of a suitable compensation is not done within 20 days after the end of rational period, the member who requests to apply the dispute settlement procedures will ask the body of compromise the permission to suspend the liabilities or other commitments against the concerned member according to comprehensive agreements.

- The principles and procedures which cover the liabilities suspense or other commitments (DSU article 22/ 3 A, B, C, D, E, F, G and memo of understanding);
- The general principle which judges that the claimer tries firstly to suspend the concession and other commitments concerned with the same sectors in which the body finds the violation or nullification of some rules.
- If the member discovers that it is not practical or effective to suspend the concessions or other commitments regarding the same sector or sectors, he has the right to suspend the concessions or other commitments in other sectors according to same agreement.
- If the member discovers that it is practical or effective to suspend the concessions or other commitments of other sectors according to that agreement and if the circumstances are severe, he has the right to suspend the liabilities or other commitments under another covered agreement.
- While applying the above listed principles, the member should consider the following:
- Trade in sector (the trade or section according to agreement in which the panel or appellate body finds the violation or the cancellation and what is the importance of the trade for this member).

- The wide economical elements that related to cancellation or suspense and the broad economical effects and consequences that suspense of concessions or other commitments will have.
- If this member decides to request authority's permission to suspend liabilities and other commitments according to partial paragraphs (B) and (C), he should explain the reasons behind his request. He should send his request at the same time to dispute settlement body and related councils and to concerned sectors in case the request is based on subparagraph (B).
- While applying this paragraph, the word sector means the following:-
- Regarding the merchandise, all merchandises.
- Regarding the services, it involves any principal sector determined in the immediate text of (Services Sect oral Classification List) which determines these sectors.
- Regarding the intellectual property rights of trade, it involves all divisions of intellectual property rights mentioned in section (1). Section (2), section (4), section (5), section (6), or section (7) of first part or the commitments according to third part or fourth part of agreement concerning the matters related with trade of intellectual property rights.
- While applying this paragraph, the word "agreement" means the following:-
- Regarding the merchandise, all agreements enlisted in Appendix 1 of world trade organization agreement and multi commercial agreements as long as the disputation's members are members of these agreements.
- Regarding the intellectual property rights, the agreement concerns with related sides of trade in the intellectual property rights.
- The level of suspense which authorizes by the compromising should be equal to the level of cancellation or impairment.

The level of suspension of concessions or other commitments which authorized by the dispute settlement body should equal the level of cancellation or impairment.

- It is impossible to suspend concessions or other commitments if the comprehensive agreement forbids this:

The dispute settlement body will not authorize to suspend concessions or other commitments if the comprehensive agreement forbids this suspension.



- The compromise body will be granted the permission to suspend at the request during 30 days after the end of rational period of time.

If it happens to face the described case in paragraph (2), the DSB will issue a permission to suspend concessions or other commitments during thirty days after the end of rational period of time, unless the DSB decides by consensus to refuse this request. But if the concerned member objects on the level of suggested suspense or claims that the mentioned principles and procedures in paragraph (3) have not been followed and do not respect the claimer's request to suspend concessions or other commitments according to paragraph (3) (B) and (C), the matter will be shifted to arbitration. The original panel will undertake the arbitration if its members are available, or the general manager will appoint a jurist who should say his final decision within 60 days after the end of rational period of time. Liabilities or other commitments will never be suspended during the course of the arbitration.

- The jurist does not look at the nature of concession or other commitments to be suspended, but he will determine this nature if the level of suspense is equal to the level of cancellation or impairment.

According to paragraph (6) the jurist<sup>1</sup> does not look at the nature of concessions or other commitments, but he will determine this nature if the level of suspense is equal to the level of cancellation or impairment. Also he decides whether the suggested suspension or other commitments are permitted according to covered agreement or not. However, if the case contains an assumption that the case does not follow the principles and procedures mentioned in paragraph (3), the jurist should look at this assumption. If he decides that the case does not follow the principles and procedures, the claimer should apply them in concern with paragraph (3) and all members should accept the jurist's decision as a final decision and they do not look at second arbitration. The compromise body should be informed quickly about jurist's decision and it will issue a permission to suspend concessions and other commitments if the request agrees with jurist's decision.

