

WORLD TRADE ORGANIZATION

The WTO Dispute Settlement Procedures

Second edition

A Collection of the Relevant Legal Texts

PREFACE

This volume contains a collection of the legal texts related to the settlement of disputes under the Agreement Establishing the World Trade Organization (WTO). To facilitate their use, the texts have been grouped by subject matter, and cross-references and a subject index have been added by the WTO Secretariat. These additions do not form part of the legal texts and therefore should not be used as sources of interpretation.

A repertoire of the dispute settlement practice under the GATT 1947 can be found in the *Analytical Index: Guide to GATT Law and Practice*, Updated 6th edition published by the WTO Secretariat, ISBN 92-870-1143-5.

ABBREVIATIONS

In this publication the following abbreviations have been used:

A.B.	Appellate Body
ADP	Agreement on Implementation of Article VI of GATT 1994
Aircraft	Tokyo Round Agreement on Trade in Civil Aircraft
BISD	Basic Instruments and Selected Documents (published by GATT)
CPs	Contracting Parties
CTG	Council for Trade in Goods
CTS	Council for Trade in Services
Customs Valuation	Agreement on Implementation of Article VII of GATT 1994
Dairy	International Dairy Agreement
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
GATS	General Agreement on Trade in Services
GPA	Agreement on Government Procurement
Montreal Decision	Decision of 12 April 1989 on Dispute Settlement (BISD 36S/61) adopted by the CPs following the Mid-Term Review of the Uruguay Round Negotiations
PGE	Permanent Group of Experts
R of C	Rules of Conduct for the DSU
SCM	Agreement on Subsidies and Countervailing Measures
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
Textile	Agreement on Textiles and Clothing
TMB	Textiles Monitoring Body
1966 Decision	Decision on 5 April 1966 on Procedures under (GATT) Article XXIII (BISD 14S/18)

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I. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU)

Members hereby agree as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

See DSU Appendix 1 at p. 28; Notification Under Appendix 1 of DSU at p. 65.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

See DSU Appendix 2 at p. 29.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the

consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

See Notification Under Appendix 1 of DSU at p. 65, DSU 6.1, 16.4, 17.14, 21.6, 22.6 at pp. 7, 15, 17, 20, 23; GPA XXII:3 at p. 63.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.
3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.
4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.¹

See Rules of Procedure (DSB) at p. 67 and Rules of Procedure VII (General Council) at p. 82.

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.
2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

¹ The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

See DSU 19.2 at p. 18.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

See Working Procedures for Appellate Review 30(2), at p. 100.

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first 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. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

See DSU 22 at p. 20.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that

covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.²

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

See 1966 Decision at p. 60.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

² This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.³

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

See GATT 1994 XXII:1 at p. 33, XXIII:1 at p. 33; SCM 4.2, 4.3 at p. 47, 7 at p. 49; GATS XXII at p. 56; TRIPS 64 at p. 57; GPA XXII:1, 2 at p. 63; Aircraft 8.5, 8.6 at p. 65; as well as provisions on consultations contained in other WTO covered agreements referred to in 4.11 footnote p. 6 and Working Practices at p. 103.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

See DSU 12.10 for developing countries at p. 13; 24.2 for least-developed countries at p. 25.

³ Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

See DSU 12.10 at p. 13.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

See Working Procedures for Appellate Review Rule 26(3), at p. 99; DSU 12.8 at p. 12.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements,⁴ such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

For the provisions see footnote 4 at p. 6.

⁴ The corresponding consultation provisions in the covered agreements are listed hereunder: Agreement on Agriculture, Article 19; Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11; Agreement on Textiles and Clothing, paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, paragraph 1 of Article 14; Agreement on Trade-Related Investment Measures, Article 8; Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17; Agreement on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 14; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

Article 5

Good Offices, Conciliation and Mediation

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

Article 6

Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.⁵

See SCM 4.4 , 7.4 at pp. 47, 50; GPA XXII:3 at p. 63.

⁵ If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

2. The request for the establishment of a panel shall be made in writing. 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.

See ADP 17.5 at p. 43.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

To examine, in the 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(s).

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

See DSU Appdx 4.1 at p. 32; GPA XXII:4 at p. 63.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

See also GATS, Annex on Financial Services Art. 4 at p. 57; GATS, Decision on Certain Dispute Settlement Procedures Art. 3 and 4 at p.118; GPA XXII:5 at p. 64.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

See Rules of Conduct II and III at p. 79.

3. Citizens of Members whose governments⁶ are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

See Decision on Certain Dispute Settlement Procedures for the GATS Art. 5 at p. 118.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after

⁶ In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

See Rules of Conduct II, III, IV, VI, VII, VIII at pp. 79-83.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

See Working Procedures for Appellate Review, Definitions at p. 88 and Rule 23 at p. 98.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.
2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

See Working Procedures for Appellate Review, Definitions at p. 88.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.
4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

See DSU 17.4 at p. 16 and Appdx 3:6 at p.30.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

See DSU 7 on the terms of reference at p. 8.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. 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 referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

See DSU 4.9 at p. 6, DSU 20 at p. 18; SCM 4.12 at p. 49; GPA XXII:6 at p. 64.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

See DSU 20 at p. 18; GPA XXII:6 at p. 64.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their 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. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

See SPS 11.2 at p. 35; SCM 4.5 at p. 47; Customs Valuation 19 and Annex II at pp. 44 and 45; TBT 14.2 and Annex 2 at p. 41; Rules of Conduct VI, VIII, Annex 1b and 3 at pp. 81, 83, 86, 87.

Article 14

Confidentiality

1. Panel deliberations shall be confidential.
2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.
3. Opinions expressed in the panel report by individual panelists shall be anonymous.

See DSU 18 at p. 17; Rules of Conduct II, III, IV, VI, VII, and VIII at pp. 79-83, Decision on Derestriction at p. 106; and CONFIDENTIALITY in the Index.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.
2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

See Working Practices 1 at p. 103.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

See SCM 7.6 at p. 50; Working Practices at p. 103.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting⁷ unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

See Working Procedures for Appellate Review Rule 20(1), 23(4) at pp. 96 and 98.

Article 17

Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

See Working Procedures for Appellate Review, Rules (3)(1), 4(4), 6 at pp. 90-91.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO

⁷ If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

See Rules of Conduct II at p. 79.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may take written submissions to, and be given an opportunity to be heard by, the Appellate Body.

See Working Procedures for Appellate Review Rules 20, 23 and 24 at pp. 96-98.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

See DSU 20 at p. 18; SCM 4.9 at p. 48; Working Procedures for Appellate Review Rule 10(4) and Annex 1 at pp. 93 and 101.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

See also Working Procedures for Appellate Body Annex 2, Ch IV at p. 102 and 80.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

See Working Procedures for Appellate Review at p. 88.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

See Working Procedures for Appellate Review Annex 2: II, III, IV, V, VI, VII at p. 102 and 79-83.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.⁸ This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

See SCM 4.9 at p. 48; Working Procedures for Appellate Review, Definitions and Annex I at p. 88 and 101.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no ex parte communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

See also Working Procedures for Appellate Review Rule 19 at p. 96.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements

⁸ If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

See CONFIDENTIALITY and DISCLOSURE in the Index.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned⁹ bring the measure into conformity with that agreement.¹⁰ In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.
2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

1. Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

See DSU 12.9, 12.10, 12.12 at pp. 12, 13; SCM 4.12 at p. 49; GPA XXII:6 at p. 64; Working Procedures for Appellate Review Annex 1 at p. 101; and Working Practices at p. 103.

⁹ The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

¹⁰ With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

Article 21*Surveillance of Implementation of Recommendations and Rulings*

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.
2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.
3. At a DSB meeting held within 30 days¹¹ 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, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:
 - (a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,
 - (b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,
 - (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.¹² In such arbitration, a guideline for the arbitrator¹³ should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

See Rules of Conduct Annex 1a at p. 86; DSU 26.1(c) at p. 26.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its

¹¹ If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

¹² If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

¹³ The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

See DSU 12.10, 12.12 at p. 13; SCM 4.12 at p. 49; GPA XXII:6 at p. 64.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

But see GPA XXII:6 at p. 64.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred

to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

See DSU 3.7 at p. 3, 26.1(b), (d) at pp. 26, 27.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

See SCM 4.10 at p. 48; GPA XXII:7 at p. 64.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

- (a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;
- (b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;
- (c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

But see GPA XXII:7 at p. 64.

- (d) in applying the above principles, that party shall take into account:
 - (i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

- (ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;
 - (e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;
 - (f) for purposes of this paragraph, "sector" means:
 - (i) with respect to goods, all goods;
 - (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;¹⁴
 - (iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;
 - (g) for purposes of this paragraph, "agreement" means:
 - (i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;
 - (ii) with respect to services, the GATS;
 - (iii) with respect to intellectual property rights, the Agreement on TRIPS.
4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.
5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

¹⁴ The list in document MTN.GNS/W/120 identifies eleven sectors.

See DSU 1.2 at p. 1; GPA XXII:7 at p. 64.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator¹⁵ appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

See SCM 4.11 and 7.10 at pp. 49 and 51; Rules of Conduct Annex 1a at p. 86.

7. The arbitrator¹⁶ acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have

¹⁵ The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

¹⁶ The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.¹⁷

See DSU 26 for enforcement of situation complaints at p. 26; GATS XXIII at p. 56.

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

- (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;
- (b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

¹⁷ Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.

See DSU footnote 3 at p. 5.

- (c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.
2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.
2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.
3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

See Rules of Conduct IV, VI, VII, VIII and Annex 1a at pp. 80-86 and ARBITRATION in the Index.

Article 26

1. Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

- (a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;
- (b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;
- (c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

- (d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

- (a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;
- (b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

See Montreal Decision at p. 59.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

See Rules of Conduct Ch. IV at p. 80.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the

WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

See Rules of Conduct II, III, IV, VI, VII and VIII at pp. 79-83.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

See DSU 8.4 at p. 9; Rules of Conduct VIII at p. 83.

APPENDIX 1

AGREEMENTS COVERED BY THE 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.

See Notification Under Appendix 1 at p. 65.

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.

See Notification Under Appendix 1 at p. 65.

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.

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.

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.

See EXPERTS in the Index for various expert groups under specific Agreements.

II. DISPUTE SETTLEMENT RULES AND PROCEDURES IN THE MULTILATERAL TRADE AGREEMENTS

A. The GATT 1994 and other Covered Agreements

1. General interpretative note to Annex 1A

In the event of conflict between a provision of the General Agreement on Tariffs and Trade 1994 and a provision of another agreement in Annex 1A to the Agreement Establishing the World Trade Organization (referred to in the agreements in Annex 1A as the "WTO Agreement"), the provision of the other agreement shall prevail to the extent of the conflict.

2. The General Agreement on Tariffs and Trade 1994

THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article XXII

Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

See DSU 3.1, 4.11 at pp. 2, 6.

Article XXIII of GATT 1994

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of:

- (a) the failure of another contracting party to carry out its obligations under this Agreement, or

- (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c) the existence of any other situation,

the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate intergovernmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary¹ to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

See DSU 3.1, 26 at pp. 2, 26.

3. WTO Covered Agreements

i. Agreement on Agriculture

AGREEMENT ON AGRICULTURE

Article 19

Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

ii. Agreement on the Application of Sanitary and Phytosanitary Measures

AGREEMENT ON THE APPLICATION OF SANITARY AND
PHYTOSANITARY MEASURES

Article 11

Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

See also Rules of Conduct: II, III, IV, VI, VII, VIII, Annex 1b, 2, and 3 at pp. 79-87.

iii. **Agreement on Textiles and Clothing**

AGREEMENT ON
TEXTILES AND CLOTHING

Article 2

...

14. Except where the Council for Trade in Goods or the Dispute Settlement Body decides otherwise under paragraph 12 of Article 8, the level of each remaining restriction shall be increased annually during subsequent stages of this Agreement by not less than the following:

- (a) for Stage 2 (from the 37th to the 84th month that the WTO Agreement is in effect, inclusive), the growth rate for the respective restrictions during Stage 1, increased by 25 per cent;
- (b) for Stage 3 (from the 85th to the 120th month that the WTO Agreement is in effect, inclusive), the growth rate for the respective restrictions during Stage 2, increased by 27 per cent.

...

21. The TMB shall keep under review the implementation of this Article. It shall, at the request of any Member, review any particular matter with reference to the implementation of the provisions of this Article. It shall make appropriate recommendations or findings within 30 days to the Member or Members concerned, after inviting the participation of such Members.

Article 4

...

4. When changes mentioned in paragraphs 2 and 3 are necessary, however, Members agree that the Member initiating such changes shall inform and, wherever possible, initiate consultations with the affected Member or Members prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustment. Members further agree that where consultation prior to implementation is not feasible, the Member initiating such changes will, at the request of the affected Member, consult, within 60 days if possible, with the Members concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any Member involved may refer the matter to the TMB for recommendations as provided in Article 8. Should the TSB not have had the opportunity to review a dispute

concerning such changes introduced prior to the entry into force of the WTO Agreement, it shall be reviewed by the TMB in accordance with the rules and procedures of the MFA applicable for such a review.

Article 5

...

