

## รายการอ้างอิง

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ภาคผนวก

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

### 1. *Coverage and Application*

1.1 The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement rules and procedures of the agreements listed in Appendix 1 to this Understanding, hereinafter referred to 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 Multilateral Trade Organization (MTO) and of this Understanding taken in isolation or in combination with any other covered agreement.

1.2 These rules and procedures 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 twenty days of the establishment of the panel, the Chairman of the Dispute Settlement Body, in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within ten days after a request by either Member. The Chairman of the Dispute Settlement Body 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.

### 2. *Administration*

2.1 The Dispute Settlement Body (DSB) established pursuant to the Agreement Establishing the MTO shall 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 covered agreements contained in Annex 4 to the MTO Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Annex 4 Agreements. Where the DSB administers the dispute settlement provisions of a covered agreement contained in Annex 4, only those Members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2.2 The DSB shall inform the relevant MTO councils and committees of any developments in disputes related to provisions of the respective covered agreements.

2.3 The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.



2.4 Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus<sup>1</sup>.

### 3. General Provisions

3.1 The members of the MTO (hereinafter referred to as "Members") affirm their adherence to the principles for the management of disputes heretofore applied under Article XXII and XXIII of the GATT 1947, as further elaborated and modified herein.

3.2 The dispute settlement system of the MTO is a central element in providing security and predictability to the multilateral trading system. The Members of the MTO 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.

3.3 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 MTO and the maintenance of a proper balance between the rights and obligations of Members.

3.4 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.

3.5 All solutions to matters formally raised under the consultation and dispute settlement rules and procedures 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.

3.6 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.

3.7 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.

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



3.8 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.

3.9 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 Agreement Establishing the MTO or a covered agreement.

3.10 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 disputes arise, all Members will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

3.11 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 this Understanding. With respect to disputes for which the request for consultations was made under the GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of this Understanding, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of this Understanding shall continue to apply.<sup>2</sup>

3.12 Notwithstanding paragraph 3.11 above, if a complaint based on any of the Agreements covered by this Understanding is brought by a developing country Member against a developed country Member, the complaining party shall have the rights to invoke, as an alternative to the provisions contained in paragraphs 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of CONTRACTING PARTIES 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 those paragraphs and the corresponding rules and procedures of the Decision, the latter shall prevail.

#### 4. *Consultations*

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

4.2 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 the covered agreements taken within the territory of the former.<sup>3</sup>

4.3 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 ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the Member

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

<sup>3</sup>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.



does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4.4 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.

4.5 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.

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

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

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

4.9 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.

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

4.11 Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to Article XXII:1 of the GATT, Article XXII:1 of the GATS Agreement or the corresponding provisions in other covered agreements,<sup>4</sup> such Member may notify the consulting Members and the DSB, within ten days 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 Article XXII:1 or XXIII:1 of the GATT, Article XXII:1 or XXIII:1 of the GATS Agreement or the corresponding provisions in other covered agreements.

<sup>4</sup>The corresponding consultations provisions in the covered agreements are listed hereunder: Agreement on Rules of Origin, Article 7; Agreement on Preshipment Inspection, Article 7; Agreement on Implementation of Article VI of the GATT, Article 15.6; Agreement on Technical Barriers to Trade, Article 14.1; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Articles 13 and 30; Agreement on Agriculture, Article 18.1, and Part C; Agreement on Sanitary and Phytosanitary Measures, paragraph 35; Trade-Related Aspects of Investment Measures, Article 8; Agreement on Textiles and Clothing Article 8.4; Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, Article 64; Agreement on Trade in Civil Aircraft Article 8.8; Agreement on Government Procurement, Article VII:3; International Dairy Arrangement, Article VIII:7; Arrangement Regarding Bovine Meat, Article VI:6.



## 5. *Good Offices, Conciliation and Mediation*

5.1 Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

5.2 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.

5.3 Good offices, conciliation and 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 terminated, the complaining party can then proceed with a request for the establishment of a panel.

5.4 When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel. The complaining party may request a panel during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5.5 If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

5.6 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.

## 6. *Establishment of Panels*

6.1 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.<sup>3</sup>

6.2 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.

## 7. *Terms of Reference of Panels*

7.1 Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty 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 DS/... 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."

<sup>3</sup>If the complaining party so requests, a meeting of the Dispute Settlement Body shall be convened for this purpose within fifteen days of the request, provided that at least ten days' advance notice of the meeting is given.



