

WORKING PROCEDURES FOR APPELLATE REVIEW

Communication from the Appellate Body

The following communication, dated 7 October 2004, from the Chairman of the Appellate Body, addressed to the Chair of the Dispute Settlement Body, is being circulated to Members.

I refer to my letter to you of 8 April 2004 regarding amendments to the *Working Procedures for Appellate Review* (the "*Working Procedures*") then under consideration by the Appellate Body. My communication to you was subsequently circulated to all WTO Members and you initiated a process of consultation with the Membership regarding the matters outlined in that document, in accordance with the DSB Decision of 19 December 2002 (WT/DSB/31).

The process of consultation that you initiated has been a very successful one. My colleagues and I very much appreciate the interest shown by the Membership in the amendments under consideration and found most helpful the careful and detailed comments provided by several Members. We have considered all of these comments and have taken them into account in improving, revising and otherwise considering the draft amendments that we developed last April.

Having benefited from the comments of Members, and having consulted you and the Director-General in accordance with Article 17.9 of the *Understanding on Rules and Procedures for the Settlement of Disputes* (the "DSU"), we now intend to adopt a final version of the amendments. The amendments that we are proceeding to adopt have been modified to take account of Members' comments. We are proceeding with amendments to all of the Rules referred to in document WT/AB/WP/8, with one exception. We have decided not to pursue any amendment to Rule 17 of the *Working Procedures* at this time, although we continue to believe that it may be appropriate to do so in the future. In the meantime, and as set out in more detail in Section IV of Annex A to this letter, we urge Members to take action themselves to deal with the numerous problems that arise in appeals that run over WTO holiday periods.

We also wish to emphasize that we monitor the operation of the *Working Procedures* closely and recognize that a need for further revisions to these rules may arise in the future. With this in mind, we welcome the response by certain delegations to our invitation to identify how any of the *Working Procedures* might be improved, and we expect to have an opportunity to consider some of the matters raised by Members in the context of future revision exercises. Moreover, as noted in our earlier communication, we anticipate that a successful conclusion of the negotiations on clarifications and improvements to the DSU will require further updating of the *Working Procedures*.

A copy of the amendments, as well as a consolidated version of the *Working Procedures* as a whole, is attached to this communication. These amendments will enter into effect for appeals initiated after 1 January 2005. Appeals initiated before that date will be unaffected by the new rules.

Detailed explanations of the original draft amendments were provided in my letter of 8 April 2004. (See the table below for the document number) In addition to those explanations, we believe that it is useful to set out further brief explanations regarding those amendments that have been revised following receipt of the comments of Members. Such additional explanations are set out in the explanatory note set out as Annex A to this letter. The legal text of the final amendments is set out in Annex B. In Annex C, we provide a consolidated version of the *Working Procedures*, taking into account the final amendments. A clean, consolidated version of the *Working Procedures* will be circulated to Members immediately after they come into effect.

New Numbering System for Documents

Lastly, the Appellate Body has decided to introduce, a new, more coherent numbering system for the *Working Procedures*. Until now, all documents relating to the *Working Procedures* had been issued with a "WT/AB/WP" series number, irrespective of the nature of such documents. Thus, the several versions of the *Working Procedures* themselves as well as any explanatory documents or other communications about the *Working Procedures* have a "WT/AB/WP" series number. We believe that this numbering system could make it difficult for Members to identify the most recent version of the *Working Procedures*. Accordingly, as from 2005, the "WT/AB/WP" series will be reserved for the various versions of the *Working Procedures* themselves. The latest number in the series will be the *Working Procedures* in force. All previous versions of the *Working Procedures* will be re-issued with a note indicating that they are no longer in force and, as necessary, a new "WT/AB/WP" number.

We will also introduce a new "WT/AB/WP/W" series for working or discussion papers, communications, and explanations relating to the *Working Procedures*. In this connection, certain documents previously issued with a "WT/AB/WP" number will be re-issued with a new "WT/AB/WP/W" number.¹ In addition, three communications from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body that were previously provided to Members in hard copy only, without any document numbers, will be circulated for the first time as "WT/AB/WP/W" documents.

Finally we are introducing, as a new Annex III to the *Working Procedures*, a "Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*". This table should provide a useful resource for Members wishing to track previous amendments to the *Working Procedures* as well as contemporaneous discussions of such amendments.