2. Should any Member believe that this Agreement is being circumvented by transshipment, re-routing, false declaration concerning country or place of origin, or falsification of official documents, and that no, or inadequate, measures are being applied to address and/or to take action against such circumvention, that Member should consult with the Member or Members concerned with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, and within 30 days when possible. If a mutually satisfactory solution is not reached, the matter may be referred by any Member involved to the TMB for recommendations.

...

4. Where, as a result of investigation, there is sufficient evidence that circumvention has occurred (e.g. where evidence is available concerning the country or place of true origin, and the circumstances of such circumvention), Members agree that appropriate action, to the extent necessary to address the problem, should be taken. Such action may include the denial of entry of goods or, where goods have entered, having due regard to the actual circumstances and the involvement of the country or place of true origin, the adjustment of charges to restraint levels to reflect the true country or place of origin. Also, where there is evidence of the involvement of the territories of the Members through which the goods have been transshipped, such action may include the introduction of restraints with respect to such Members. Any such actions, together with their timing and scope, may be taken after consultations held with a view to arriving at a mutually satisfactory solution between the concerned Members and shall be notified to the TMB with full justification. The Members concerned may agree on other remedies in consultation. Any such agreement shall also be notified to the TMB, and the TMB may make such recommendations to the Members concerned as it deems appropriate. If a mutually satisfactory solution is not reached, any Member concerned may refer the matter to the TMB for prompt review and recommendations.

...

6. Members agree that false declaration concerning fibre content, quantities, description or classification of merchandise also frustrates the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, Members agree that appropriate measures, consistent with domestic laws and procedures, should be taken against the exporters or importers involved. Should any Member believe that this Agreement

is being circumvented by such false declaration and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that Member should consult promptly with the Member involved with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by any Member involved to the TMB for recommendations. This provision is not intended to prevent Members from making technical adjustments when inadvertent errors in declarations have been made.

Article 6

...

9. Details of the agreed restraint measure shall be communicated to the TMB within 60 days from the date of conclusion of the agreement. The TMB shall determine whether the agreement is justified in accordance with the provisions of this Article. In order to make its determination, the TMB shall have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned. The TMB may make such recommendations as it deems appropriate to the Members concerned.

10. If, however, after the expiry of the period of 60 days from the date on which the request for consultations was received, there has been no agreement between the Members, the Member which proposed to take safeguard action may apply the restraint by date of import or date of export, in accordance with the provisions of this Article, within 30 days following the 60-day period for consultations, and at the same time refer the matter to the TMB. It shall be open to either Member to refer the matter to the TMB before the expiry of the period of 60 days. In either case, the TMB shall promptly conduct an examination of the matter, including the determination of serious damage, or actual threat thereof, and its causes, and make appropriate recommendations to the Members concerned within 30 days. In order to conduct such examination, the TMB shall have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7, as well as any other relevant information provided by the Members concerned.

11. In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action. In the case that consultations do not produce agreement, the TMB shall be notified at the conclusion of consultations, but in any case no later than 60 days from the date of the implementation of the action. The TMB shall promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days. In the case that consultations do produce agreement, Members shall notify the TMB upon

conclusion but, in any case, no later than 90 days from the date of the implementation of the action. The TMB may make such recommendations as it deems appropriate to the Members concerned.

Article 8

1. In order to supervise the implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required of it by this Agreement, the Textiles Monitoring Body (TMB) is hereby established. The TMB shall consist of a Chairman and 10 members. Its membership shall be balanced and broadly representative of the Members and shall provide for rotation of its members at appropriate intervals. The members shall be appointed by Members designated by the Council for Trade in Goods to serve on the TMB, discharging their function on an ad personam basis.

See Rules of Conduct, IV and V at p. 80.

2. The TMB shall develop its own working procedures. It is understood, however, that consensus within the TMB does not require the assent or concurrence of members appointed by Members involved in an unresolved issue under review by the TMB.

3. The TMB shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Agreement. It shall rely on notifications and information supplied by the Members under the relevant Articles of this Agreement, supplemented by any additional information or necessary details they may submit or it may decide to seek from them. It may also rely on notifications to and reports from other WTO bodies and from such other sources as it may deem appropriate.

4. Members shall afford to each other adequate opportunity for consultations with respect to any matters affecting the operation of this Agreement.

As set out in footnote 4, Art. 4.11 DSU, at p. 6, listed in Appendix 2, p. 29.

5. In the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either Member, and following a thorough and prompt consideration of the matter, make recommendations to the Members concerned.

6. At the request of any Member, the TMB shall review promptly any particular matter which that Member considers to be detrimental to its interests under this Agreement and where consultations between it and the Member or Members concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the Members concerned and for the purposes of the review provided for in paragraph 11.

7. Before formulating its recommendations or observations, the TMB shall invite participation of such Members as may be directly affected by the matter in question.

8. Whenever the TMB is called upon to make recommendations or findings, it shall do so, preferably within a period of 30 days, unless a different time period is specified in this Agreement. All such recommendations or findings shall be communicated to the Members directly concerned. All such recommendations or findings shall also be communicated to the Council for Trade in Goods for its information.

9. The Members shall endeavour to accept in full the recommendations of the TMB, which shall exercise proper surveillance of the implementation of such recommendations.

10. If a Member considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefore not later than one month after receipt of such recommendations. Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. If, after such further recommendations, the matter remains unresolved, either Member may bring the matter before the Dispute Settlement Body and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the Dispute Settlement Understanding.

11. In order to oversee the implementation of this Agreement, the Council for Trade in Goods shall conduct a major review before the end of each stage of the integration process. To assist in this review, the TMB shall, at least five months before the end of each stage, transmit to the Council for Trade in Goods a comprehensive report on the implementation of this Agreement during the stage under review, in particular in matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 respectively. The TMB's comprehensive report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods.

12. In the light of its review the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired. For the resolution of any disputes that may arise with respect to matters referred to in Article 7, the Dispute Settlement Body may authorize, without prejudice to the final date set out under Article 9, an adjustment to paragraph 14 of Article 2, for the stage subsequent to the review, with respect to any Member found not to be complying with its obligations under this Agreement.

iv. Agreement on Technical Barriers to Trade

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Article 14

Consultation and Dispute Settlement

14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.

See also Rules of Conduct II, III, IV, VI, VII, VIII, Annex 1b, 2, and 3 at pp. 79-87.

14.3 Technical expert groups shall be governed by the procedures of Annex 2.

14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

ANNEX 2

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert 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 technical expert 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 a technical expert 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 a technical expert group. Members of technical expert 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 a technical expert group.

4. Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert 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 a technical expert group for such information as the technical expert group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert 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 technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the panel.

v. Agreement on Trade-Related Investment Measures

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Article 8

Consultation and Dispute Settlement

The provisions of Article XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

**vi. Agreement on the Implementation of Article VI of
the General Agreement on Tariffs and Trade 1994**

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF
THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article 17

Consultation and Dispute Settlement

...

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body (DSB). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

- (i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
- (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

- (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even

though the panel might have reached a different conclusion, the evaluation shall not be overturned;

- (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

**vii. Agreement on Implementation of Article VII of
the General Agreement on Tariffs and Trade 1994**

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article 19

Consultations and Dispute Settlement

[1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.]

Paragraph 1 of Art. 19 is not referred to in Appendix 2 of DSU.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another member or of other members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or members in question. Each Member shall afford sympathetic consideration to any request from another member for consultations.

As set out in footnote 4, Art. 4.11 DSU at p. 6.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

...

2. The responsibilities of the Technical Committee shall include the following:

...

- (f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

...

Technical Committee Meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this

paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

...

Quorum and Voting

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

viii. Agreement on Preshipment Inspection

AGREEMENT ON PRESHIPMENT INSPECTION

Article 7

Consultation

Members shall consult with other Members upon request with respect to any matter affecting the operation of this Agreement. In such cases, the provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

As set out in footnote 4, Art. 4.11 DSU at p. 6.

ix. Agreement on Rules of Origin

AGREEMENT ON RULES OF ORIGIN

Article 7

Consultation

The provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

As set out in footnote 4, Art. 4.11 DSU at p. 6.

x. Agreement on Import Licensing Procedures

AGREEMENT ON IMPORT LICENSING PROCEDURES

Article 6

Consultation and Dispute Settlement

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

As set out in footnote 4, Art. 4.11 DSU at p. 6.

xi. Agreement on Subsidies and Countervailing Measures

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Article 4

Remedies

...

4.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

But see SCM 27.7 at p. 52.

4.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

4.4 If no mutually agreed solution has been reached within 30 days⁶ of the request for consultations, any Member party to such consultations may refer the matter to the Dispute Settlement Body (DSB) for the immediate establishment of a panel, unless the DSB decides by consensus not to establish a panel.

4.5 Upon its establishment, the panel may request the assistance of the Permanent Group of Experts⁷ (referred to in this Agreement as the PGE) with

⁶ Any time periods mentioned in this Article may be extended by mutual agreement.

⁷ As established in Article 24.

regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the Member applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusions to the panel within a time-limit determined by the panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the panel without modification.

See Rules of Conduct II, III, IV, VI, VII, VIII Annex 1b, 2 and 3 at pp. 79-87.

4.6 The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 90 days of the date of the composition and the establishment of the panel's terms of reference.

4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.

4.8 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

4.9 Where a panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 30 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.⁸

See DSU 17.5 at p. 16.

4.10 In the event the recommendation of the DSB is not followed within the time-period specified by the panel, which shall commence from the date of adoption of the panel's report or the Appellate Body's report, the DSB shall grant

⁸ If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

authorization to the complaining Member to take appropriate⁹ countermeasures, unless the DSB decides by consensus to reject the request.

4.11 In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the Dispute Settlement Understanding (DSU), the arbitrator shall determine whether the countermeasures are appropriate.¹⁰

4.12 For purposes of disputes conducted pursuant to this Article, except for time periods specifically prescribed in this Article, time-periods applicable under the DSU for the conduct of such disputes shall be half the time prescribed therein.

See SCM 27.7 for developing countries at p. 52.

PART III: ACTIONABLE SUBSIDIES

Article 6

Serious Prejudice

...

6.6 Each Member in the market of which serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7, all relevant information that can be obtained as to the changes in market shares of the parties to the dispute as well as concerning prices of the products involved.

Article 7

Remedies

...

7.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question, and (b) the injury caused to the domestic industry, or the nullification or

⁹ This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

¹⁰ This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

impairment, or serious prejudice¹⁹ caused to the interests of the Member requesting consultations.

7.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

7.4 If consultations do not result in a mutually agreed solution within 60 days²⁰, any Member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The composition of the panel and its terms of reference shall be established within 15 days from the date when it is established.

7.5 The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 120 days of the date of the composition and establishment of the panel's terms of reference.

See the Decision on Part V of SCM at p. 106.

7.6 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB²¹ unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

7.7 Where a panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.²²

7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of

¹⁹ In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of paragraph 1 of Article 6, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of paragraph 1 of Article 6 have been met or not.

²⁰ Any time periods mentioned in this Article may be extended by mutual agreement.

²¹ If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

²² If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

7.9 In the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request.

7.10 In the event that a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator shall determine whether the countermeasures are commensurate with the degree and nature of the adverse effects determined to exist.

PART V: COUNTERVAILING MEASURES

Article 10

Application of Article VI of GATT 1994

Footnote 35

The provisions of Part II or III may be invoked in parallel with the provisions of Part V; however, with regard to the effects of a particular subsidy in the domestic market of the importing Member, only one form of relief (either a countervailing duty, if the requirements of Part V are met, or a countermeasure under Articles 4 or 7) shall be available. The provisions of Parts III and V shall not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV. However, measures referred to in paragraph 1(a) of Article 8 may be investigated in order to determine whether or not they are specific within the meaning of Article 2. In addition, in the case of a subsidy referred to in paragraph 2 of Article 8 conferred pursuant to a programme which has not been notified in accordance with paragraph 3 of Article 8, the provisions of Part III or V may be invoked, but such subsidy shall be treated as non-actionable if it is found to conform to the standards set forth in paragraph 2 of Article 8.

PART VI: INSTITUTIONS

Article 24

Committee on Subsidies and Countervailing Measures and Subsidiary Bodies

...

24.4 The PGE may be consulted by any Member and may give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7.

PART VIII: DEVELOPING COUNTRY MEMBERS

Article 27

Special and Differential Treatment of Developing Country Members

...

27.7 The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5. The relevant provisions in such a case shall be those of Article 7.

PART X: Dispute Settlement

Article 30

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

As set out in footnote 4, Art. 4.11 DSU at p. 6.