7.2 Panels shall address the relevant provisions in any covered agreement/s cited by the parties to the dispute.

7.3 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 7.1 above. 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.

## 8. *Composition of Panels*

8.1 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 an MTO Member or of a contracting party to the GATT 1947 or as a representative to a 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.

8.2 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.

8.3 Citizens of Members whose governments<sup>4</sup> are parties to the dispute or third parties as defined in paragraph 10.2 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

8.4 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 above, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists that was established by the GATT CONTRACTING PARTIES 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 this Understanding. 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.

8.5 Panels shall be composed of three panelists unless the parties to the dispute agree, within ten 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.

8.6 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.

8.7 If there is no agreement on the panelists within twenty days from 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 committee or council, shall form the panel by appointing the panelists whom he or she considers most appropriate in accordance with any relevant special or additional

<sup>4</sup>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.



procedure of the covered agreement, after 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 ten days from the date he or she receives such a request.

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

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

8.10 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.

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

#### 9. *Procedures for Multiple Complainants*

9.1 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.

9.2 The single panel will organize its examination and present its findings to the DSB so 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 will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

9.3 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.

#### 10. *Third Parties*

10.1 The interests of the parties to a dispute and those of other Members<sup>7</sup> of a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

10.2 Any Member, of a covered agreement at issue in a dispute, having a substantial interest in a matter before a panel and having notified its interest to the DSB, (hereinafter referred to 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.

<sup>7</sup>With respect to disputes arising under covered agreements contained in Annex 4 to the MTO Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Annex 4 Agreements. Where the DSB administers the dispute settlement provisions of a covered agreement contained in Annex 4, only those Members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to that dispute.



10.3 Such third parties shall receive submissions of the parties to the dispute for the first meeting of the panel.

10.4 If a third party considers 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.

## 11. *Function of Panels*

11.1 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.

## 12. *Panel Procedures*

12.1 Panels shall follow the Working Procedures appended hereto unless the panel decides otherwise after consulting the parties to the dispute.

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

12.3 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 4.9, if relevant.

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

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

12.6 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 12.3 above 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.

12.7 Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in a written form. 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.

12.8 In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided 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 provide its report to the parties to the dispute within three months.

12.9 When the panel considers that it cannot provide 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 submit its report. In no case should the period from the establishment of the panel to the submission of the report to the Members exceed nine months.

12.10 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 4.7 and 4.8. 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 paragraphs 20.1 and 21.4 are not affected by any action pursuant to this paragraph.

12.11 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.

12.12 The panel may suspend its work at any time at the request of the complaining party for a period not to exceed twelve months. In the event of such a suspension, the time frames set out in paragraphs 12.8, 12.9, 20.1 and 21.4 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 twelve months, the authority for establishment of the panel shall lapse.

### 13. *Right to Seek Information*

13.1 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.

13.2 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.



14. *Confidentiality*

14.1 Panel deliberations shall be confidential.

14.2 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.

14.3 Opinions expressed in the panel report by individual panelists shall be anonymous.

15. *Interim Review Stage*

15.1 Following the consideration of rebuttal submissions and oral arguments, the panel shall submit the descriptive (factual and argument) sections of its draft report to the parties. Within a period of time set by the panel, the parties shall submit their comments in writing.

15.2 Following the deadline for receipt of comments from the parties, 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.

15.3 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 12.8.

16. *Adoption of Panel Reports*

16.1 In order to provide sufficient time for the Members of the DSB to consider panel reports, the reports shall not be considered for adoption by the DSB until twenty days after they have been issued to the Members.

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

16.3 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.

16.4 Within sixty days of the issuance of a panel report to the Members, the report shall be adopted at a DSB meeting<sup>8</sup> 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. If a party has notified its intention 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.

<sup>8</sup>If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 16.1 and 16.4 to be met, a meeting of the DSB shall be held for this purpose.



## 17. *Appellate Review*

### *Standing Appellate Body*

17.1 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 of the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

17.2 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 this Understanding 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 his or her predecessor's term.

17.3 The Appellate Body shall be comprised of 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 MTO. 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 MTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

17.4 Only parties to the dispute, not third parties, may appeal a panel decision. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 10.2 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

17.5 As a general rule, the proceedings shall not exceed sixty days from the date a party to the dispute formally notifies its intent to appeal to the date the Appellate Body issues its decision. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 4.9, if relevant. When the Appellate Body considers that it cannot provide its report within sixty 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 ninety days.