The table below identifies the document numbers that will change as we introduce the new system. A copy of the "Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*" is included in both Annexes B and C to this letter.

¹Notes in both the new "WT/AB/WP/W" document and any renumbered "WT/AB/WP" document will explain the new document number(s) and allow readers to locate the document that they seek even if its number has changed. For example, the new WT/AB/WP/2 will contain a note explaining that the original document WT/AB/WP/2 has been re-issued as document WT/AB/WP/W/3. Thus far, documents WT/AB/WP/1 through WT/AB/WP/8 have been issued. Thus, once the eighth document in the updated "WT/AB/WP" series has been issued (that is, the eighth version of the *Working Procedures* themselves), there will no longer be a need for such explanatory notes about number changes.

OLD DOCUMENT NUMBER	NEW DOCUMENT NUMBER	DOCUMENT TITLE, DATE
No document number assigned when hard copy circulated in 1996	WT/AB/WP/W/1	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 7 February 1996
WT/AB/WP/1	WT/AB/WP/1 (no change)	<i>Working Procedures for Appellate Review</i> , 15 February 1996
WT/DSB/RC/2	WT/DSB/RC/2, WT/AB/WP/W/2	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 20 January 1997
WT/AB/WP/2	WT/AB/WP/W/3	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 24 February 1997
WT/AB/WP/3	WT/AB/WP/2	<i>Working Procedures for Appellate Review</i> , 28 February 1997
No document number assigned when hard copy circulated in 2001	WT/AB/WP/W/4	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 10 July 2001
No document number assigned when hard copy circulated in 2001	WT/AB/WP/W/5	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 18 September 2001
WT/AB/WP/4	WT/AB/WP/3	<i>Working Procedures for Appellate Review</i> , 24 January 2002
WT/AB/WP/5	WT/AB/WP/W/6	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 17 December 2002
WT/AB/WP/6	WT/AB/WP/W/7	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 9 April 2003
WT/AB/WP/7	WT/AB/WP/4	<i>Working Procedures for Appellate Review</i> , 1 May 2003
WT/AB/WP/8	WT/AB/WP/W/8	Communication from the Chairman of the Appellate Body to the Chairperson of the Dispute Settlement Body, 8 April 2004

Annex A

Amendments to the *Working Procedures for Appellate Review*: Explanatory Notes

I. Notices of Appeal

A. *Content of Notice Of Appeal*

Having considered the views expressed by Members regarding the contents of the Notice of Appeal, we wish to emphasize that we share the concern implicit in the comments of a number of Members, namely that revision of the *Working Procedures* should serve the interests of due process and orderly procedure and should reduce, rather than enhance, opportunities for procedural disputes on appeal. For the reasons set out in my letter of 8 April, we believe that these objectives would be served by further clarification of what is meant by the requirement in Rule 20(2)(d) that a Notice of Appeal set out a "brief statement of the nature of the appeal". We have, accordingly, adopted changes to this provision similar to those envisaged in our initial draft amendment.

At the same time, we have made certain adjustments to the draft amendment. First, item (i) of subparagraph (d) has been adjusted to specify that what is required is "identification" (rather than "description") of the "alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Furthermore, the qualifying phrase "without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal" has been added to the beginning of item (iii) of that same subparagraph. This confirms that the list of paragraphs of the panel report to be included in the Notice of Appeal is indicative. We emphasize that this provision is intended to enhance due process and assist the other parties, as well as the Appellate Body, to understand the issues under appeal, and will not prejudice an appellant seeking to refer to other paragraphs in the context of its appeal.

B. *Notice of Other Appeal*

For the reasons given in my letter of 8 April, we have decided to introduce a Notice of Other Appeal into the appellate process. Accordingly, we are adopting amendments to Rules 1 (definitions), 21 (timing for filing appellant's submission), and 23 (timing and contents of Notice of Appeal and other appellant's submission) that are largely consistent with the terms of the original draft amendment, and which require an other appellant to notify the DSB of its other appeal and to file a Notice of Other Appeal within 12 days of the filing of the original Notice of Appeal. It has, however, been necessary to adjust the initial draft to ensure symmetry between the requirements for the Notice of Other Appeal and the revised requirements for the Notice of Appeal, as identified above¹, and to otherwise simplify the amended rule. In addition to these adjustments, and as proposed, the deadline for the filing of the appellant's submission will be changed to 7 days after the filing of the original Notice of Appeal (as opposed to the current 10-day deadline). We have also taken the opportunity to refine the definition of the term "documents" in Rule 1, in order to clarify that the submissions and other written statements of third participants are included within the scope of this definition.