- The suspension of concessions will be temporary and will only be applied until the act that is inconsistent with the covered agreement has been corrected.

Or the member who must execute the agreements and decisions should find a solution to cancel and abolish the benefits. Or there will be a suitable solution for both sides.

According to DSU article (21) the dispute settlement body will continue to check the implementation and decisions including those cases which contained compensations or suspensions or other commitments.

- It is possible to use the rules of dispute settlement in covered agreements regarding the procedures and with respect of measures affecting their observance adopted by governments or regional or local authorities within the member's territory.

It is possible to use the rules of dispute settlement in comprehensive agreements regarding the procedures which influenced on restriction which adopted by governments or regional or local authorities within the member's land. When the dispute settlement body will decide that there is a part of the covered agreement's texts that has not been respected, the responsible member should adopt any rational procedures so as to assure his restriction. All rules of covered agreements and rules of this understanding which related with compensation a suspension or other commitments will be applied in the cases which it is impossible to assure the obedience (Esaei and Abraham, 1995).

#### **Supporting of multilateral system**

- When members try to correct any violation happened under the covered agreement or other nullification or impairment. Or there is an obstacle which forbids achieving the aims of comprehensive agreements, the members will adopt the rules and procedures of this Understanding and commit themselves to follow such rules.
- In such case, the members will be care about the following:
- Do not make a determination that will cause a violation or that will nullify or impair the objectives of the covered agreement. Only through compromise of disputations according to the rules and procedures of this Understanding and make this determination in corresponding with the enlisted results of the panel or appellate body's report adopted by the dispute settlement body or arbitration decision according to this Understanding.
- Following the procedures mentioned in DSU article (21) to determine the rational period of time that required to execute the recommendations and decisions by the concerned member.
- Following the procedures mentioned in DSU article (22) to determine the level of Suspense of compensation and other commitments and get an authorization from dispute settlement body according

to those procedures before the suspension and other commitments according to covered agreements as a reaction against the delay of execution for the recommendations and decisions by the concerned member within rational period.

**The special procedures with less developed countries' members:** Self control while asking for compensation or beseech an authorization to suspend the application of concessions or other commitments. In all stages of determining the reasons and procedures of dispute settlement, there should be due restraint in raising matters with members from less developed countries. Therefore, other members should control themselves if there is a problem with a member from less developed countries, especially when he requests compensation or asks for permission for suspension or other commitments.

In case that there is no solution reached during the counsels to compromise the disputes which related with a member from less developed countries, the Director General or the Chairman of the DSB will offer good officers, conciliation and mediation to assist a satisfactory conclusion, in addition that he will counsel with any source which regarding as a suitable one (Abed, 1994).

Consequently, the agreement affirms in its DSU article (24) some special rules related with less developed countries and actuates other countries to delay their decisions when asking for compensation procedures against less developed countries in case one of them cancel his commitments according to agreement. They should consider the retrogressive economical circumstances in these countries. So as to keep the efficiency of dispute settlement' procedures and assuring their neutralism and equity, the ministers decided in their meeting in Morocco to submit all rules and procedures of dispute settlement in world trade organization to the universal review board within four years after establishing the organization. This will help to keep the facility of international commerce according to an accurate and fair base.