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

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

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

### *Procedures for Appellate Review*

17.9 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.



17.10 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.

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

17.12 The Appellate Body shall address each of the issues raised in accordance with paragraph 17.6 during the appellate proceeding.

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

#### *Adoption of Appellate Reports*

17.14 An 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 thirty days following its issuance to the Members.<sup>9</sup> This adoption procedure is without prejudice to the right of Members to express their views on an appellate report.

#### 18. *Communications with the panel or Appellate Body*

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

18.2 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 statement 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.

#### 19. *Panel and Appellate Body Recommendations*

19.1 Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned<sup>10</sup> bring the measure into conformity with that Agreement.<sup>11</sup> In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

19.2 In accordance with paragraph 3.2 above, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

<sup>9</sup>If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

<sup>10</sup>The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

<sup>11</sup>With respect to recommendations in cases not involving a violation of the GATT and any other covered agreement, see section 25.



20. *Time-Frame for DSB Decisions*

20.1 Unless otherwise agreed to by the parties to the dispute, the period from the establishment of the Panel by the DSB until the DSB considers the panel or appellate report for adoption shall not as a general rule exceed nine months where the report is not appealed or twelve months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 12.9 or 17.5, to extend the time of providing its report, the additional time taken shall be added to the above periods.

21. *Surveillance of Implementation of Recommendations and Rulings*

21.1 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.

21.2 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.

21.3 At a DSB meeting held within thirty days<sup>12</sup> of the 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 forty-five days following adoption of the recommendations and rulings; or, in the absence of such agreement,
- (c) a period of time determined through binding arbitration within ninety days following adoption of the recommendations and rulings.<sup>13</sup> In such arbitration, a guideline for the arbitrator<sup>14</sup> should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed fifteen months from the adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

21.4 Except where the panel or the Appellate Body has extended, pursuant to paragraph 12.9 or 17.5, the time of providing its report, the period from the date of establishment of the panel by the DSB until the determination of the reasonable period of time shall not exceed fifteen 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 fifteen-month

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<sup>12</sup>If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

<sup>13</sup>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.

<sup>14</sup>The expression "arbitrator" shall be interpreted as referring either to an individual or a group.



period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed eighteen months.

21.5 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, involving resort to the original panel wherever possible. The panel shall issue its decision within ninety days 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.

21.6 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 on the agenda of the DSB meeting after six months following the establishment of the reasonable period of time pursuant to paragraph 21.3 and shall remain on the DSB's agenda until the issue is resolved. At least ten 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.

21.7 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.

21.8 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.

## 22. *Compensation and the Suspension of Concessions*

22.1 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.

22.2 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 21.3 above, 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 twenty days after the 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.

22.3 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 sectors, 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.
- (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 (b) or (c) above, 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 (b), the relevant sectoral bodies.
- (f) For purposes of this paragraph, "sector" means:
- With respect to goods, all goods;
  - With respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;<sup>15</sup>
  - 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 Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods ("Agreement on TRIPS").
- (g) For purposes of this paragraph, "agreement" means:
- With respect to goods, the agreements listed in Annex 1A of the MTO Agreement, taken as a whole as well as the agreements listed in Annex 4 of the MTO Agreement in so far as the relevant parties to the dispute are parties to these agreements;
  - With respect to services, the GATS;

<sup>15</sup> The list in document MTN.GNS/W/120 identifies eleven sectors.



— With respect to intellectual property rights, the Agreement on TRIPS.

22.4 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.

22.5 The Dispute Settlement Body shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

22.6 When the situation described in paragraph 22.2 above occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within thirty 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 22.3 above have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 22.3(b) or (c) above, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator<sup>16</sup> appointed by the Director-General and shall be completed within sixty days of the expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

22.7 The arbitrator<sup>17</sup> acting pursuant to paragraph 22.6 above 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 22.3 above 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 22.3 above. 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.

22.8 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 21.6 above, 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 been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

22.9 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

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<sup>16</sup>The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

<sup>17</sup>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.



compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.<sup>18</sup>

### 23. *Strengthening of the Multilateral System*

23.1 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.

23.2 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 Section 21 of this Understanding to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and
- (c) follow the procedures set forth in Section 22 of the Understanding 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.

