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DISPUTE SETTLEMENT

WORLD TRADE ORGANIZATION

3.4 Implementation and Enforcement



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NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

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WHAT YOU WILL LEARN

One of the distinguishing features of the WTO dispute settlement mechanism when compared with other dispute settlement mechanisms administered by other international organizations is the relatively high rate of compliance by WTO Members with the recommendations and rulings of panels and the Appellate Body as adopted by the Dispute Settlement Body. This relatively high rate of compliance has increased confidence in the dispute settlement mechanism and encouraged its use by a significant number of WTO Members including developing countries.

This Module provides a detailed overview of the implementation process under the Dispute Settlement Understanding from the moment the DSB adopts a panel report and/or an Appellate Body report until the time the responding Member brings its measures into conformity with WTO law.

The first Section of this Module recalls that it is a fundamental obligation of WTO Members to implement promptly the recommendations and rulings of the DSB. However, where it is not possible for the concerned Member to implement promptly the recommendations and rulings of the DSB, it may be entitled to a reasonable period to do so. The first Section contains a detailed discussion of the procedure to be followed to determine the reasonable period of time for implementation and the factors taken into account in this determination.

The second Section of the Module deals with the procedure provided in Article 21.5 of the DSU to resolve disagreements on the existence or WTO consistency of measures taken to implement the recommendations and rulings of the DSB.

The third Section of the Module explains the circumstances under which the complaining Member could have recourse to the alternative remedies of compensation and suspension of concessions or other obligations towards the responding Member. It stresses that both compensation and suspension of concessions are temporary measures to promote full compliance. The third Section describes in detail the principles and procedures which have to be followed by a Member which wants to avail itself of the right to suspend concessions to the responding Member and reviews the emerging case law on this remedy.

1. THE IMPLEMENTATION OF RECOMMENDATIONS AND RULINGS

Objectives

On completion of this Section, the reader will be able:

- **to appreciate that prompt compliance with recommendations and rulings of the Dispute Settlement Body is required, but where it is impracticable to comply immediately, the Member concerned shall have a reasonable period in which to do so.**
- **to explain how the decision on this reasonable period of time for implementation is taken and which factors determine the length of that period for implementation.**

1.1 Prompt Compliance

Article 3.7 DSU

The credibility of the dispute settlement mechanism of the WTO depends to a large extent on the prompt implementation of the recommendations and rulings of the Dispute Settlement Body (“DSB”). In other words, for the proper functioning of the dispute settlement mechanism, it is necessary for Members whose measures have been found to be inconsistent with their obligations under the covered WTO Agreement to bring them into conformity. Article 3.7 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“the DSU”) provides that in the absence of a mutually satisfactory solution to a dispute, the preferred objective of the dispute settlement mechanism:

...is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements.

Article 21.1 DSU

Article 21.1 of the DSU provides that:

...[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

The DSU makes it clear that the alternative remedy of compensation is temporary and should be resorted to only when it is not possible to withdraw the inconsistent measures.¹ It further provides that suspension of concessions or other obligations should be resorted to at the last instance.²

Article 21.3 DSU

To ensure prompt compliance with the recommendations and rulings of the DSB, the DSU provides that within thirty days after the adoption of the panel

¹ Article 3.7 of the DSU.

² Ibid.

and/or Appellate Body report by the DSB, the responding Member shall disclose at a meeting of the DSB how it intends to implement the recommendations and rulings of the DSB.³ It is at this meeting of the DSB that the Member concerned may outline the difficulties it may have in promptly implementing the recommendations and rulings and indicate that it may need a reasonable period of time to fulfil its obligations. Contemplating such situations, the DSU provides that where it is impracticable for the Member concerned to comply immediately, it shall have a reasonable period to do so. Article 21.3 of the DSU provides:

At a DSB meeting held within 30 days⁴ after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings [of the DSB], the Member concerned shall have a reasonable period in which to do so.

The scope of Article 21.3 of the DSU has been examined in a number of arbitration awards. Generally, the arbitrators have indicated that it is only in compelling cases that the Member concerned shall be excused from implementing promptly the recommendations and rulings of the DSB. In other words, Members do not have discretion to decide when they want to comply promptly with the recommendations and rulings of the DSB. In *Australia – Salmon*, the Arbitrator stated that the primary objective of the DSU is the immediate withdrawal of the measure which has been found to be inconsistent with a covered agreement. The Arbitrator held:

Taken together, these provisions clearly define the rights and obligations of the Member concerned with respect to the implementation of the recommendations and rulings of the DSB. In the absence of a mutually agreed solution, the first objective is usually the immediate withdrawal of the measure judged to be inconsistent with any of the covered agreements. Only if it is impracticable to do so, is the Member concerned entitled to a reasonable period of time for implementation.⁵

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