ANNEX V

**PROCEDURES FOR DEVELOPING INFORMATION CONCERNING
SERIOUS PREJUDICE**

1. Every Member shall cooperate in the development of evidence to be examined by a panel in procedures under paragraphs 4 through 6 of Article 7. The parties to the dispute and any third-country Member concerned shall notify to the DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for administration of this provision within

its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to the DSB under paragraph 4 of Article 7, the DSB shall, upon request, initiate the procedure to obtain such information from the government of the subsidizing Member as necessary to establish the existence and amount of subsidization, the value of total sales of the subsidized firms, as well as information necessary to analyze the adverse effects caused by the subsidized product.⁶⁶ This process may include, where appropriate, presentation of questions to the government of the subsidizing Member and of the complaining Member to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set forth in Part VII.⁶⁷

3. In the case of effects in third-country markets, a party to a dispute may collect information, including through the use of questions to the government of the third-country Member, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining Member or the subsidizing Member. This requirement should be administered in such a way as not to impose an unreasonable burden on the third-country Member. In particular, such a Member is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this Member (e.g. most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third-country Member and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

4. The DSB shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the cooperation of the parties.

5. The information-gathering process outlined in paragraphs 2 through 4 shall be completed within 60 days of the date on which the matter has been

⁶⁶ In cases where the existence of serious prejudice has to be demonstrated.

⁶⁷ The information-gathering process by the DSB shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any Member involved in this process.

referred to the DSB under paragraph 4 of Article 7. The information obtained during this process shall be submitted to the panel established by the DSB in accordance with the provisions of Part X. This information should include, *inter alia*, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes in market shares. It should also include rebuttal evidence, as well as such supplemental information as the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third-country Member fail to cooperate in the information-gathering process, the complaining Member will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non-cooperation of the subsidizing and/or third-country Member. Where information is unavailable due to non-cooperation by the subsidizing and/or third-country Member, the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the panel should draw adverse inferences from instances of non-cooperation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the panel shall consider the advice of the DSB representative nominated under paragraph 4 as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a cooperative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily the panel should not request additional information to complete the record where the information would support a particular party's position and the absence of that information in the record is the result of unreasonable non-cooperation by that party in the information-gathering process.

xii. Agreement on Safeguards

AGREEMENT ON SAFEGUARDS

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

As set out in footnote 4, Art. 4.11 DSU, p. 6. See also GATT 1994 XXII:1 and XXIII:1 at p. 56; SCM 4.3. 7.2 and 7.3 at pp. 47, 50; GATS XXII at p. 56; TRIPS 64 at p. 57; GPA XXII at p. 63; Aircraft 8.5 at p. 65.

B. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

GENERAL AGREEMENT ON TRADE IN SERVICES

Article XXI

Modification of Schedules

...

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

See Rules of Conduct II, III, IV, VI, VII, VIII, Annex 1a, 2, and 3 at pp. 79-87.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or

withdrawal may be implemented solely with respect to the modifying Member.

PART V

INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.
2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.
3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.¹ The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII

Dispute Settlement and Enforcement

4. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.
5. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.
6. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the

application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

ANNEX ON FINANCIAL SERVICES

4. Dispute Settlement

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

See DSU 8 at p. 8.

ANNEX ON AIR TRANSPORT SERVICES

...

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

C. **AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

AGREEMENT OF TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial

Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

As set out in footnote 4, Art. 4.11 DSU, p. 6.

III. DISPUTE SETTLEMENT DECISIONS OF THE CONTRACTING PARTIES TO THE GATT 1947 REFERRED TO IN THE DSU

A. Decision of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/6)

Montreal Decision referred to in DSU 26.2 at p. 27, applicable to situation complaints under GATT 1994 Art. XXIII(1)(c).

...

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.
2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.
3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.
4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.
2. The contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/214).

[The 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance is not reproduced in this volume but can be found in BISD 26S/214.]

**B. Procedures Under Article XXIII - Decision of 5 April 1966
(BISD 14S/98)**

Fast track procedure applicable to procedures involving Developing Countries referred to in DSU 3.12 at p. 4.

The CONTRACTING PARTIES,

Recognizing that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties;

Recognizing further that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties; and

Affirming their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures;

Decide that:

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of

Article XXIII do not lead to a satisfactory settlement, the less-developed contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution.,

2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.

3. On receipt of this information, the Director-General shall consult with the contracting parties concerned and with such other contracting parties or inter-governmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.

4. After a period of two months from the commencement of the consultations referred to in paragraph 3 above, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending appropriate solutions. The members of the panel shall act a personal capacity and shall be appointed in consultation with, and with the approval of, the contracting parties concerned.

6. In conducting its examination and having before it all the background information, the panel shall take due account of all the circumstances and considerations relating to the application of the measures complained of, and their impact on the trade and economic development of affected contracting parties.

7. The panel shall, within a period of sixty days from the date the matter was referred to it, submit its findings and recommendations to the CONTRACTING PARTIES or to the Council, for consideration and decision. Where the matter is referred to the Council, it may, in accordance with Rule 8 of the Intersessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session, address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

8. Within a period of ninety days from the date of the decision of the CONTRACTING PARTIES or the Council, the contracting party to which a recommendation is directed shall report to the CONTRACTING PARTIES or the Council on the action taken by it in pursuance of the decision.

9. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant recommendation of the CONTRACTING PARTIES or the Council, and that any benefit accruing directly or indirectly under the General Agreement continued in

consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

10. In the event that a recommendation to a developed country by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 8, the CONTRACTING PARTIES shall consider what measures, further to those undertaken under paragraph 9, should be taken to resolve the matter.

11. If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions of the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree.

IV. DISPUTE SETTLEMENT RULES AND PROCEDURES IN THE PLURILATERAL TRADE AGREEMENTS

A. Provisions Regarding the Agreement on Government Procurement

1. Agreement on Government Procurement

AGREEMENT ON GOVERNMENT PROCUREMENT

Article XXII

Consultations and Dispute Settlement

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the Dispute Settlement Understanding) shall be applicable except as otherwise specifically provided below.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as DSB), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.

4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:

To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement 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 this Agreement.

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

See also DSU 8 at p. 8.

6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.

7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.

See Notification under Appendix 1 DSU at p. 65.

2. Notification Under Appendix 1 of the Dispute Settlement Understanding

*Communication from the Chairman of the Committee on Government Procurement
(WT/DSB/7)*

The following letter, dated 8 July 1996, from the Chairman of the Committee on Government Procurement to the Chairman of the Dispute Settlement Body is circulated to Members for information.

According to the provisions of Article 1.2 and Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the competent Body of each Plurilateral Trade Agreement shall notify any special or additional rules or procedures as regards dispute settlement to the DSB. I am writing to you in accordance with this provision.

The Agreement on Government Procurement entered into force on 1 January 1996. At its meeting of 4 June 1996, the Committee on Government Procurement requested me to notify the DSB, through you, of the following special or additional rules and procedures contained in the Agreement on Government Procurement as regards dispute settlement:

Article XXII: paragraphs 2 through 7.

B. Agreement On Trade In Civil Aircraft¹

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Article 8

Surveillance, Review, Consultation, and Dispute Settlement

...

8.5 Each Signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by another Signatory with respect to any matter affecting the operation of this Agreement.

8.6 Signatories recognize the desirability of consultations with other Signatories in the Committee in order to seek a mutually acceptable solution

¹ No notification under Appendix 1 of the DSU has been made by the Committee on Trade in Civil Aircraft.

prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic procedures are initiated, Signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

8.7 Should a Signatory consider that its trade interests in civil aircraft manufacture, repair, maintenance, rebuilding, modification or conversion have been or are likely to be adversely affected by any action by another Signatory, it may request review of the matter by the Committee. Upon such a request, the Committee shall convene within thirty days and shall review the matter as quickly as possible with a view to resolving the issues involved as promptly as possible and in particular prior to final resolution of these issues elsewhere. In this connection the Committee may issue such rulings or recommendations as may be appropriate. Such review shall be without prejudice to the rights of Signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. For the purposes of aiding consideration of the issues involved, under the GATT and such instruments, the Committee may provide such technical assistance as may be appropriate.

8.8 Signatories agree that, with respect to any dispute related to a matter covered by this Agreement, but not covered by other instruments multilaterally negotiated under the auspices of the GATT, the provisions of Articles XXII and XXIII of the General Agreement and the provisions of the Understanding related to Notification, Consultation, Dispute Settlement and Surveillance shall be applied, *mutatis mutandis*, by the Signatories and the Committee for the purposes of seeking settlement of such dispute. These procedures shall also be applied for the settlement of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT, should the parties to the dispute so agree.

The provisions of the Understanding Related to Notification, Consultation, Dispute Settlement and Surveillance are not reproduced in the present volume but can be found in BISD 26S /210.

V. RULES OF PROCEDURE FOR THE MEETINGS OF DISPUTE SETTLEMENT BODY

A. RULES OF PROCEDURE FOR MEETINGS OF THE DISPUTE SETTLEMENT BODY

*Adopted by the DSB on 10 February and 25 April 1995
(WT/DSB/9)*

Hereafter referred to as the DSB Procedures

1. When the General Council convenes as the Dispute Settlement Body (DSB), it shall follow the rules of procedure for meetings of the General Council, except as provided otherwise in the Dispute Settlement Understanding (DSU) or below.

Chapter IV – Observers

2. Observership at meetings of the DSB shall be governed by paragraphs 9 to 11 of Annex 2 and paragraph 3, including footnote 5 of Annex 3 to these Rules.¹

Chapter V - Officers

3. The DSB shall elect its own Chairperson* from among the representatives of Members. The election shall take place at the first meeting of the year and shall take effect at the end of the meeting. The Chairperson shall hold office until the end of the first meeting of the following year.

4. If the Chairperson is absent from any meeting or part thereof, the Chairperson of the General Council or in the latter's absence, the Chairperson of the Trade Policy Review Body, shall perform the functions of the Chairperson. If the Chairpersons of the General Council and of the Trade Policy Review Body are also not present, the DSB shall elect an interim Chairperson for that meeting or that part of the meeting.

5. If the Chairperson can no longer perform the functions of the office, the DSB shall designate a Chairperson in accordance with paragraph 4 to perform those functions pending the election of a new Chairperson.

¹ I.e., the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, see p. 68.

* The Dispute Settlement Body shall apply the relevant guidelines contained in the "Guidelines for Appointment of Officers to WTO Bodies" (WT/L/31).

**B. RULES OF PROCEDURE FOR SESSIONS OF THE
MINISTERIAL CONFERENCE AND MEETINGS OF THE
GENERAL COUNCIL**

(WT/L/161)*

Hereafter referred to as the GC/DSB Procedures

*RULES OF PROCEDURE FOR SESSIONS OF THE MINISTERIAL
CONFERENCE*

...

*RULES OF PROCEDURE FOR MEETINGS OF THE GENERAL
COUNCIL*

Note: For the purposes of these Rules, the term "WTO Agreement" includes the Multilateral Trade Agreements.

Chapter I — Meetings

Rule 1

The General Council shall meet as appropriate.

Rule 2

Meetings of the General Council shall be convened by the Director-General by a notice issued not less than ten calendar days prior to the date set for the meeting. In the event that the tenth day falls on a weekend or a holiday, the notice shall be issued no later than the preceding WTO working day. Meetings may be convened with shorter notice for matters of significant importance or urgency at the request of a Member concurred in by the majority of the Members.

Chapter II — Agenda

Rule 3

A list of the items proposed for the agenda of the meeting shall be communicated to Members together with the convening notice for the meeting. It shall be open

* This document reproduces the rules of procedure for sessions of the Ministerial Conference and meetings of the General Council adopted by the General Council on 31 January 1995 (WT/L/28), as amended by the General Council on 3 April 1995 with regard to Chapter V - Officers of the Rules for the General Council, and on 18 July 1996 with regard to Annex 3 referred to in Rule 11 of the Rules for both the Ministerial Conference and the General Council.

to any Member to suggest items for inclusion in the proposed agenda up to, and not including, the day on which the notice of the meeting is to be issued.

Rule 4

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat in writing, together with the accompanying documentation to be issued in connection with that item. Documentation for consideration at a meeting shall be circulated not later than the day on which the notice of the meeting is to be issued.

Rule 5

A proposed agenda shall be circulated by the Secretariat one or two days before the meeting.

Rule 6

The first item of business at each meeting shall be the consideration and approval of the agenda. Representatives may suggest amendments to the proposed agenda, or additions to the agenda under "Other Business". Representatives shall provide the Chairperson or the Secretariat, and the other Members directly concerned, whenever possible, advance notice of items intended to be raised under "Other Business".

Rule 7

The General Council may amend the agenda or give priority to certain items at any time in the course of the meeting.

Chapter III — Representation

Rule 8

Each Member shall be represented by an accredited representative.

Rule 9

Each representative may be accompanied by such alternates and advisers as the representative may require.

Chapter IV — Observers

Rule 10

Representatives of States or separate customs territories may attend the meetings as observers on the invitation of the General Council in accordance with paragraphs 9 to 11 of the guidelines in Annex 2 to these Rules.

Rule 11

Representatives of international intergovernmental organizations may attend the meetings as observers on the invitation of the General Council in accordance with the guidelines in Annex 3 to these Rules.

Chapter V — Officers

Rule 12

The General Council shall elect a Chairperson¹ from among the representatives of Members. The election shall take place at the first meeting of the year and shall take effect at the end of the meeting. The Chairperson shall hold office until the end of the first meeting of the following year.

Rule 13

If the Chairperson is absent from any meeting or part thereof, the Chairperson of the Dispute Settlement Body or the Chairperson of the Trade Policy Review Body, shall perform the functions of the Chairperson. If the Chairperson of the Dispute Settlement Body and of the Trade Policy Review Body are also not present, the General Council shall elect an interim Chairperson for that meeting or that part of the meeting.