¹Thus, we have used the word "identification" (rather than "description") of the "alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel" in Rule 23(2)(c)(ii)(A), and added the qualifying phrase "without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of the appeal" to the beginning of Rule 23(2)(c)(ii)(C).

C. *Amending Notices of Appeal*

We are of the view that the adoption of a rule allowing for the amendment of Notices of Appeal would remedy an existing gap in the *Working Procedures* and have included such an amendment as new Rule 23 *bis*.

We also recognize the concern expressed by certain Members regarding the criteria to be considered by a Division when addressing a request for authorization to amend a Notice of Appeal. Accordingly, paragraph (3) of the original draft new Rule has been modified to specify, in non-exhaustive terms, the types of considerations that will be taken into account by a Division in such a case.

We have also taken note of the concern expressed by Members regarding the impact of a request to amend a Notice of Appeal on the timeframes involved in an appeal. In line with this concern, we have adjusted the amendment to require that requests for authorization to amend be made "as soon as possible". We anticipate that a Division considering any such request will consider the matter promptly, and will fix strict deadlines for comment by other parties. We do not, therefore, consider that the new Rule 23 *bis* will affect the ability of the Appellate Body to deal expeditiously with the matters that come before it.

II. **Correction of "Clerical" Errors**

A number of Members voiced a preference to retain the term "clerical" in Rule 18(5), regarding the correction of certain errors in submissions and other documents. Consistent with the concerns expressed, we have, in the final version of the amendments, decided to retain the term "clerical", while adding an illustrative list of the types of errors subject to the rule. We have also taken into account the preference expressed by certain Members for the maintenance of a deadline for correction of clerical errors. However, in the light of the non-substantial nature of amendments covered by this rule, and to allow for the possibility that participants may become aware of clerical errors only upon the filing of written submissions by *other* participants, we have chosen to provide a generous deadline, *viz.* 30 days following the filing of the Notice of Appeal, or, roughly five days following receipt of the last of the written pleadings. We note that, in any event, a Member's ability to correct clerical errors will be contingent upon the receipt of authorization from the Division hearing the appeal.

III. **The Oral Hearing**

Rule 27 regarding the timing of the oral hearing is amended in line with the original draft, such that, as a general rule, the oral hearing will be held between 35 and 45 days following the filing of the Notice of Appeal.

We note the suggestion of certain delegations that a Division should consult the parties to a dispute before fixing the date of the oral hearing. Although we believe that it is neither efficient nor appropriate to inscribe in the *Working Procedures* a specific requirement for consultation on the working schedule for each appeal, we observe that it is always possible for delegations to make the Secretariat aware, at the outset of an appeal, of any constraints regarding the timing of the oral hearing, in order to enable the Division to be cognizant of such matters when preparing the working schedule.

IV. Calculation of 60 and 90 Day Time Limits

In the light of the comments made by Members regarding our proposal to modify Rule 17.1 of the *Working Procedures* regarding the calculation of the 90- and 60-day periods for appeal, we have decided not to pursue this amendment at this time. At the same time, we observe that Members have both acknowledged the difficulties that arise in meeting the deadlines prescribed by Article 17.5 of the DSU when appeals run over the months of August and December/January, and indicated their desire to consider themselves taking action to relieve the additional pressures that arise during such periods. It is thus in order to allow Members an opportunity, themselves, to decide how to deal with this issue—whether as part of the DSU negotiations, in the form of a decision of the DSB supplementing the DSB decision of 27 September 1995 regarding the calculation of time-periods², or otherwise—that we have decided not to pursue this particular amendment at this time. Nevertheless, our decision is without prejudice to our right to revisit this issue at a later date.