## CONCLUSION

The modern age has witnessed a rapid increasing growth in international trade relations between individual persons and organizations. Foreign investments have increased vastly. According to the report of world trade organization about direct foreign trade and investments which was published on October 1996, the great increase in annual international flow among 1985 and 1995 was range from 60-315 million dollars. This is regarded as the greatest advantage of international trade. The climax was

during the signature of Morocco agreements and establishing the world trade organization. The shift from compromise to obliged arbitration-in dispute settlement of world trade-can be explained by the growth of the general agreement of GATT and international trade which lead to establishing the world trade organization. According to rules of the world trade organization, the dispute settlement of international trade became an obliged decision and all members should apply for obliged arbitration. Before Uruguay agreement, the general manager of GATT had a limited authority to counsel and arbitrate between countries of disputation's members before foundation of a board which could undertake its new functions. This board could only form after getting the GATT's members assent, which gives a chance to the second member to hamper its formation. Also its formation took a long time often exceeding more than 8 months due to the difference about the membership of this board and its authorization. Moreover, the disputation's solution spans many years and its results were only for the benefit of large countries against small ones. But Uruguay agreement achieved an agreement of dispute settlement because it authorized the world trade organization-which substituted the general trusteeship of GATT-to dispute settlement, but the board's decisions to solve the disputation should be obligatory to all members and should be executed in the swiftest time possible.

The most general features of dispute settlement that resulted from GATT agreements and world trade organization are:

**Respect of countries' will:** Each country in the international society has the right to join these agreements freely; therefore the country will be subject to these agreements and the memo of understanding concerned with rules and procedures which cover the dispute settlement.

**Equality among members:** All rules of dispute settlement body were formulated equally and balanced so as to achieve the justice among members and assure the commitments of all members towards the rules of world trade organization's agreements. This will work to the advantage of all countries especially the less developed countries to face the tyranny of large countries which have the power to take some penal procedures against the smaller countries. This new system will ensure the rights of developed countries and enable them to seek the help of dispute settlement body to undertake suitable procedures to stop such tyranny and compensate the developed countries. Also the agreements allow the other countries-the advanced and developed-to delay the

application of compensation procedures on the less developed countries in case one of these countries cancels or suspends its commitments according to these agreements due to its retrogressive economical circumstances.

Therefore, all members will be careful concerning the procedures of dispute settlement.

**Respect of disputation members' will:** The respect of disputation members' will in choosing the way of dispute settlement through counsels, reconciliation or substituted ways (such as good officers, conciliation, mediation, quick arbitration or the ordinary arbitration, compensation, or facilitation of commercial activities). Also they are free to determine the required periods to solve the disputation and they are free to determine the procedures in which they do not contrast with rules of the memo of understanding.

**Practice of procedures in very goodwill:** The request of conciliation or using the procedures of dispute settlement do not mean to increase hostility, but the procedures should be practiced in goodwill and to solve the disputation.

**Presence of permanent body:** There should be a permanent body to supervise the compromise disputation among members of countries. Therefore, it is very important to inform the body, councils or committees about any solution achieved by two members.

**Presence of trusteeship for the body:** The trusteeship plays the role of secretary, support and technical counsel to the disputed members.

**Presence of secretariat of DSB as a means to solve disputations:** Preparing lists to select jurists inside the compromise body and this means presence of organized arbitration.

Efficiency, independence, neutralism and impartiality of jurists.

Singular numbers (1, 3 and 5).

Quick solution for disputation. The period ranges from three months (in urgent cases) or six months (in ordinary cases).

Opportunity for a third member (interference) in procedures of dispute settlement in case both members agree on this.

Quick sessions.

Writing reports for the team or appellate body without the presence of disputation's members.

Hierarchy of opinions in reports without mentioning names.

Libel of reports by appellate body. There will be a lasting body for this purpose and no one will interfere in its affair.

Neither the team nor the appellate body can add or decrease any of their conclusions or recommendations to the agreed rights and commitments enlisted in comprehensive agreements.

**Adoption of recommendation and reports:** All recommendations of the arbitration panel or appellate body will be made available to the dispute settlement body in order to adopt them and these decisions will be obligatory to their members as soon as they adopt them and then they will be valid.

The period between establishing the panel and date of determining the rational period should not exceed fifteen months. The period of solving disputation should not exceed eighteen months (as a maximum) unless there are exceptional conditions.

There should be special rules and procedures for less developed countries. The less developed countries could put a member on the arbitration panel if one of the disputation's members is from a developing country. Also there are special rules to compromise disputation if one member is from less developed countries.

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