Rule 14

If the Chairperson can no longer perform the functions of the office, the General Council shall designate a Chairperson in accordance with Rule 13 to perform those functions pending the election of a new Chairperson.

Rule 15

The Chairperson shall not normally participate in the proceedings as the representative of a Member. The Chairperson may, however, at any time request permission to do so.

Chapter VI — Conduct of business

Rule 16

A simple majority of the Members shall constitute a quorum.

Rule 17

In addition to exercising the powers conferred elsewhere by these rules, the Chairperson shall declare the opening and closing of each meeting, shall direct the discussion, accord the right to speak, submit questions for decision, announce decisions, rule on points of order and, subject to these rules, have complete control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

¹ The General Council shall apply the relevant guidelines contained in the "Guidelines for Appointment of Officers to WTO Bodies" (WT/L/31).

Rule 18

During the discussion of any matter, a representative may raise a point of order. In this case the Chairperson shall immediately state the ruling. If the ruling is challenged, the Chairperson shall immediately submit it for decision and it shall stand unless overruled.

Rule 19

During the discussion of any matter, a representative may move the adjournment of the debate. Any such motion shall have priority. In addition to the proponent of the motion, one representative may be allowed to speak in favour of, and two representatives against, the motion, after which the motion shall be submitted for decision immediately.

Rule 20

A representative may at any time move the closure of the debate. In addition to the proponent of the motion, not more than one representative may be granted permission to speak in favour of the motion and not more than two representatives may be granted permission to speak against the motion, after which the motion shall be submitted for decision immediately.

Rule 21

During the course of the debate, the Chairperson may announce the list of speakers and, with the consent of the meeting, declare the list closed. The Chairperson may, however, accord the right of reply to any representative if a speech delivered after the list has been declared closed makes this desirable.

Rule 22

The Chairperson, with the consent of the meeting, may limit the time allowed to each speaker.

Rule 23

Representatives shall endeavour, to the extent that a situation permits, to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in fuller detail may circulate a written statement for distribution to Members, the summary of which, at the representative's request, may be reflected in the records of the General Council.

Rule 24

In order to expedite the conduct of business, the Chairperson may invite representatives that wish to express their support for a given proposal to show their hands, in order to be duly recorded in the records of the General Council as supporting statements; thus, only representatives with dissenting views or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition

of points already made, and will not preclude any representative who so wishes from taking the floor.

Rule 25

Representatives should avoid unduly long debates under "Other Business". Discussions on substantive issues under "Other Business" shall be avoided, and the General Council shall limit itself to taking note of the announcement by the sponsoring delegation, as well as any reactions to such an announcement by other delegations directly concerned.

Rule 26

While the General Council is not expected to take action in respect of an item introduced as "Other Business", nothing shall prevent the General Council, if it so decides, to take action in respect of any such item at a particular meeting, or in respect of any item for which documentation was not circulated at least ten calendar days in advance.

Rule 27

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

Rule 28

Proposals and amendments to proposals shall normally be introduced in writing and circulated to all representatives not later than twelve hours before the commencement of the meeting at which they are to be discussed.

Rule 29

If two or more proposals are moved relating to the same question, the meeting shall first decide on the most far-reaching proposal and then on the next most far-reaching proposal and so on.

Rule 30

When an amendment is moved to a proposal, the amendment shall be submitted for decision first and, if it is adopted, the amended proposal shall then be submitted for decision.

Rule 31

When two or more amendments are moved to a proposal, the meeting shall decide first on the amendment farthest removed in substance from the original proposal, then, if necessary, on the amendment next farthest removed, and so on until all the amendments have been submitted for decision.

Rule 32

Parts of a proposal may be decided on separately if a representative requests that the proposal be divided.

Chapter VII — Decision-Making

Rule 33

The General Council shall take decisions in accordance with the decision-making provisions of the WTO Agreement, in particular Article IX thereof entitled "Decision-Making".

Rule 34

When, in accordance with the WTO Agreement, decisions are required to be taken by vote, such votes shall be taken by ballot. Ballot papers shall be distributed to representatives of Members present at the meeting and a ballot box placed in the conference room. However, the representative of any Member may request, or the Chairperson may suggest, that a vote be taken by the raising of cards or by roll call. In addition, where in accordance with the WTO Agreement a vote by a qualified majority of all Members is required to be taken, the General Council may decide, upon request from a Member or the suggestion of the Chairperson, that the vote be taken by airmail ballots or ballots transmitted by telegraph or telefacsimile in accordance with the procedures described in Annex 1 to these Rules.

Chapter VIII — Languages

Rule 35

English, French and Spanish shall be the working languages.

Chapter IX — Records

Rule 36

Records of the discussions of the General Council shall be in the form of minutes³.

Chapter X — Publicity of meetings

Rule 37

The meetings of the General Council shall ordinarily be held in private. It may be decided that a particular meeting or meetings should be held in public.

Rule 38

After a private meeting has been held, the Chairperson may issue a communiqué to the Press.

Chapter XI — Revision

Rule 39

The General Council may decide at any time to revise these rules or any part of them.

ANNEX 1

RULES FOR AIRMAIL BALLOTS AND BALLOTS TRANSMITTED BY TELEGRAPH OR TELEFACSIMILE

In any case where the Ministerial Conference or the General Council decides that a vote be taken by airmail ballots or ballots transmitted by telegraph or telefacsimile, ballot papers shall be distributed to representatives of Members present at the meeting and a notice shall be sent to each Member. The notice shall contain such information as the Chairperson considers necessary and a clear statement of the question to which each Member shall be requested to answer "yes" or "no".

The Chairperson of the Ministerial Conference or the General Council shall determine the date and hour by which votes must be received. The time-limit shall be set at no later than 30 days after the date the notice is sent. Any Member from which a vote has not been received within such time-limit shall be regarded as not voting.

³ The customary practice under the GATT 1947, whereby representatives may, upon their request, verify those portions of the draft records containing their statements, prior to the issuance of such records, shall be continued.

Members entitled to participate in a vote by airmail ballots or ballots transmitted by telegraph or telefacsimile are those which are Members at the time of the decision to submit the matter in question to a vote.

ANNEX 2

GUIDELINES FOR OBSERVER STATUS FOR GOVERNMENTS IN THE WTO

1. Governments seeking observer status in the Ministerial Conference shall address a communication to that body indicating their reasons for seeking such status. Such requests shall be examined on a case-by-case basis by the Ministerial Conference.
2. Governments accorded observer status at sessions of the Ministerial Conference shall not automatically have that status at meetings of the General Council or its subsidiary bodies. However, governments accorded such status in the General Council and its subsidiary bodies in accordance with the procedures described below, shall be invited to attend sessions of the Ministerial Conference as observers.
3. The purpose of observer status in the General Council and its subsidiary bodies is to allow a government to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO Agreement.
4. Governments wishing to request observer status in the General Council shall address to that body a communication expressing the intent to initiate negotiations for accession to the WTO Agreement within a maximum period of five years, and provide a description of their current economic and trade policies, as well as any intended future reforms of these policies.
5. The General Council shall examine requests for observer status by governments on a case-by-case basis.
6. Observer status in the General Council shall be granted initially for a period of five years. In addition to being invited to sessions of the Ministerial Conference, governments with observer status in the General Council may participate as observers at meetings of working parties and other subsidiary bodies of the General Council as appropriate, with the exception of the Committee on Budget, Finance and Administration.
7. During its period of observership, an observer government shall provide the Members of the WTO with any additional information it considers relevant concerning developments in its economic and trade policies. At the request of any Member or the observer government itself, any matter contained in such information may be brought to the attention of the General Council after governments have been allowed sufficient time to examine the information.

- 8 (a) If, at the end of five years, an observer government has not yet initiated a process of negotiation with a view to acceding to the WTO Agreement, it may request an extension of its status as observer. Such a request shall be made in writing and shall be accompanied by a comprehensive, up-dated description of the requesting government's current economic and trade policies, as well as an indication of its future plans in relation to initiating accession negotiations.
- (b) Upon receiving such a request, the General Council shall review the situation, and decide upon the extension of the status of observer and the duration of such extension.
9. Observer governments shall have access to the main WTO document series. They may also request technical assistance from the Secretariat in relation to the operation of the WTO system in general, as well as to negotiations on accession to the WTO Agreement.
10. Representatives of governments accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to make proposals, unless a government is specifically invited to do so, nor to participate in decision-making.
11. Observer governments shall be required to make financial contributions for services provided to them in connection with their observer status in the WTO, subject to financial regulations established pursuant to Article VII:2 of the WTO Agreement.

ANNEX 3

OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS IN THE WTO⁴

1. The purpose of observer status for international intergovernmental organizations (hereinafter referred to as "organizations") in the WTO is to enable these organizations to follow discussions therein on matters of direct interest to them.
2. Requests for observer status shall accordingly be considered from organizations which have competence and a direct interest in trade policy matters, or which, pursuant to paragraph V:1 of the WTO Agreement, have responsibilities related to those of the WTO.

⁴ These guidelines shall apply also to other organizations referred to by name in the WTO Agreement.

3. Requests for observer status shall be made in writing to the WTO body in which such status is sought, and shall indicate the nature of the work of the organization and the reasons for its interest in being accorded such status. Requests for observer status from organizations shall not, however, be considered for meetings of the Committee on Budget, Finance and Administration or of the Dispute Settlement Body.⁵

4. Requests for observer status shall be considered on a case-by-case basis by each WTO body to which such a request is addressed, taking into account such factors as the nature of work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization has been associated in the past with the work of the CONTRACTING PARTIES to GATT 1947.

5. In addition to organizations that request, and are granted, observer status, other organizations may attend meetings of the Ministerial Conference, the General Council or subsidiary bodies on the specific invitation of the Ministerial Conference, the General Council or the subsidiary body concerned, as the case may be. Invitations may also be extended, as appropriate and on a case-by-case basis, to specific organizations to follow particular issues within a body in an observer capacity.

6. Organizations with which the WTO has entered into a formal arrangement for cooperation and consultation shall be accorded observer status in such bodies as may be determined by that arrangement.

7. Organizations accorded observer status in a particular WTO body shall not automatically be accorded such status in other WTO bodies.

8. Representatives of organizations accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to circulate papers or to make proposals, unless an organization is specifically invited to do so, nor to participate in decision-making.

9. Observer organizations shall receive copies of the main WTO documents series and of other documents series relating to the work of the subsidiary bodies which they attend as observers. They may receive such additional documents as may be specified by the terms of any formal arrangements for cooperation between them and the WTO.

⁵ In the case of the IMF and the World Bank, their requests for attendance as observers to the DSB will be acted upon in accordance with the arrangements to be concluded between the WTO and these two organizations.

10. If for any one-year period after the date of the grant of observer status, there has been no attendance by the observer organization, such status shall cease. In the case of sessions of the Ministerial Conference, this period shall be two years.

VI. RULES OF CONDUCT FOR THE UNDERSTANDING ON THE RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

*Adopted by the DSB on 3 December 1996
(WT/DS/RC/1)*

I. Preamble

Members,

Recalling that on 15 April 1994 in Marrakesh, Ministers welcomed the stronger and clearer legal framework they had adopted for the conduct of international trade, including a more effective and reliable dispute settlement mechanism;

Recognizing the importance of full adherence to the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and the principles for the management of disputes applied under Articles XXII and XXIII of GATT 1947, as further elaborated and modified by the DSU;

Affirming that the operation of the DSU would be strengthened by rules of conduct designed to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU thereby enhancing confidence in the new dispute settlement mechanism;

Hereby establish the following Rules of Conduct.

II. Governing Principle

1. Each person covered by these Rules (as defined in paragraph 1 of Section IV below and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved. These Rules shall in no way modify the rights and obligations of Members under the DSU nor the rules and procedures therein.

III. Observance of the Governing Principle

1. To ensure the observance of the Governing Principle of these Rules, each covered person is expected (1) to adhere strictly to the provisions of the DSU; (2) to disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and (3) to take due care in the performance of their duties to fulfil these

expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in anyway interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

IV. Scope

1. These Rules shall apply, as specified in the text, to each person serving: (a) on a panel; (b) on the Standing Appellate Body; (c) as an arbitrator pursuant to the provisions mentioned in Annex "1a"; or (d) as an expert participating in the dispute settlement mechanism pursuant to the provisions mentioned in Annex "1b". These Rules shall also apply, as specified in this text and the relevant provisions of the Staff Regulations, to those members of the Secretariat called upon to assist the panel in accordance with Article 27.1 of the DSU or to assist in formal arbitration proceedings pursuant to Annex "1a"; to the Chairman of the Textiles Monitoring Body (hereinafter called "TMB") and other members of the TMB Secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the WTO Agreement on Textiles and Clothing; and to Standing Appellate Body support staff called upon to provide the Standing Appellate Body with administrative or legal support in accordance with Article 17.7 of the DSU (hereinafter "Member of the Secretariat or Standing Appellate Body support staff"), reflecting their acceptance of established norms regulating the conduct of such persons as international civil servants and the Governing Principle of these Rules.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Members' requests for assistance and information.