In order to assist Members in their consideration of this issue, I would like to set out, in some detail, the numerous problems that the Appellate Body has encountered in recent years in appeals running over the months of August and December/January. The various difficulties that have arisen have been dealt with in four different ways: (i) extensions of the 60-day deadline within which to file an appeal; (ii) the withdrawal and re-filing of the Notice of Appeal; (iii) changes to the Working Schedule for Appeal; (iii) extension of the 90-day period for circulation of the Appellate Body report.

A. *Extensions of the Deadline to Appeal*

In three separate disputes³, the DSB agreed to extend the period within which the panel report had to be adopted or appealed. The 60-day time-period set forth in Article 16.4 of the DSU was scheduled to expire, in those disputes, in the month of August, when there are normally no regularly-scheduled DSB meetings. Accordingly, at the July DSB meeting, the European Communities – the complainant in all three disputes – proposed "the postponement of consideration of these Panel Reports and the extension of the corresponding time-periods for appeal to a future meeting of the DSB at the beginning of September."⁴ Other Members concerned agreed to accept the proposal and, accordingly, these three panel reports were appealed more than sixty days after they had been circulated.

B. *Withdrawing and Re-filing the Notice of Appeal*

On three occasions an appellant has, for scheduling reasons involving holiday periods, withdrawn its original Notice of Appeal and re-filed a new notice at a later date. In two of these appeals, when the appellant re-filed the Notice of Appeal, it also filed its appellant's submission on an expedited basis (the same day or the day after the Notice of Appeal) in order to ensure that the appeal could be completed in a timely manner, notwithstanding an intervening holiday period.

In *United States – Tax Treatment for "Foreign Sales Corporations"*, the United States filed its original Notice of Appeal on 28 October 1999, 20 days after the panel report had been circulated. Following discussions with the Appellate Body and the other participant in the appeal concerning difficulties that this appeal date posed in setting the working schedule for the appeal, the United States decided, for scheduling reasons, to withdraw its Notice of Appeal on 2 November 1999 on the condition that it could later be re-filed. On 26 November, the United States re-filed the Notice of

²See minutes of the DSB meeting held on 27 September 1995, WT/DSB/M/7, pp. 9-10. See also WT/DSB/W/10 and WT/DSB/W/10/Add.1.

³*Chile – Taxes on Alcoholic Beverages* (DS87, DS110); *Argentina – Safeguard Measures on Imports of Footwear* (DS121); and *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products* (DS98).

⁴See minutes of the DSB meeting held on 26 July 1999, WT/DSB/M/65, p. 19.

Appeal, and the Appellate Body Report was circulated within the 90-day deadline, on 24 February 2000.⁵

In *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, the United States filed its original Notice of Appeal on 6 November 2001. Had the Appellate Body proceeded on the basis of that notice, the oral hearing would have had to have been held on the first or second working day of the New Year, which would have caused difficulties for the parties and the Appellate Body. With this in mind, and following discussions with the Appellate Body and the other participant in the appeal, the United States withdrew its original Notice of Appeal and re-filed a new Notice of Appeal on 19 November 2001. Accordingly, in accordance with a revised and agreed working schedule for that appeal, the United States filed its appellant's submission on 20 November 2001 and the oral hearing was held on 15 January 2002.⁶

In *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, the United States filed its original Notice of Appeal on 2 October 2003. If the appeal had proceeded on the basis of that notice, the Appellate Body Report would have had to have been issued on the first working day of January 2004, which would not have been possible.⁷ For this reason, and following discussions with the Appellate Body and the other participant in the appeal, the United States withdrew its original Notice of Appeal and re-filed a new notice on 21 October 2003. Under the new working schedule the United States also filed its appellant's submission on 21 October 2003 and the Appellate Body issued its Report on 19 January 2004.⁸

C. *Changes to the Appellate Body Working Schedule*

On several occasions, parties have requested the Appellate Body to change the working schedule in appeals due to holidays. Four examples are provided below.

In one case, the parties to the dispute jointly raised concerns arising from the intervening Christmas/New Year holidays, and requested, pursuant to Rule 16(2) of the *Working Procedures for Appellate Review*, that for the purpose of that appeal the time-periods for filing the appellant's, appellee's and third participant's submissions be modified. The Appellate Body agreed to this request and extended the relevant deadlines.

