

The dispute settlement system has worked reasonably well but the experience of its first seven years of operation has revealed flaws. There are many good proposals on the table to improve the system but agreement, it was suggested, is unlikely to be reached by the target of end-May 2003, even with a good Chair's paper. For example, the sequencing discussion has failed to come to a resolution and there is now a proposal to collapse the Article 21.5 and 22.6 panel processes.¹¹ Accordingly, it was suggested that Ministers might wish to consider extending the negotiations.

The more difficult issues are the larger questions surrounding dispute settlement. For example, it was argued that retaliation does not work effectively because it hits innocent bystanders, potentially reduces trade, and raises angst within the business community about market access. The EU has proposed fines as an alternative; as was observed at the workshop, this would in turn introduce a fundamental change at the heart of the system, not to mention all sorts of minor and perhaps not so minor issues. Questions for example were raised about collection,

¹¹ Editors' note: The "sequencing" issue under the Dispute Settlement Understanding boils down to whether the authority to suspend concessions under Article 22.6 should be first subject to a compliance-panel ruling under Article 21.5. There was an effort to reform the DSU before Seattle, which failed as a result of EU-US disagreement. Proposals to amend Articles 21 and 22 of the DSU have been submitted by several Members and were discussed at the General Council on October 10th, 2000 and on December 7th-8th, 2000, but with little progress made. In the *EU-Bananas* case, the Appellate Body agreed that the terms of Articles 21.5 and 22 were not a 'model of clarity', and referred the matter to WTO membership to provide clarification or decide what the proper sequence should be. Subsequently, the EU has noted that in "light of the practice followed consistently since then"—including in subsequent disputes such as *US - Foreign Sales Corporation* where the US insisted that a 21.5 panel review its efforts to comply with the WTO ruling before right to retaliate was granted under a 22.6 panel—"it would appear that Members now broadly agree that completing the procedures established under Article 21.5 of the DSU is a prerequisite for invoking the provisions of Article 22, in case of disagreement among the parties about implementation. The problem is therefore clearly less acute than in the past." That being said, the EU stated that they remain in favour of clarifying the DSU.