3. These Rules shall apply to the members of the TMB to the extent prescribed in Section V.

V. Textiles Monitoring Body

1. Members of the TMB shall discharge their functions on an ad personam basis, in accordance with the requirement of Article 8.1 of the Agreement on

Textiles and Clothing, as further elaborated in the working procedures of the TMB, so as to preserve the integrity and impartiality of its proceedings.¹

VI. Self-Disclosure Requirements by Covered Persons

1. (a) Each person requested to serve on a panel, on the Standing Appellate Body, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List (Annex 2) of examples of the matters subject to disclosure.

(b) Any member of the Secretariat described in paragraph IV:1, who may expect to be called upon to assist in a dispute, and Standing Appellate Body support staff, shall be familiar with these Rules.

2. As set out in paragraph VI:4 below, all covered persons described in paragraph VI.1(a) and VI.1(b) shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List, if relevant.

3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels, the Standing Appellate Body, or in other dispute settlement roles.

4. (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 3 of these Rules. Such information would be disclosed to the Chair of the Dispute Settlement Body ("DSB") for consideration by the parties to the dispute.

(b) (i) Persons serving on the Standing Appellate Body who, through rotation, are selected to hear the appeal of a particular panel case, shall review the factual portion of the Panel report and complete the form at Annex 3. Such information would be disclosed to the

¹ These working procedures, as adopted by the TMB on 26 July 1995 (G/TMB/R/1), currently include, inter alia, the following language in paragraph 1.4: "In discharging their functions in accordance with paragraph 1.1 above, the TMB members and alternates shall undertake not to solicit, accept or act upon instructions from governments, nor to be influenced by any other organisations or undue extraneous factors. They shall disclose to the Chairman any information that they may consider likely to impede their capacity to discharge their functions on an *ad personam* basis. Should serious doubts arise during the deliberations of the TMB regarding the ability of a TMB member to act on an *ad personam* basis, they shall be communicated to the Chairman. The Chairman shall deal with the particular matter as necessary".

Standing Appellate Body for its consideration whether the member concerned should hear a particular appeal.

- (ii) Standing Appellate Body support staff shall disclose any relevant matter to the Standing Appellate Body, for its consideration in deciding on the assignment of staff to assist in a particular appeal.
- (c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Director-General of the WTO the information required under paragraph VI:2 of these Rules and any other relevant information required under the Staff Regulations, including the information described in the footnote.²

5. During a dispute, each covered person shall also disclose any new information relevant to paragraph VI:2 above at the earliest time they become aware of it.

6. The Chair of the DSB, the Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel process and its enforcement procedures, if any, are completed.

VII. Confidentiality

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.

² Pending adoption of the Staff Regulations, members of the Secretariat shall make disclosures to the Director-General in accordance with the following draft provision to be included in the Staff Regulations:

When paragraph VI:4(c) of the Rules of Conduct for the DSU is applicable, members of the Secretariat would disclose to the Director-General of the WTO the information required in paragraph VI:2 of those Rules, as well as any information regarding their participation in earlier formal consideration of the specific measure at issue in a dispute under any provisions of the WTO Agreement, including through formal legal advice under Article 27.2 of the DSU, as well as any involvement with the dispute as an official of a WTO Member government or otherwise professionally, before having joined the Secretariat.

The Director-General shall consider any such disclosures in deciding on the assignment of members of the Secretariat to assist in a dispute.

When the Director-General, in the light of his consideration, including of available Secretariat resources, decides that a potential conflict of interest is not sufficiently material to warrant non-assignment of a particular member of the Secretariat to assist in a dispute, the Director-General shall inform the panel of his decision and of the relevant supporting information."

2. During the proceedings, no covered person shall engage in ex parte contacts concerning matters under consideration. Subject to paragraph VII:1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Standing Appellate Body has been derestricted.

VIII. Procedures Concerning Subsequent Disclosure and Possible Material Violations

1. Any party to a dispute, conducted pursuant to the WTO Agreement, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the Chair of the DSB, the Director-General or the Standing Appellate Body, as appropriate according to the respective procedures detailed in paragraphs VIII:5 to VIII:17 below, in a written statement specifying the relevant facts and circumstances. Other Members who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.

2. When evidence as described in paragraph VIII:1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.

3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph VIII:1.

4. Following the submission of such evidence to the Chair of the DSB, the Director-General of the WTO or the Standing Appellate Body, as specified below, the procedures outlined in paragraphs VIII:5 to VIII:17 below shall be completed within fifteen working days.

Panelists, Arbitrators, Experts

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the Chair of the DSB.

6. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2, the Chair of the DSB shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.

7. If, after having consulted with the person concerned, the matter is not resolved, the Chair of the DSB shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the dispute. If the person concerned resigns, the Chair of the DSB shall inform the parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.

8. In all cases, the Chair of the DSB, in consultation with the Director-General and a sufficient number of Chairs of the relevant Council or Councils to provide an odd number, and after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs VIII:1 and VIII:2 above has occurred. Where the parties agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.

9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.

10. The Chair of the DSB shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

Secretariat

11. If the covered person who is the subject of the evidence is a member of the Secretariat, the party shall only provide the evidence to the Director-General of the WTO, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute and the panel.

12. It shall be for the Director-General to take any appropriate action in accordance with the Staff Regulations.³

³ Pending adoption of the Staff Regulations, the Director-General would act in accordance with the following draft provision for the Staff Regulations: "If paragraph VIII:11 of the Rules of Conduct for the DSU governing the settlement of disputes is invoked, the Director-General shall consult with the person who is the subject of the evidence and the panel and shall, if necessary, take appropriate disciplinary action".

13. The Director-General shall inform the parties to the dispute, the panel and the Chair of the DSB of his decision, together with relevant supporting information.

Standing Appellate Body

14. If the covered person who is the subject of the evidence is a member of the Standing Appellate Body or of the Standing Appellate Body support staff, the party shall provide the evidence to the other party to the dispute and the evidence shall thereafter be provided to the Standing Appellate Body.

15. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2 above, the Standing Appellate Body shall forthwith provide it to the person who is the subject of such evidence, for consideration by the latter.

16. It shall be for the Standing Appellate Body to take any appropriate action after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard.

17. The Standing Appellate Body shall inform the parties to the dispute and the Chair of the DSB of its decision, together with relevant supporting information.

18. Following completion of the procedures in paragraphs VIII:5 to VIII:17, if the appointment of a covered person, other than a member of the Standing Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the DSU for initial appointment shall be followed for appointment of a replacement, but the time periods shall be half those specified in the DSU.⁴ The member of the Standing Appellate Body who, under that Body's rules, would next be selected through rotation to consider the dispute, would automatically be assigned to the appeal. The panel, members of the Standing Appellate Body hearing the appeal, or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.

19. All covered persons and Members concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in the DSU.

20. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

⁴ Appropriate adjustments would be made in the case of appointments pursuant to the Agreement on Subsidies and Countervailing Measures.

IX. Review

1. These Rules of Conduct shall be reviewed within two years of their adoption and a decision shall be taken by the DSB as to whether to continue, modify or terminate these Rules.

ANNEX 1a

Arbitrators acting pursuant to the following provisions:

- Articles 21.3(c); 22.6 and 22.7; 26.1(c) and 25 of the DSU;
- Article 8.5 of the Agreement on Subsidies and Countervailing Measures;
- Articles XXI.3 and XXII.3 of the General Agreement on Trade in Services.

ANNEX 1b

Experts advising or providing information pursuant to the following provisions:

- Article 13.1; 13.2 of the DSU;
- Article 4.5 of the Agreement on Subsidies and Countervailing Measures;
- Article 11.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures;
- Article 14.2; 14.3 of the Agreement on Technical Barriers to Trade.

ANNEX 2

ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Each covered person, as defined in Section IV:1 of these Rules of Conduct has a continuing duty to disclose the information described in Section VI:2 of these Rules which may include the following:

- (a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these

involve issues similar to those addressed in the dispute in question);

- (c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements);
- (e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 3

Dispute Number: _____

WORLD TRADE ORGANIZATION

DISCLOSURE FORM

I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Conduct for the DSU. I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the Dispute Settlement Body (DSB) makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Dated:

Signed:

VII. WORKING PROCEDURES FOR APPELLATE REVIEW

*Dated 28 February 1997
(WT/AB/WP/3)*

Definitions

1. In these Working Procedures for Appellate Review,

"appellant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20 or has filed a submission pursuant to paragraph 1 of Rule 23;

"appellate report" means an Appellate Body report as described in Article 17 of the *DSU*;

"appellee" means any party to the dispute that has filed a submission pursuant to Rule 22 or paragraph 3 of Rule 23;

"consensus" a decision is deemed to be made by consensus if no Member formally objects to it;

"covered agreements" has the same meaning as "covered agreements" in paragraph 1 of Article 1 of the *DSU*;

"division" means the three Members who are selected to serve on any one appeal in accordance with paragraph 1 of Article 17 of the *DSU* and paragraph 2 of Rule 6;

"documents" means the Notice of Appeal and the submissions and other written statements presented by the participants;

"DSB" means the Dispute Settlement Body established under Article 2 of the *DSU*;

"*DSU*" means the *Understanding on Rules and Procedures Governing the Settlement of Disputes* which is Annex 2 to the *WTO Agreement*;

"Member" means a Member of the Appellate Body who has been appointed by the DSB in accordance with Article 17 of the *DSU*;

"participant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20 or a submission pursuant to Rule 22 or paragraphs 1 or 3 of Rule 23;

"party to the dispute" means any WTO Member who was a complaining or defending party in the panel dispute, but does not include a third party;

"proof of service" means a letter or other written acknowledgement that a document has been delivered, as required, to the parties to the dispute, participants, third parties or third participants, as the case may be;

"Rules" means these *Working Procedures for Appellate Review*;

"*Rules of Conduct*" means the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* as attached in Annex II to these Rules;

"*SCM Agreement*" means the *Agreement on Subsidies and Countervailing Measures* which is in Annex 1A to the *WTO Agreement*;

"Secretariat" means the Appellate Body Secretariat;

"service address" means the address of the party to the dispute, participant, third party or third participant as generally used in WTO dispute settlement proceedings, unless the party to the dispute, participant, third party or third participant has clearly indicated another address;

"third participant" means any third party that has filed a submission pursuant to Rule 24;

"third party" means any WTO Member who has notified the DSB of its substantial interest in the matter before the panel pursuant to paragraph 2 of Article 10 of the *DSU*;

"WTO" means the World Trade Organization;

"*WTO Agreement*" means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh, Morocco on 15 April 1994;

"WTO Member" means any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations that has accepted or acceded to the WTO in accordance with Articles XI, XII or XIV of the *WTO Agreement*; and

"WTO Secretariat" means the Secretariat of the World Trade Organization.

PART I

MEMBERS

Duties and Responsibilities

2. (1) A Member shall abide by the terms and conditions of the *DSU*, these Rules and any decisions of the DSB affecting the Appellate Body.

- (2) During his/her term, a Member shall not accept any employment nor pursue any professional activity that is inconsistent with his/her duties and responsibilities.
- (3) A Member shall exercise his/her office without accepting or seeking instructions from any international, governmental, or non-governmental organization or any private source.
- (4) A Member shall be available at all times and on short notice and, to this end, shall keep the Secretariat informed of his/her whereabouts at all times.

Decision-Making

3. (1) In accordance with paragraph 1 of Article 17 of the *DSU*, decisions relating to an appeal shall be taken solely by the division assigned to that appeal. Other decisions shall be taken by the Appellate Body as a whole.
- (2) The Appellate Body and its divisions shall make every effort to take their decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote.

Collegiality

4. (1) To ensure consistency and coherence in decision-making, and to draw on the individual and collective expertise of the Members, the Members shall convene on a regular basis to discuss matters of policy, practice and procedure.
- (2) The Members shall stay abreast of dispute settlement activities and other relevant activities of the WTO and, in particular, each Member shall receive all documents filed in an appeal.
- (3) In accordance with the objectives set out in paragraph 1, the division responsible for deciding each appeal shall exchange views with the other Members before the division finalizes the appellate report for circulation to the WTO Members. This paragraph is subject to paragraphs 2 and 3 of Rule 11.
- (4) Nothing in these Rules shall be interpreted as interfering with a division's full authority and freedom to hear and decide an appeal assigned to it in accordance with paragraph 1 of Article 17 of the *DSU*.

Chairman

5. (1) There shall be a Chairman of the Appellate Body who shall be elected by the Members.
- (2) The term of office of the Chairman shall be one year. In order to ensure rotation of the Chairmanship, no Member shall serve as Chairman for more than one term consecutively.
- (3) The Chairman shall be responsible for the overall direction of the Appellate Body business, and in particular, his/her responsibilities shall include:
 - (a) the supervision of the internal functioning of the Appellate Body; and
 - (b) any such other duties as the Members may agree to entrust to him/her.
- (4) Where the office of the Chairman becomes vacant due to permanent incapacity as a result of illness or death or by resignation or expiration of his/her term, the Members shall elect a new Chairman who shall serve a full term in accordance with paragraph 2.
- (5) In the event of a temporary absence or incapacity of the Chairman, the Appellate Body shall authorize another Member to act as Chairman *ad interim*, and the Member so authorized shall temporarily exercise all the powers, duties and functions of the Chairman until the Chairman is capable of resuming his/her functions.