In another appeal, the parties to the dispute jointly submitted, on Day 21 of the appeal, a request to move the date of the oral hearing from Day 39 to Day 44. One of the parties requested the

⁵See Appellate Body Report, *US – FSC*, WT/DS108/AB/R, adopted 20 March 2000, DSR 2000:III, 1619, para. 7.

⁶See Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, adopted 8 March 2002, paras. 13-14.

⁷In this regard it is worth noting that the Appellate Body must complete the drafting of its reports at least two weeks in advance of the date of circulation of the report in order to allow for translation of the report into the two other official WTO languages. In other words, the Appellate Body in practice must comply with a 75-day deadline, not a 90-day deadline. The time needed for translation can be particularly onerous when cases run over the Christmas/New Year holiday season because, due to the closure of the WTO, translation services are unavailable for a period of up to 10 days.

⁸See Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, para. 6. In that case, the European Communities, a third participant, objected to the working schedule proposed by the Division in the wake of the withdrawal and re-filing of the appeal, in particular to the deadline for its third participant's submission, which was set at fifteen days after the submission of the Notice of Appeal and appellant's submission. The Division, however, refused the European Communities' request to modify this deadline (see para. 7 of the Appellate Body Report).

additional days in the light of the several working days lost to the Easter holiday. The Appellate Body granted the request, in part, by changing the oral hearing date from Day 39 to Day 42.

In another appeal, the participants jointly requested the Appellate Body on Day 7 to extend the time-period for the filing of the appellee's and third participants' submissions due to the impending Christmas/New Year holidays. The Appellate Body agreed to those requests and moved the deadline for the filing of the above-mentioned submissions from the beginning of January 2001 to a date six days later.

In one appeal, the parties jointly requested the Appellate Body to move the date of the oral hearing from August to July because of the August holiday period. However, the Appellate Body refused the request as it would not have been possible for the Appellate Body to carry out the necessary preparatory work in the appeal before a July oral hearing.

D. *Extensions of the 90-Day Deadline for Appellate Proceedings*

Article 17.5 of the DSU requires appellate proceedings to be completed in no case later than 90 days from the date of the filing of the appeal. To date, this time-limit has been exceeded only four times. In three of these cases the extension was due, at least in part, to the fact that the appeals ran over the Christmas/New Year holiday period.⁹

E. *Conclusion*

The situations set out above illustrate why there is a need for a special approach to calculation of the procedural time-limits during holiday periods. The difficulties flowing from these particular periods are not rare occurrences—to date they have required special arrangements to be made in thirteen different appeals, or approximately 20 percent of the 63 appeals completed to date.

A more systematic approach to deal with these common difficulties would enhance the ability of the Appellate Body to comply with the 90-day deadline prescribed in the DSU and avoid the need for the Appellate Body, the participants in appeals, and/or the DSB to agree on an assortment of *ad hoc* arrangements—as has in practice proven almost inevitable on such occasions under the current rules. The Appellate Body therefore urges Members to reflect further on this matter and to adopt a practical solution at the earliest possible opportunity.

⁹These three cases are *EC Measures Concerning Meat and Meat Products (Hormones)* (DS26, DS48); *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (DS135); and *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland* (DS122). In the case of *EC – Hormones*, see the Communication to the Chairman of the DSB from the Chairman of the Appellate Body dated 10 December 1997, referring to "the exceptional nature of this case" and "the time needed for translation and the intervention of the Christmas holiday period". (WT/DS48/9 and WT/DS26/11; emphasis added)

V. Amendments to Annex I

The above amendments require certain minor changes to Annex I of the *Working Procedures*, as outlined in the Annexes to this communication. In particular, the revised Annex reflects a new timetable for the filing of appellants' submissions and for the holding of oral hearings in both general and prohibited subsidies appeals.

Annex B

Amendments to the Working Procedures for Appellate Review

0. Content of the Notice of Appeal

Rule 20 will be amended as follows:

Rule 20 (Commencement of Appeal)

- (2) A Notice of Appeal shall include the following information:
- (a) the title of the panel report under appeal;
 - (b) the name of the party to the dispute filing the Notice of Appeal;
 - (c) the service address, telephone and facsimile numbers of the party to the dispute; and
 - (d) a brief statement of the nature of the appeal, including ~~the allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel:~~
 - (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.

