

Appellate Body

**WORKING PROCEDURES
FOR
APPELLATE REVIEW**

This document replaces the *Working Procedures for Appellate Review* circulated 4 January 2005. It is a consolidated, revised version, and reflects amendments to Rules 6 (3), 18(1), 18(2), 18(4), 21(1), 22(1), 23(1), 23(3), 23(4), 24(1), 24(2), 27(1), 32(1), and 32(2), and Annexes I and III, as discussed in WT/AB/WP/W/10 and WT/AB/WP/W/11. The *Working Procedures for Appellate Review* consolidated in this document will be applied to appeals initiated on or after 15 September 2010.

***NOTE CONCERNING DOCUMENT NUMBER:** A Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body was originally issued on 10 April 2003 as document WT/AB/WP/6. For technical reasons (explained in WT/AB/WP/W/9), that Communication was re-issued as document WT/AB/WP/W/7.

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;
- "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 4 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, any Notice of Other Appeal and the submissions and other written statements presented by the participants or third 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;
- "other appellant"
means any party to the dispute that has filed a Notice of Other Appeal pursuant to paragraph 1 of Rule 23;
- "participant"
means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20, a Notice of Other Appeal pursuant to Rule 23 or a submission pursuant to Rule 22 or paragraph 4 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 written submission pursuant to Rule 24(1); or any third party that appears at the oral hearing, whether or not it makes an oral statement at that hearing;

"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 of the Appellate Body shall be one year. The Appellate Body Members may decide to extend the term of office for an additional period of up to one year. However, in order to ensure rotation of the Chairmanship, no Member shall serve as Chairman for more than two consecutive terms.
- (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:
 - (a) he/she is excused from that division pursuant to Rule 9 or 10;
 - (b) 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
 - (c) 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 VI: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 VI:4(b)(ii) of Annex II.
- (3) Where information has been submitted pursuant to Article VI: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 VIII 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 VIII: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 VIII of Annex II, an appeal shall be suspended for fifteen days or until the procedure referred to in Article VIII:14-16 of Annex II is completed, whichever is earlier.
 - (5) As a result of the procedure referred to in Article VIII: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 VIII of Annex II.
- 11.
- (1) A Member who has submitted a disclosure form with information attached pursuant to Article VI:4(b)(i) or is the subject of evidence of a material violation pursuant to Article VIII: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 parties to the dispute, participants, third parties and third participants 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.

Official versions of documents shall be submitted in paper form to the Appellate Body Secretariat by 17:00 Geneva time on the day that the document is due. Participants, parties, third participants and third parties shall, by the same deadline, also provide to the Appellate Body Secretariat an electronic copy of each document. Such electronic copy may be sent via electronic mail to the Appellate Body

Secretariat's electronic mail address, or brought to the Appellate Body Secretariat on a data storage device such as a CD-ROM or USB flash drive.

- (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 on the same day be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal, in accordance with paragraph 4.
- (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.

Electronic copies of documents served shall also be provided on the same day, either by electronic mail, or through physical delivery of a data storage device containing an electronic copy of the document.

- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat no later than 30 days after the date of the filing of the Notice of Appeal. A copy of the request shall be served upon the other parties to the dispute, participants, third parties and third participants, each of whom shall be given an opportunity to comment in writing on the request. The division shall notify the parties to the dispute, participants, third parties and third participants of its decision.

Ex Parte Communications

19. (1) Neither a division nor any of its Members shall meet with or contact one party to the dispute, participant, third party or third participant in the absence of the other parties to the dispute, participants, third parties and third participants.
- (2) No Member of the division may discuss any aspect of the subject matter of an appeal with any party to the dispute, participant, third party 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 party to the dispute, participant, third party 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:
 - (i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
 - (ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
 - (iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

Appellant's Submission

21. (1) The appellant shall, on the same day as 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 18 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 5 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. That party shall notify the DSB in writing of its appeal and shall simultaneously file a Notice of Other Appeal with the Secretariat.
- (2) A Notice of Other 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 Other Appeal;
 - (c) the service address, telephone and facsimile numbers of the party to the dispute; and either
 - (i) a statement of the issues raised on appeal by another participant with which the party joins; or
 - (ii) a brief statement of the nature of the other appeal, including:
 - (A) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
 - (B) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
 - (C) without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.
- (3) The other appellant shall, within 5 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 of Rule 21 and serve a copy of the submission on the other parties to the dispute and third parties.
- (4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 3 may file a written submission within

18 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.