Divisions

6. (1) In accordance with paragraph 1 of Article 17 of the *DSU*, a division consisting of three Members shall be established to hear and decide an appeal.
- (2) The Members constituting a division shall be selected on the basis of rotation, while taking into account the principles of random selection, unpredictability and opportunity for all Members to serve regardless of their national origin.
- (3) A Member selected pursuant to paragraph 2 to serve on a division shall serve on that division, unless:
 - (i) he/she is excused from that division pursuant to Rules 9 or 10;
 - (ii) he/she has notified the Chairman and the Presiding Member that he/she is prevented from serving on the division

because of illness or other serious reasons pursuant to Rule 12; or

- (iii) he/she has notified his/her intentions to resign pursuant to Rule 14.

Presiding Member of the Division

- 7. (1) Each division shall have a Presiding Member, who shall be elected by the Members of that division.
- (2) The responsibilities of the Presiding Member shall include:
 - (a) coordinating the overall conduct of the appeal proceeding;
 - (b) chairing all oral hearings and meetings related to that appeal; and
 - (c) coordinating the drafting of the appellate report.
- (3) In the event that a Presiding Member becomes incapable of performing his/her duties, the other Members serving on that division and the Member selected as a replacement pursuant to Rule 13 shall elect one of their number to act as the Presiding Member.

Rules of Conduct

- 8. (1) On a provisional basis, the Appellate Body adopts those provisions of the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*, attached in Annex II to these Rules, which are applicable to it, until *Rules of Conduct* are approved by the DSB.
- (2) Upon approval of *Rules of Conduct* by the DSB, such *Rules of Conduct* shall be directly incorporated and become part of these Rules and shall supersede Annex II.
- 9. (1) Upon the filing of a Notice of Appeal, each Member shall take the steps set out in Article V:4(b)(i) of Annex II, and a Member may consult with the other Members prior to completing the disclosure form.
- (2) Upon the filing of a Notice of Appeal, the professional staff of the Secretariat assigned to that appeal shall take the steps set out in Article V:4(b)(ii) of Annex II.
- (3) Where information has been submitted pursuant to Article V:4(b)(i) or (ii) of Annex II, the Appellate Body shall consider whether further action is necessary.

- (4) As a result of the Appellate Body's consideration of the matter pursuant to paragraph 3, the Member or the professional staff member concerned may continue to be assigned to the division or may be excused from the division.
10.
 - (1) Where evidence of a material violation is filed by a participant pursuant to Article VII of Annex II, such evidence shall be confidential and shall be supported by affidavits made by persons having actual knowledge or a reasonable belief as to the truth of the facts stated.
 - (2) Any evidence filed pursuant to Article VII:1 of Annex II shall be filed at the earliest practicable time: that is, forthwith after the participant submitting it knew or reasonably could have known of the facts supporting it. In no case shall such evidence be filed after the appellate report is circulated to the WTO Members.
 - (3) Where a participant fails to submit such evidence at the earliest practicable time, it shall file an explanation in writing of the reasons why it did not do so earlier, and the Appellate Body may decide to consider or not to consider such evidence, as appropriate.
 - (4) While taking fully into account paragraph 5 of Article 17 of the *DSU*, where evidence has been filed pursuant to Article VII of Annex II, an appeal shall be suspended for fifteen days or until the procedure referred to in Article VII:14-16 of Annex II is completed, whichever is earlier.
 - (5) As a result of the procedure referred to in Article VII:14-16 of Annex II, the Appellate Body may decide to dismiss the allegation, to excuse the Member or professional staff member concerned from being assigned to the division or make such other order as it deems necessary in accordance with Article VII of Annex II.
11.
 - (1) A Member who has submitted a disclosure form with information attached pursuant to Article V:4(b)(i) or is the subject of evidence of a material violation pursuant to Article VII:1 of Annex II, shall not participate in any decision taken pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10.
 - (2) A Member who is excused from a division pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10 shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.
 - (3) A Member who, had he/she been a Member of a division, would have been excused from that division pursuant to paragraph 4 of Rule 9, shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.

Incapacity

12. (1) A Member who is prevented from serving on a division by illness or for other serious reasons shall give notice and duly explain such reasons to the Chairman and to the Presiding Member.
- (2) Upon receiving such notice, the Chairman and the Presiding Member shall forthwith inform the Appellate Body.

Replacement

13. Where a Member is unable to serve on a division for a reason set out in paragraph 3 of Rule 6, another Member shall be selected forthwith pursuant to paragraph 2 of Rule 6 to replace the Member originally selected for that division.

Resignation

14. (1) A Member who intends to resign from his/her office shall notify his/her intentions in writing to the Chairman of the Appellate Body who shall immediately inform the Chairman of the DSB, the Director-General and the other Members of the Appellate Body.
- (2) The resignation shall take effect 90 days after the notification has been made pursuant to paragraph 1, unless the DSB, in consultation with the Appellate Body, decides otherwise.

Transition

15. A person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body.

PART II

PROCESS

General Provisions

16. (1) In the interests of fairness and orderly procedure in the conduct of an appeal, where a procedural question arises that is not covered by these Rules, a division may adopt an appropriate procedure for the purposes of that appeal only, provided that it is not inconsistent with the *DSU*, the other covered agreements and these Rules. Where such a procedure is adopted, the Division shall immediately

notify the participants and third participants in the appeal as well as the other Members of the Appellate Body.

- (2) In exceptional circumstances, where strict adherence to a time period set out in these Rules would result in a manifest unfairness, a party to the dispute, a participant, a third party or a third participant may request that a division modify a time period set out in these Rules for the filing of documents or the date set out in the working schedule for the oral hearing. Where such a request is granted by a division, any modification of time shall be notified to the parties to the dispute, participants, third parties and third participants in a revised working schedule.
17. (1) Unless the DSB decides otherwise, in computing any time period stipulated in the *DSU* or in the special or additional provisions of the covered agreements, or in these Rules, within which a communication must be made or an action taken by a WTO Member to exercise or preserve its rights, the day from which the time period begins to run shall be excluded and, subject to paragraph 2, the last day of the time-period shall be included.
 - (2) The DSB Decision on "Expiration of Time-Periods in the *DSU*", WT/DSB/M/7, shall apply to appeals heard by divisions of the Appellate Body.

Documents

18. (1) No document is considered filed with the Appellate Body unless the document is received by the Secretariat within the time period set out for filing in accordance with these Rules.
- (2) Except as otherwise provided in these Rules, every document filed by a party to the dispute, a participant, a third party or a third participant shall be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal.
- (3) A proof of service on the other parties to the dispute, participants, third parties and third participants shall appear on, or be affixed to, each document filed with the Secretariat under paragraph 1 above.
- (4) A document shall be served by the most expeditious means of delivery or communication available, including by:
 - (a) delivering a copy of the document to the service address of the party to the dispute, participant, third party or third participant; or

- (b) sending a copy of the document to the service address of the party to the dispute, participant, third party or third participant by facsimile transmission, expedited delivery courier or expedited mail service.
- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its submissions. Such correction shall be made within 3 days of the filing of the original submission and a copy of the revised version shall be filed with the Secretariat and served upon the other participants and third participants.

Ex Parte Communications

- 19. (1) Neither a division nor any of its Members shall meet with or contact one participant or third participant in the absence of the other participants and third participants.
- (2) No Member of the division may discuss any aspect of the subject matter of an appeal with any participant or third participant in the absence of the other Members of the division.
- (3) A Member who is not assigned to the division hearing the appeal shall not discuss any aspect of the subject matter of the appeal with any participant or third participant.

Commencement of Appeal

- 20. (1) An appeal shall be commenced by notification in writing to the DSB in accordance with paragraph 4 of Article 16 of the *DSU* and simultaneous filing of a Notice of Appeal with the Secretariat.
- (2) A Notice of Appeal shall include the following information:
 - (a) the title of the panel report under appeal;
 - (b) the name of the party to the dispute filing the Notice of Appeal;
 - (c) the service address, telephone and facsimile numbers of the party to the dispute; and
 - (d) a brief statement of the nature of the appeal, including the allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel.

Appellant's Submission

21. (1) The appellant shall, within 10 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.
- (2) A written submission referred to in paragraph 1 shall
 - (a) be dated and signed by the appellant; and
 - (b) set out
 - (i) a precise statement of the grounds for the appeal, including the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel, and the legal arguments in support thereof;
 - (ii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
 - (iii) the nature of the decision or ruling sought.

Appellee's Submission

22. (1) Any party to the dispute that wishes to respond to allegations raised in an appellant's submission filed pursuant to Rule 21 may, within 25 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the appellant, other parties to the dispute and third parties.
- (2) A written submission referred to in paragraph 1 shall
 - (a) be dated and signed by the appellee; and
 - (b) set out
 - (i) a precise statement of the grounds for opposing the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel raised in the appellant's submission, and the legal arguments in support thereof;
 - (ii) an acceptance of, or opposition to, each ground set out in the appellant's submission;
 - (iii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
 - (iv) the nature of the decision or ruling sought.

Multiple Appeals

23. (1) Within 15 days after the date of the filing of the Notice of Appeal, a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel.
- (2) Any written submission made pursuant to paragraph 1 shall be in the format required by paragraph 2 of Rule 21.
- (3) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 1 may file a written submission within 25 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- (4) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 4 of Article 16 of the *DSU*.
- (5) Where a party to the dispute which has not filed a submission under Rule 21 or paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 4, a single division shall examine the appeals.

Third Participants

24. Any third party may file a written submission, stating its intention to participate as a third participant in the appeal and containing the grounds and legal arguments in support of its position, within 25 days after the date of the filing of the Notice of Appeal.

Transmittal of Record

25. (1) Upon the filing of a Notice of Appeal, the Director-General of the WTO shall transmit forthwith to the Appellate Body the complete record of the panel proceeding.
- (2) The complete record of the panel proceeding includes, but is not limited to:
- (i) written submissions, rebuttal submissions, and supporting evidence attached thereto by the parties to the dispute and the third parties;
 - (ii) written arguments submitted at the panel meetings with the parties to the dispute and the third parties, the recordings of

such panel meetings, and any written answers to questions posed at such panel meetings;

- (iii) the correspondence relating to the panel dispute between the panel or the WTO Secretariat and the parties to the dispute or the third parties; and
- (iv) any other documentation submitted to the panel.

Working Schedule

- 26. (1) Forthwith after the commencement of an appeal, the division shall draw up an appropriate working schedule for that appeal in accordance with the time periods stipulated in these Rules.
- (2) The working schedule shall set forth precise dates for the filing of documents and a timetable for the division's work, including where possible, the date for the oral hearing.
- (3) In accordance with paragraph 9 of Article 4 of the *DSU*, in appeals of urgency, including those which concern perishable goods, the Appellate Body shall make every effort to accelerate the appellate proceedings to the greatest extent possible. A division shall take this into account in drawing up its working schedule for that appeal.
- (4) The Secretariat shall serve forthwith a copy of the working schedule on the appellant, the parties to the dispute and any third parties.

Oral Hearing

- 27. (1) A division shall hold an oral hearing, which shall be held, as a general rule, 30 days after the date of the filing of the Notice of Appeal.
- (2) Where possible in the working schedule or otherwise at the earliest possible date, the Secretariat shall notify all parties to the dispute, participants, third parties and third participants of the date for the oral hearing.
- (3) Any third participant who has filed a submission pursuant to Rule 24 may appear to make oral arguments or presentations at the oral hearing.
- (4) The Presiding Member may, as necessary, set time-limits for oral arguments and presentations.

Written Responses

28. (1) At any time during the appellate proceeding, including, in particular, during the oral hearing, the division may address questions orally or in writing to, or request additional memoranda from, any participant or third participant, and specify the time periods by which written responses or memoranda shall be received.
- (2) Any such questions, responses or memoranda shall be made available to the other participants and third participants in the appeal, who shall be given an opportunity to respond.

Failure to Appear

29. Where a participant fails to file a submission within the required time periods or fails to appear at the oral hearing, the division shall, after hearing the views of the participants, issue such order, including dismissal of the appeal, as it deems appropriate.

Withdrawal of Appeal

30. (1) At any time during an appeal, the appellant may withdraw its appeal by notifying the Appellate Body, which shall forthwith notify the DSB.
- (2) Where a mutually agreed solution to a dispute which is the subject of an appeal has been notified to the DSB pursuant to paragraph 6 of Article 3 of the *DSU*, it shall be notified to the Appellate Body.

Prohibited Subsidies

31. (1) Subject to Article 4 of the *SCM Agreement*, the general provisions of these Rules shall apply to appeals relating to panel reports concerning prohibited subsidies under Part II of that *Agreement*.
- (2) The working schedule for an appeal involving prohibited subsidies under Part II of the *SCM Agreement* shall be as set out in Annex I to these Rules.

Entry into Force and Amendment

32. (1) These Rules shall enter into force on 15 February 1996.
- (2) The Appellate Body may amend these Rules in compliance with the procedures set forth in paragraph 9 of Article 17 of the *DSU*.