0. Notice of Other Appeal

Rules 1, 21 and 23 will be amended as follows:

Rule 1 (Definitions)

- "appellant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20 ~~or has filed a submission pursuant to paragraph 1 of Rule 23;~~
...
- "appellee" means any party to the dispute that has filed a submission pursuant to Rule 22 or paragraph ~~3~~ 4 of Rule 23;
...
- "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;
...

"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 paragraphs 1 or 3-4 of Rule 23;

Rule 21 (Appellant's Submission)

- (1) The appellant shall, within ~~10~~ 7 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.

Rule 23 (Multiple Appeals)

- (1) Within ~~15-12~~ 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) ~~Any written submission made pursuant to paragraph 1 shall be in the format required by paragraph 2 of Rule 21.~~

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 15 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.

- ~~(3)~~ (4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 4 ~~3~~ may file a written submission within 25 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- ~~(4)~~ (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.
- ~~(5)~~ (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 4~~5~~, a single division shall examine the appeals.

0. Amending Notices of Appeal

A new Rule 23 *bis* will be inserted following Rule 23:

Rule 23 bis (Amending Notices of Appeal)

- (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 the 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.

0. Correcting Clerical Errors

Rule 18(5) will be amended as follows:

Rule 18 (Documents)

- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its ~~submissions~~ documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). ~~Such correction shall be made within 3 days of the filing of the original submission and a copy of the revised version.~~ 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.

0. Oral Hearing

Paragraphs 1 and 4 of Rule 27 will be amended as follows:

Rule 27 (Oral Hearing)

- (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 30 35 and 45 days after the date of the filing of a Notice of Appeal.

...

- (4) The Presiding Member may, ~~as necessary,~~ set time-limits for oral arguments ~~and presentations.~~

0. Timetable for Appeals

Annex I to the *Working Procedures* will be amended as follows:

TIMETABLE FOR APPEALS¹

	<u>General Appeals</u>	<u>Prohibited Subsidies Appeals</u>
	Day	Day
Notice of Appeal ^{1 2}	0	0
Appellant's Submission ^{2 3}	40 <u>7</u>	5 <u>4</u>
<u>Notice of Other Appeal⁴</u>	<u>12</u>	<u>6</u>
Other Appellant(s) Submission(s) ^{3 5}	15	7
Appellee(s) Submission(s) ^{4 6}	25	12
Third Participant(s) Submission(s) ^{5 7}	25	12
Third Participant(s) Notification(s) ^{6 8}	25	12
Oral Hearing ^{7 9}	30 <u>35-45</u>	15 <u>17-23</u>
Circulation of Appellate Report	60 – 90 ^{8 10}	30 – 60 ^{9 11}
DSB Meeting for Adoption	90 – 120 ^{10 12}	50 – 80 ^{11 13}

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

^{1 2}Rule 20.

^{2 3}Rule 21(1).

^{3 4}Rule 23(1).

^{3 5}Rule 23(~~3~~4).

^{4 6}Rules 22 and 23(~~4~~3).

^{5 7}Rule 24(1).

^{6 8}Rule 24(2).

^{7 9}Rule 27.

^{8 10}Article 17:5, DSU.

^{9 11}Article 4:9, *SCM Agreement*.

^{10 12}Article 17:14, DSU.

^{11 13}Article 4:9, *SCM Agreement*.

0. Table of Consolidated and Revised Versions of the *Working Procedures*

A new Annex III will be added to the *Working Procedures* as follows:

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	Principal DSB Meeting(s) at which Amendments Discussed, Minutes
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	11 September 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

Annex C

**WORLD TRADE
ORGANIZATION**

WT/AB/WP/5*

[first working day of
January 2005]
(05-0000)

Appellate Body

**WORKING PROCEDURES
FOR
APPELLATE REVIEW**

This document replaces the *Working Procedures for Appellate Review* circulated 1 May 2003. It is a consolidated, revised version of the *Working Procedures for Appellate Review*, and reflects amendments to Rules 1, 18(5), 20, 21, 23, 27 and Annex I, as well as the addition of a new Rule 23 *bis* and a new Annex III, as discussed in WT/AB/WP/W/8 and WT/AB/WP/W/9. The *Working Procedures for Appellate Review* consolidated in this document will be applied to appeals initiated after 1 January 2005.