- (5) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 4 of Article 16 of the DSU.
- (6) Where a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 5, a single division shall examine the appeals.

Amending Notices of Appeal

- 23bis. (1) The division may authorize an original appellant to amend a Notice of Appeal or an other appellant to amend a Notice of Other Appeal.
- (2) A request to amend a Notice of Appeal or a Notice of Other Appeal shall be made as soon as possible in writing and shall state the reason(s) for the request and identify precisely the specific amendments that the appellant or other appellant wishes to make to the Notice. A copy of the request shall be served on the other parties to the dispute, participants, third participants and third parties, each of whom shall be given an opportunity to comment in writing on the request.
 - (3) In deciding whether to authorize, in full or in part, a request to amend a Notice of Appeal or Notice of Other Appeal, the division shall take into account:
 - (a) the requirement to circulate the appellate report within the time-period set out in Article 17.5 of the DSU or, as appropriate, Article 4.9 of the *SCM Agreement*; and,
 - (b) the interests of fairness and orderly procedure, including the nature and extent of the proposed amendment, the timing of the request to amend a Notice of Appeal or Notice of Other Appeal, any reasons why the proposed amended Notice of Appeal or Notice of Other Appeal was not or could not have been filed on its original date, and any other considerations that may be appropriate.
 - (4) The division shall notify the parties to the dispute, participants, third participants, and third parties of its decision. In the event that the division authorizes an amendment to a Notice of Appeal or a Notice of Other Appeal, it shall provide an amended copy of the Notice to the DSB.

Third Participants

24. (1) Any third party may file a written submission containing the grounds and legal arguments in support of its position. Such submission shall be filed within 21 days after the date of the filing of the Notice of Appeal.
- (2) A third party not filing a written submission shall, within the same period of 21 days, notify the Secretariat in writing if it intends to appear at the oral hearing, and, if so, whether it intends to make an oral statement.

- (3) Third participants are encouraged to file written submissions to facilitate their positions being taken fully into account by the division hearing the appeal and in order that participants and other third participants will have notice of positions to be taken at the oral hearing.
- (4) Any third party that has neither filed a written submission pursuant to paragraph 1, nor notified the Secretariat pursuant to paragraph 2, may notify the Secretariat that it intends to appear at the oral hearing, and may request to make an oral statement at the hearing. Such notifications and requests should be notified to the Secretariat in writing at the earliest opportunity.

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:
 - (a) written submissions, rebuttal submissions, and supporting evidence attached thereto by the parties to the dispute and the third parties;
 - (b) 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;
 - (c) 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
 - (d) 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, between 30 and 45 days after the date of the filing of a 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) (a) Any third party that has filed a submission pursuant to Rule 24(1), or has notified the Secretariat pursuant to Rule 24(2) that it intends to appear at the oral hearing, may appear at the oral hearing, make an oral statement at the hearing, and respond to questions posed by the division.
- (b) Any third party that has notified the Secretariat pursuant to Rule 24(4) that it intends to appear at the oral hearing may appear at the oral hearing.
- (c) Any third party that has made a request pursuant to Rule 24(4) may, at the discretion of the division hearing the appeal, taking into account the requirements of due process, make an oral statement at the hearing, and respond to questions posed by the division.
- (4) The Presiding Member may set time-limits for oral arguments.