- (3) Whenever there is an amendment to the *DSU* or to the special or additional rules and procedures of the covered agreements, the Appellate Body shall examine whether amendments to these Rules are necessary.

ANNEX I

TIMETABLE FOR APPEALS

	<i>Prohibited Subsidies Appeals</i>	<i>General Appeals</i>
	Day	Day
Notice of Appeal ¹	0	0
Appellant's Submission ²	10	5
Other Appellant(s) Submission(s) ³	15	7
Appellee(s) Submission(s) ⁴	25	12
Third Participant(s) Submission(s) ⁵	25	12

¹ Rule 20.

² Rule 21.

³ Rule 23(1).

⁴ Rules 22 and 23(3).

⁵ Rule 24.

Dispute Settlement Procedures

Oral Hearing ⁶	30	15
Circulation of Appellate Report	60 - 90 ⁷	30 - 60 ⁸
DSB Meeting for Adoption	90 - 120 ⁹	50 - 80 ¹⁰

ANNEX II

RULES OF CONDUCT FOR THE
UNDERSTANDING ON RULES AND PROCEDURES
GOVERNING THE SETTLEMENT OF DISPUTES

I. Preamble

...

Annex II is a reproduction of the Rules of Conduct for the Understanding on the Rules and Procedures Governing the Settlement of Disputes, p. 79.

⁶ Rule 27.

⁷ Article 17:5, *DSU*.

⁸ Article 4:9, *SCM Agreement*.

⁹ Article 17:14, *DSU*.

¹⁰ Article 4:9, *SCM Agreement*.

VIII. DSU PRACTICES

A. Working practices concerning dispute settlement procedures

*As agreed by the Dispute Settlement Body
(WT/DSB/6)*

For practical purposes the working practices agreed by the Dispute Settlement Body concerning dispute settlement procedures since the entry into force of the WTO are compiled in this document. The working practices pertain to:

1. "Date of circulation" in the DSU and its additional and special rules.
2. Communications under the DSU.
3. Time-periods under the DSU and other covered agreements.
4. Notifications of requests for consultations.

Date of circulation" in the DSU and its additional and special rules¹

When there is a reference to the terms "date of circulation" or "issuance to all Members" or "issuance to the Members" in the DSU and its additional and special rules, the date to be used is the date printed on the WTO document to be circulated with the assurance of the Secretariat that the date printed on the document is the date on which this document is effectively put in the pigeon holes of delegations in all three working languages. This practice will be used on a trial basis and be subject to revision when necessary.

Communications under the DSU²

Where there is a requirement under the DSU or any other covered agreements that communications by delegations be addressed to the DSB Chairman such communications should always be sent to the WTO Secretariat with a copy to the DSB Chairman. Members are invited to contact the Council Division in the WTO Secretariat, to inform it that a communication is being sent in order to enable an expeditious processing and circulation of communications.

¹ See Minutes of the DSB meeting on 29 March 1995 (WT/DSB/M/2).

² See Minutes of the DSB meeting on 31 May 1995 (WT/DSB/M/5).

Note: In addition to notification to the DSB, Notice of Appeal must be sent to the Appellate Body Secretariat in accordance with the Working Procedures for Appellate Review (WT/AB/WP/1). All other communications to the Appellate Body are required to be submitted to the Appellate Body Secretariat as provided for in the above-mentioned Working Procedures.

Time-periods under the DSU and other covered agreements³

When, under the DSU and its special or additional rules and procedures, a time-period within which a communication must be made or action taken by a Member to exercise or preserve its rights expires on a non-working day of the WTO Secretariat, any such communication or action will be deemed to have been made or taken on the WTO non-working day if lodged on the first working day of the WTO Secretariat following the day on which such time-period would normally expire.⁴

Notifications of requests for consultations⁵

All requests for consultations under Article 4.4 of the DSU which should be notified to the DSB and the relevant Councils and Committees by a Member should be sent to the Secretariat (Council Division) specifying in the notifications the other relevant Councils or Committees to which they wished the notification to be addressed. The Secretariat would then distribute it to the specified relevant bodies.

B. Article 4.11 DSU - Replies to request

*Communication from the Chairman of the Dispute Settlement Body
(WT/DS200/13)*

...

With reference to your comments regarding the need to circulate not only requests for consultations (Article 4.3 of the DSU) and requests to be joined in consultations (Article 4.11 of the DSU), but also the various responses to such requests to be joined into consultations, I have looked into the matter and advised

³ See Minutes of the DSB meeting on 27 September 1995 (WT/DSB/M/7).

⁴ See also WT/DSB/W/10/Add.1 containing an illustrative list of DSU provisions which refer to time-periods and WT/DSB/W/16 indicating the WTO non-working days in 1996.

⁵ See Minutes of the DSB meeting on 19 July 1995 (WT/DSB/M/6).

the Secretariat that it should resort to its previous practice of circulating a Note identifying Members accepted to participate in consultations pursuant to Article 4.11 of the DSU, where such information has been made available to the Secretariat.

IX. OTHER DECISIONS

A. Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures

Ministers recognize, with respect to dispute settlement pursuant to the Agreement on Implementation of Article VI of GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures, the need for the consistent resolution of disputes arising from anti-dumping and countervailing duty measures.

B. Procedures for the Circulation and Derestriction of WTO Documents¹

*Adopted by the General Council on 18 July 1996²
(WT/L/160/Rev.1)*

Hereafter referred to as the Decision on Derestriction

Revision

The General Council *decides* to adopt the following procedures with respect to the circulation³ and derestriction of documents:

1. Documents circulated after the date of entry into force of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") in any WTO document series shall be circulated as unrestricted with the exception of documents specified in the attached Appendix, which shall be circulated as restricted and subject to derestriction, or consideration thereof, as provided. Notwithstanding the exceptions specified in the Appendix, any document that contains only information that is publicly available or information that is required to be published under any agreement in

¹ A copy of this decision shall be transmitted to the bodies established under the Plurilateral Trade Agreements for their consideration and appropriate action. The decision does not, furthermore, cover documents outside of a formal document series, such as a submission to a dispute settlement panel, or an interim report of a dispute settlement panel submitted to the parties thereto.

² In adopting these procedures, the General Council took note that Members attached particular importance to the restricted nature of documents so designated, and that individual governments should proceed accordingly in their handling of such documents.

³ The terms "circulation" and "circulated" when used in this decision shall be understood to refer to the distribution by the Secretariat of documents to all WTO Members.

Annex 1, 2 or 3 of the WTO Agreement shall be circulated on an unrestricted basis.

2. Notwithstanding the exceptions to paragraph 1 set forth in the Appendix,
 - (a) any Member may, at the time it submits any document for circulation, indicate to the Secretariat that the document be issued as unrestricted; and
 - (b) any restricted document circulated after the date of entry into force of the WTO Agreement may be considered for derestriction at any time by the Ministerial Conference, the General Council, or the body under the auspices of which the document was circulated, or may be considered for derestriction at the request of any Member.
3. Requests for consideration for derestriction shall be made in writing and shall be directed to the Chairman of the Ministerial Conference, the General Council or the relevant WTO body. Such requests shall be circulated to all Members and placed on the agenda of a forthcoming meeting of the body concerned for consideration. However, in order to preserve the efficiency of work of the body concerned, the Member concerned may indicate to the Secretariat that it circulate to Members a notice advising them of the documents proposed for derestriction and the date proposed for derestriction, which shall normally be sixty days after the date the notice is circulated. These documents shall be derestricted on the date set forth in the notice unless, prior to that date, a Member notifies the Secretariat in writing of its objection to the derestriction of a document, or any portion of a document.
4. The Secretariat shall prepare and circulate a list of all documents eligible for consideration for derestriction, indicating the proposed date of derestriction, which shall normally be sixty days after the circulation of the list. These documents shall be derestricted on the date set forth in the notice unless, prior to that date, a Member notifies the Secretariat in writing of its objection to the derestriction of a document, or any portion of a document.
5. If a document⁴ considered for derestriction is not derestricted because of an objection by any Member, and remains restricted at the end of the first year following the year in which an objection was raised, the document shall be considered for derestriction at that time.

⁴ These procedures shall apply *mutatis mutandis* to the consideration for derestriction of a portion of a document that remains restricted as a result of an objection made pursuant to paragraph 4.

6. The Secretariat will circulate periodically (e.g., every six months) a list of newly derestricted documents, as well as a list of all documents remaining restricted.

7. In the light of the experience gained from the operation of these procedures and changes in any other relevant procedures under the WTO, the General Council will review, and if necessary modify, the procedures two years after their adoption.

APPENDIX

- (a) Working documents in all series (i.e., draft documents such as agendas, decisions and proposals, as well as other working papers, issued as "-/W/-" documents in a particular series), including documents in the Spec/- series.

Such documents shall be derestricted upon the adoption of the report⁵ or of the decision pertaining to their subject matter, or considered for derestriction six months after the date of their circulation⁶, whichever is earlier. However, working documents relating to balance-of-payments consultations, the Committee on Market Access, the Committee on Trade and Development and the Trade Policy Review Mechanism, shall be considered for derestriction at the end of each six-month period.^{7,8} All background notes by the Secretariat, however, shall be considered for derestriction six months after the date of their circulation.

- (b) Documents in the SECRET/- series (i.e., those documents relating to modification or withdrawal of concessions pursuant to Article XXVIII of the GATT 1994).

Such documents shall be derestricted upon completion of the Article XXVIII process (including such process initiated pursuant to Article XXIV:6) through certification of the changes in the schedule in accordance with the Decision by the CONTRACTING PARTIES to GATT 1947 of 26 March 1980 (BISD 27S/25).

- (c) Minutes of meetings of all WTO bodies (other than minutes of the Trade Policy Review Body, which shall be circulated

⁵ Reference to "adoption" of a report in this decision is intended to mean its adoption by the Ministerial Conference, General Council or other relevant WTO body.

⁶ The "date of circulation" means the date printed on the front page of a document indicating when it has been made available to Members' delegations.

⁷ Documents circulated during the period January through June would be considered for derestriction directly after the end of that period. Documents circulated during the period July through December would be considered for derestriction directly after the end of that period.

⁸ Notwithstanding these provisions, budget working documents in the Spec/- series shall not be derestricted.

as unrestricted), including Summary Records of Sessions of the Ministerial Conference.

Such documents shall be considered for derestriction six months after the date of their circulation.

- (d) Reports by the Secretariat and by the government concerned, relating to the Trade Policy Review Mechanism, including the annual report by the Director-General on the overview of developments in the international trading environment.

Such documents shall be derestricted upon the expiry of the press embargo thereon.

- (e) Documents relating to working parties on accession.

Such documents shall be derestricted upon the adoption of the report of the working party. Prior to the adoption of the report, any such documents shall be considered for derestriction at the end of the first year following the year in which they were circulated.

- (f) Documents (other than working documents covered by (a) above) relating to balance-of-payments consultations, including the reports thereon.

Such documents shall be considered for derestriction at the end of each six-month period.⁹

- (g) Documents submitted to the Secretariat by a Member for circulation if, at the time the Member submits the document, the Member indicates to the Secretariat that the document should be issued as restricted.

Such documents shall be considered for derestriction at the end of each six-month period.⁹

- (h) Reports of panels which are circulated in accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes.¹⁰

Such reports shall be circulated to all Members as restricted documents and derestricted no later than the tenth day thereafter if, prior to the date of

⁹ Documents circulated during the period January through June would be considered for derestriction directly after the end of that period. Documents circulated during the period July through December would be considered for derestriction directly after the end of that period.

¹⁰ This provision will be subject to review at the time of review of the Dispute Settlement Understanding, and will be discontinued if there is no consensus on the matter.

circulation a party to the dispute that forms the basis of a report submits to the Chairman of the Dispute Settlement Body a written request for delayed derestriction. A report circulated as a restricted document shall indicate the date upon which it will be derestricted.¹¹

C. Procedures for Arbitration Under Article 8.5 of the Agreement on Subsidies and Countervailing Measures

*Adopted by the Committee on Subsidies and Countervailing Measures
on 2 June 1998
(G/SCM/19)*

Introduction

The Committee on Subsidies and Countervailing Measures has discussed at length the provisions contained in Article 8.5 of the Agreement on Subsidies and Countervailing Measures. In view of the importance of these provisions, as well as the limited time specified in Article 8.5 for the completion of arbitration proceedings and the absence of detailed guidance for their conduct, the Committee has developed the following procedures with the aim of facilitating the operation of arbitration proceedings and enhancing transparency and predictability for all Members with respect to the application of Article 8 of the Agreement. The Committee affirms that because arbitration under Article 8.5 determines the status of a notified programme or individual cases of subsidization under Article 8, the results of any such arbitration proceeding are equally applicable to all Members. This is without prejudice to the right of any Member to request arbitration.