***NOTE CONCERNING DOCUMENT NUMBER:** A Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body was originally issued as document WT/AB/WP/5, dated 19 December 2002. For technical reasons, that Communication has been re-issued as document WT/AB/WP/W/6.

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:
 - (i) he/she is excused from that division pursuant to Rules 9 or 10;
 - (ii) he/she has notified the Chairman and the Presiding Member that he/she is prevented from serving on the division because of illness or other serious reasons pursuant to Rule 12; or
 - (iii) he/she has notified his/her intentions to resign pursuant to Rule 14.

Presiding Member of the Division

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

Rules of Conduct

8. (1) On a provisional basis, the Appellate Body adopts those provisions of the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*, attached in Annex II to these Rules, which are applicable to it, until *Rules of Conduct* are approved by the DSB.
- (2) Upon approval of *Rules of Conduct* by the DSB, such *Rules of Conduct* shall be directly incorporated and become part of these Rules and shall supersede Annex II.
9. (1) Upon the filing of a Notice of Appeal, each Member shall take the steps set out in Article 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.
- (2) Except as otherwise provided in these Rules, every document filed by a party to the dispute, a participant, a third party or a third participant shall be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal.
- (3) A proof of service on the other parties to the dispute, participants, third parties and third participants shall appear on, or be affixed to, each document filed with the Secretariat under paragraph 1 above.

- (4) A document shall be served by the most expeditious means of delivery or communication available, including by:
 - (a) delivering a copy of the document to the service address of the party to the dispute, participant, third party or third participant; or
 - (b) sending a copy of the document to the service address of the party to the dispute, participant, third party or third participant by facsimile transmission, expedited delivery courier or expedited mail service.
- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its 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, within 7 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.
- (2) A written submission referred to in paragraph 1 shall
- (a) be dated and signed by the appellant; and
 - (b) set out
 - (i) a precise statement of the grounds for the appeal, including the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel, and the legal arguments in support thereof;
 - (ii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
 - (iii) the nature of the decision or ruling sought.

Appellee's Submission

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

Multiple Appeals

23. (1) Within 12 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 15 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 25 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- (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

- 23 bis. (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 25 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 25 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:
- (i) written submissions, rebuttal submissions, and supporting evidence attached thereto by the parties to the dispute and the third parties;
 - (ii) written arguments submitted at the panel meetings with the parties to the dispute and the third parties, the recordings of such panel meetings, and any written answers to questions posed at such panel meetings;
 - (iii) the correspondence relating to the panel dispute between the panel or the WTO Secretariat and the parties to the dispute or the third parties; and
 - (iv) any other documentation submitted to the panel.

Working Schedule

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

Oral Hearing

27. (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 35 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 shall enter into force on 15 February 1996.
- (2) The Appellate Body may amend these Rules in compliance with the procedures set forth in paragraph 9 of Article 17 of the DSU.
- (3) Whenever there is an amendment to the DSU or to the special or additional rules and procedures of the covered agreements, the Appellate Body shall examine whether amendments to these Rules are necessary.

ANNEX I

TIMETABLE FOR APPEALS¹

	<u>General Appeals</u>	<u>Prohibited Subsidies Appeals</u>
	Day	Day
Notice of Appeal ²	0	0
Appellant's Submission ³	7	4
Notice of Other Appeal ⁴	12	6
Other Appellant(s) Submission(s) ⁵	15	7
Appellee(s) Submission(s) ⁶	25	12
Third Participant(s) Submission(s) ⁷	25	12
Third Participant(s) Notification(s) ⁸	25	12
Oral Hearing ⁹	35-45	17-23
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.

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".

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

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

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

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

**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."

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

VII. Confidentiality

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

2. 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.

^{***}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".

Standing Appellate Body

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

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

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

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

18. Following completion of the procedures in paragraphs VIII:5 to VIII:17, if the appointment of a covered person, other than a member of the Standing Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the DSU for initial appointment shall be followed for appointment of a replacement, but the time-periods shall be half those specified in the DSU.^{****} 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	Principal DSB Meeting(s) at which Amendments Discussed, Minutes
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	11 September 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