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.
- (3) When the questions or requests for memoranda are made prior to the oral hearing, then the questions or requests, as well as the responses or memoranda, shall also be made available to the third parties, who shall also 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 entered into force on 15 February 1996, and have subsequently been amended as indicated in Annex III.
- (2) The Appellate Body may amend these Rules in compliance with the procedures set forth in paragraph 9 of Article 17 of the DSU. The Appellate Body will announce the date on which such amendments come into force. The document number for each revised version of these Rules, and the date upon which each version entered into force and succeeded the previous version, are indicated in Annex III.
- (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 APPEALS¹

| | <u>General Appeals</u> | <u>Prohibited Subsidies Appeals</u> |
|---|------------------------|-------------------------------------|
| | Day | Day |
| Notice of Appeal ² | 0 | 0 |
| Appellant's Submission ³ | 0 | 0 |
| Notice of Other Appeal ⁴ | 5 | 2 |
| Other Appellant's Submission ⁵ | 5 | 2 |
| Appellee's Submission ⁶ | 18 | 9 |
| Third Participant's Submission ⁷ | 21 | 10 |
| Third Participant's Notification ⁸ | 21 | 10 |
| Oral Hearing ⁹ | 30 – 45 | 15 – 23 |
| Circulation of Appellate Report | 60 – 90 ¹⁰ | 30 – 60 ¹¹ |
| DSB Meeting for Adoption | 90 – 120 ¹² | 50 – 80 ¹³ |

¹Rule 17 applies to the computation of the time-periods below.

²Rule 20.

³Rule 21(1).

⁴Rule 23(1).

⁵Rule 23(3).

⁶Rules 22 and 23(4).

⁷Rule 24(1).

⁸Rule 24(2).

⁹Rule 27.

¹⁰Article 17.5, DSU.

¹¹Article 4.9, *SCM Agreement*.

¹²Article 17.14, DSU.

¹³Article 4.9, *SCM Agreement*.

ANNEX II

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

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

¹These 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".

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 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.**

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.

**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."

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. 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.^{***}

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.

^{***} 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".

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.**** 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.

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.

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

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.

Signed:

Dated:

ANNEX III

Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*

| Document Number | Effective Date | Rules Amended | Working Documents/Explanatory Texts | Minutes of Principal DSB Meeting(s) at which Amendments were Discussed |
|------------------------|-----------------------|---|--|---|
| WT/AB/WP/1 | 15 February 1996 | N/A | WT/AB/WP/W/1 | 31 January 1996, WT/DSB/M/10 and 21 February 1996, WT/DSB/M/11 |
| WT/AB/WP/2 | 28 February 1997 | Rule 5(2) and Annex II | WT/AB/WP/W/2, WT/AB/WP/W/3 | 25 February 1997, WT/DSB/M/29 |
| WT/AB/WP/3 | 24 January 2002 | Rule 5(2) | WT/AB/WP/W/4, WT/AB/WP/W/5 | 24 July 2001, WT/DSB/M/107 |
| WT/AB/WP/4 | 1 May 2003 | Rules 24 and 27(3), with consequential amendments to Rules 1, 16, 18, 19, and 28, and Annex I | WT/AB/WP/W/6, WT/AB/WP/W/7 | 23 October 2002, WT/DSB/M/134 |
| WT/AB/WP/5 | 1 January 2005 | Rules 1, 18, 20, 21, 23, 23 <i>bis</i> , and 27, and Annexes I and III | WT/AB/WP/W/8, WT/AB/WP/W/9 | 19 May 2004, WT/DSB/M/169 |
| WT/AB/WP/6 | 15 September 2010 | Rules 6(3), 18(1), 18(2), 18(4), 21(1), 22(1), 23(1), 23(3), 23(4), 24(1), 24(2), 27(1), 32(1), and 32(2), and Annexes I and III; additional technical amendments to Spanish and French versions only | WT/AB/WP/W/10, WT/AB/WP/W/11 | 18 May 2010, WT/DSB/M/283 |