The Committee notes that the provisions of Article 8.5 cannot be viewed strictly in isolation, insofar as they form an integrated part of the whole of Part IV of the Agreement. In this regard, the Committee recognizes the importance of the review procedure under Article 8.4 and the seriousness with which Members are expected to treat it. In particular, to the extent that Members may have questions about the consistency of a notified programme with the conditions and criteria

¹¹ The following standard cover note will be placed on panel reports: "The report of the Panel on [name of dispute] is being circulated to all Members, pursuant to the DSU. The report is being circulated as an unrestricted document from [date] pursuant to the procedures for the Circulation and Derestriction of WTO Documents [document number]. Members are reminded that in accordance with the DSU only parties to the dispute may appeal a panel report, an appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel, and that there shall be no ex parte communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body."

provided for in the provisions of Article 8.2, the Committee would expect Members to make full and substantive use of the procedures under Article 8.4 in order to clarify all relevant questions regarding a notified programme. In the same vein, the Committee notes that, pursuant to Article 8.3, a Member which is notifying a programme is required to provide sufficiently precise information to enable other Members to evaluate the consistency of the programme with the relevant conditions and criteria of Article 8.2. The Committee would, therefore, expect notifying Members to cooperate as fully as possible in responding to the questions of other Members in the course of the Article 8.4 review procedure.

In short, the Committee exhorts all Members to participate constructively and in good faith in the notification and review process provided for in paragraphs 3 and 4 of Article 8 so as to resolve any questions and concerns about notified programmes at the earliest opportunity. Where appropriate, it is recognized that such efforts encompass the possibility of concerned Members consulting informally prior to requesting arbitration in order to avoid unnecessary arbitration requests. Finally, without prejudice to Members' rights as provided for under Article 8.5, the Committee notes that: (i) the interests of clarity, predictability and greater legal certainty would be best served if arbitration requests involving Committee determinations under Article 8.4 (or the failure of the Committee to make a determination) were made as soon as practicable following the conclusion of the procedure set forth in Article 8.4; and (ii) arbitration procedures would be facilitated if requesting Members fully identify and describe those issues which were not raised during the Article 8.4 procedure.

Procedures

The Committee on Subsidies and Countervailing Measures hereby decides, pursuant to the decision of the General Council of 31 January 1995 (WT/GC/M/1), to adopt the following procedures for use in binding arbitration conducted pursuant to Article 8.5 of the Agreement on Subsidies and Countervailing Measures. These procedures shall not add to or detract from the existing rights and obligations of Members under the Agreement on Subsidies and Countervailing Measures or under any other WTO Agreement.

I. REQUESTS FOR ARBITRATION

1. Any Member wishing to request arbitration under Article 8.5 shall address a written request to that effect to the Chairman of the Committee on Subsidies and Countervailing Measures ("the Committee"). The request shall include:

- (a) the basis for the request, i.e. a determination by the Committee under Article 8.4, a failure by the Committee to make such a determination, and/or the violation in individual cases of subsidization of the conditions set out in a subsidy programme notified under Article 8.3;

- (b) the specific questions to be addressed by the arbitration body, as related to requirements under the provisions of Article 8.2, and a statement of the position taken by the Member requesting the arbitration with respect to each such question;
 - (c) a brief summary of the information on which the request is based.
2. Any request for arbitration shall be circulated immediately to the Members.
3. Without prejudice to the right of any Member to request arbitration, Members should take into account the need to avoid undue multiplication of arbitration proceedings in respect of the same programme, and should therefore avail themselves of the procedures under paragraph 4 for becoming Parties, or the procedures under paragraph 17 for becoming Third Parties, to an arbitration.
4. In order to become Parties to the arbitration proceeding, other Members shall have a period of 15 days after the date of circulation of the request for arbitration to provide the Chairman of the Committee with a communication which shall conform with the requirements for requests for arbitration set forth in paragraph 1. Any such communication shall be circulated immediately to the Members.
5. During the 30-day period referred to in paragraph 10, Parties also may agree, subject to the provisions of Section VI, to any supplemental or alternative procedures for arbitration under Article 8.5 to those specified herein, provided that such supplemental or alternative procedures are not incompatible with Article 8.5. Any such supplemental or alternative procedures shall be promptly notified to the Members. In the event that there is no agreement by all Parties on such supplemental or alternative procedures, the procedures specified herein shall apply exclusively and in full.

II. REFERRAL TO ARBITRATION

6. As soon as the composition of the arbitration body has been decided, a notice to that effect shall be circulated promptly to the Members.
7. For purposes of Article 8.5, the date of circulation of the notice under paragraph 6 shall be deemed to be the date on which the matter is referred to the arbitration body.

III. PARTIES TO THE ARBITRATION PROCEEDING¹

8. The Parties to the arbitration proceeding shall be the Member which has notified the subsidy programme in question, the Member which requests the arbitration, and any other Member which has become a Party to the arbitration in accordance with paragraph 4.

IV. COMPOSITION OF THE ARBITRATION BODY

9. The arbitration body shall consist of three arbitrators, unless the Parties agree to a different uneven number.

10. The members of the arbitration body and its president shall be appointed by agreement of the Parties. If the Parties do not reach agreement within 30 days after the date of circulation of the request for arbitration, unless the Parties agree on a longer period, any Party may request the Director-General of the WTO to appoint, in consultation with the Chairman of the Committee, the arbitrator or arbitrators not yet appointed. Such appointment shall be made, after consultation with the Parties, within 10 days of the request to the Director-General.

11. Except as the Parties otherwise agree, the arbitrators shall not be citizens of any of the Parties or Third Parties to the arbitration proceeding.²

12. The arbitrators shall be chosen from among persons with relevant legal, economic, financial or technical expertise, including expertise in the Agreement on Subsidies and Countervailing Measures, with respect to the matter referred to the arbitration body.

13. Based upon nominations put forward by delegations and approved by the Committee, the Secretariat shall maintain an indicative list of qualified persons from which arbitrators may be selected. This list shall include an identification of each person's academic and/or professional background and qualifications.

14. Where a Party to an arbitration is a developing country Member, the arbitration body shall, if the developing country Member so requests, include at least one arbitrator from a developing country Member.

¹ As used throughout this text, the terms "Party" and "Parties" do not encompass the terms "Third Party" and "Third Parties" provided for in Section VI, *infra*.

² In the case where a customs union or a common market is a Party or Third Party to an arbitration, this provision applies to citizens of all members of that customs union or common market.

V. TERMS OF REFERENCE OF THE ARBITRATION BODY³

15. If a request for arbitration pertains to a determination of the Committee under Article 8.4, or a failure of the Committee to make such a determination, the arbitration body shall determine, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration, whether the subsidy programme notified under Article 8.3 does not meet the conditions and criteria of Article 8.2.

16. If a request for arbitration pertains to alleged violation in individual cases of the conditions set out in a subsidy programme notified under Article 8.3, the arbitration body shall determine, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration, whether or not individual cases of subsidization violate the conditions set out in the subsidy programme notified under Article 8.3. If a Party so requested under paragraph 1 or 4, the arbitration body also shall determine whether the programme in question does not meet the conditions and criteria of Article 8.2.

VI. THIRD PARTIES

17. A Member not wishing to become a Party to the arbitration, but wishing instead to participate in the arbitration on a limited basis, shall have a period of 20 days after the date of circulation of the request for arbitration to inform the Chairman of the Committee in writing that it wishes to become a Third Party to the arbitration proceeding. A Third Party may intervene only with respect to specific questions raised by Parties.

18. A Member that has informed the Committee under paragraph 17 of its interest to participate as a Third Party in the arbitration proceeding shall have the right to make a written submission to the arbitration body and to receive copies of written submissions of the Parties to the arbitration proceeding, shall have an opportunity to be heard at meetings of the arbitration body, and shall otherwise have the right to participate in the arbitration proceeding as specified elsewhere in these procedures. A Third Party may not participate in the selection of arbitrators or in the establishment of the arbitration body's working procedures.

VII. WORKING PROCEDURES

19. The arbitration proceedings shall be conducted on the basis of written submissions and documents. The Parties and Third Parties to the arbitration proceedings shall make written submissions within time periods to be determined by the arbitration body after consultation with the Parties. The arbitration body

³ These terms of reference apply equally to requests for second or later arbitrations.

shall decide whether further written submissions are necessary and shall fix a period of time for such submissions after consulting the Parties.

20. The arbitration body also may hold meetings with the Parties and shall hold one such meeting if any Party so requests at an appropriate stage of the proceedings. Any such meeting normally shall include Third Parties. If in exceptional circumstances the arbitration body holds a meeting with Parties only, the arbitration body also shall, upon request of a Third Party, hold one session for Third Parties to present their views, at which Parties shall have the right to be present. Written texts of the oral statements made by Parties and Third Parties shall be submitted to the arbitration body, and shall consist only of the information and views actually presented orally.

VIII. PROCESS

21. The proceedings of the arbitration body shall be confidential. Written submissions to the arbitration body shall be treated as confidential. The arbitration body and all Parties and Third Parties to a proceeding shall treat as confidential any information submitted to the arbitration body which the submitter has designated as confidential. Nothing in these procedures shall preclude a Party or a Third Party to an arbitration from disclosing statements of its own positions to the public.

22. A Party or Third Party to an arbitration shall make available to all other Parties and Third Parties its written submissions. A Party or a Third Party shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public. When providing a non-confidential summary, a Party or Third Party will duly take into account the expeditious nature of these proceedings.

23. There shall be no *ex parte* communications with the arbitration body concerning matters under consideration by the arbitration body.

24. Before presenting its conclusions, the arbitration body shall provide to the Parties and Third Parties a written summary of the information on which it intends to base its conclusions. The arbitration body shall provide an opportunity for the Parties and Third Parties to comment, within a time period to be established by the arbitration body, on the written summary. Each Third Party shall have the right to comment only on those sections of the written summary which pertain to the specific questions that that Third Party has addressed.

25. The arbitration proceedings shall take place at the seat of the World Trade Organization.

26. WTO Secretariat shall act as Secretariat to the arbitration body, and shall perform all administrative functions necessary to assist the arbitration body, including the receipt and circulation of communications related to arbitration

requests, and the maintenance of an organized permanent record for each arbitration proceeding.

IX. INFORMATION BEFORE THE ARBITRATION BODY

27. arbitration body shall proceed on the basis of the information before it, to include such of the following as exist and are relevant:

- (a) the notifications of the subsidy programme in question, and any yearly updates of such notifications;
- (b) the findings of the Secretariat, the minutes of the Committee and the determination by the Committee, as recorded during the procedure under Article 8.4;
- (c) the documents and arguments submitted to the Secretariat and the Committee in the procedure under Article 8.4;
- (d) the record(s) of any previous arbitration(s) related to the same programme;
- (e) any information provided to the arbitration body by the Parties and Third Parties under these procedures;
- (f) any information or technical advice obtained by the arbitration body under the provisions of paragraphs 28, 29, and 30.

28. A Member should respond promptly and fully to any request by an arbitration body for such information as the arbitration body considers necessary and appropriate.

29. The arbitration body shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before an arbitration body seeks such information or technical advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member.

30. Parties and Third Parties shall have full access to any requests for information or technical advice under this or the preceding two paragraphs, as well as to any information or technical advice obtained thereby. At the time that it requests information or technical advice under this or the preceding two paragraphs, the arbitration body shall obtain the agreement of the individual, body or Member to disclose to the Parties and Third Parties all such information or technical advice. The Parties and Third Parties shall treat as confidential any information or technical advice that an individual, body or Member has designated as confidential. The arbitration body shall provide an opportunity to the Parties and Third Parties to comment upon any information or technical advice obtained under this or the preceding two paragraphs.

X. RULES OF CONDUCT

31. As provided in paragraph IV:1 of the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Rules of Conduct apply to arbitrators acting pursuant to Article 8.5, and to those Members of the Secretariat called upon to assist in arbitration proceedings pursuant to Article 8.5. In addition, the Rules of Conduct shall apply to any individual from whom any information or technical advice is sought under paragraphs 28, 29 and 30 of these procedures.

XI. CONCLUSIONS OF THE ARBITRATION BODY

32. The conclusions of the arbitration body shall consist of a determination, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration, of whether the subsidy programme notified under Article 8.3 does not meet the conditions and criteria of Article 8.2, and/or whether or not the individual cases of subsidization violate the conditions set out in the subsidy programme notified under Article 8.3.

33. The arbitration body shall present to the Members its conclusions and the reasons on which those conclusions are based in the form of a single, collegial decision, within 120 days from the date of circulation of the notice under paragraph 6.

34. These conclusions shall be binding in accordance with Article 8.5.

XII. REVIEW OF THESE PROCEDURES

35. Without prejudice to Article 31 of the Agreement on Subsidies and Countervailing Measures, the Committee shall, no later than five years after the adoption of these procedures, review their operation, and may decide at that time on any modifications to them.

D. Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services

*Adopted by the Council for Trade in Services on 1 March 1995
(S/L/2)*

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Taking into account the specific nature of the obligations and specific commitments of the Agreement, and of trade in services, with respect to dispute settlement under Articles XXII and XXIII,

Decides as follows:

1. A roster of panelists shall be established to assist in the selection of panelists.
2. To this end, Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.
2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters. Panelists shall serve in their individual capacities and not as representatives of any government or organisation.

See DSU 8.1 at p. 8.

3. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.

See DSU 8.1 at p. 8.

4. The Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.

See DSU 8.4 at p. 9.

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