### 24. *Special Procedures involving Least-Developed Country Members*

24.1 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.

24.2 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 they deem appropriate.

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<sup>18</sup>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.



25. *Arbitration*

25.1 Expedient arbitration within the MTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

25.2 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.

25.3 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.

25.4 Sections 21 and 22 of this Understanding shall apply mutatis mutandis to arbitration awards.

26. *Non-Violation*

26.1 *Complaints of the Type Described in Article XXIII:1(b) of GATT 1994*

Where the provisions of Article XXIII:1(b) of the 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 Article XXIII:1(b) 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 paragraph 21, the arbitration provided for in paragraph 21.3, 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.
- (d) Notwithstanding the provisions of paragraph 22.1, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

26.2 *Complaints of the Type Described in Article XXIII:1(c) of GATT 1994*



Where the provisions of Article XXIII:1(c) of the 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 Article XXIII:1(a) and (b) 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 issued to the Members. The dispute settlement rules and procedures contained in the Decision of the GATT Council of Representatives of 12 April 1989 (BISD 36S/61) 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 issue a report addressing any such matters and a separate report on matters falling under this paragraph.

## 27. *Responsibilities of the Secretariat*

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

27.2 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 MTO technical co-operation 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.

27.3 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.

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## APPENDIX 1

## AGREEMENTS COVERED BY THE UNDERSTANDING

- A) Agreement Establishing the Multilateral Trade Organization
- B) Annex 1A: Agreements on trade in goods  
Annex 1B: General Agreement on Trade in Services  
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods
- Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes
- C) Annex 4: Agreement on Trade in Civil Aircraft  
Agreement on Government Procurement  
International Dairy Arrangement  
Arrangement Regarding Bovine Meat

The applicability of this Understanding to Annex 4 Agreements shall be subject to the adoption of a decision by the Signatories of 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 Dispute Settlement Body.

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APPENDIX 2  
SPECIAL OR ADDITIONAL RULES AND PROCEDURES  
CONTAINED IN THE COVERED AGREEMENTS

<i>Agreement</i>	<i>Rules and Procedures</i>
Anti-Dumping	17.4 to 17.7
Technical Barriers to Trade	14.2 to 14.4, Annex 2
Subsidies and Countervailing Measures	4.2 to 4.12, 6.6, 7.2 to 7.10, 8.5, footnote 33, 25.3 to 25.4, 28.6, Annex V
Customs Valuation	19.3 to 19.5, Annex II.2(f), 3, 9, 21
Sanitary and Phytosanitary Regulations	36
Textiles	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 to 8.12
General Agreement on Trade in Services	XXII:3, XXIII:3
Financial Services	4.1
Air Transport Services	4
Ministerial Decision on Services Disputes	1 to 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 ANNEX 4 Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

### APPENDIX 3

#### WORKING PROCEDURES

1. In its proceedings the panel will follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes. In addition, the following working procedures will apply.
2. The panel will meet in closed session. The parties to the dispute, or other interested parties, will 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 will 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, both 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 will 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 will 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 will be made at a second substantive meeting of the panel. The party complained against will have the right to take the floor first to be followed by the complaining party. Both 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 Section 8 of the Understanding 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 above will be made in the presence of both 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, will be made available to the other party.
11. Any additional procedures specific to the panel.



12. The panel proposes the following timetable for its 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) Submission 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) Submission 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) Submission 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 will 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 Article 13.2.

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 circulated 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.

จุฬาลงกรณ์มหาวิทยาลัย



## ประวัติผู้วิจัย

### ประวัติและการศึกษา

นางสาวพรชญา ลัพธวรรณ เกิดเมื่อวันที่ 24 ธันวาคม 2512 ที่กรุงเทพมหานคร สำเร็จการศึกษาระดับปริญญาตรี ที่คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัยในปี 2535 และเข้าศึกษาในหลักสูตรนิติศาสตรมหาบัณฑิตที่คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัยในปีเดียวกัน

### ประสบการณ์การทำงาน

- |              |   |
|--------------|---|
| ปี 2535-2537 | - ธนาคารไทยทนุ จำกัด(มหาชน)                   |
| ปี 2537-2539 | - บริษัทเงินทุนหลักทรัพย์ ชิทก้า จำกัด(มหาชน) |
| ปัจจุบัน     | - บริษัท สำนักกฎหมายธนนิติ จำกัด              |



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย