WIPO

WO/GA/XXI/3
ORIGINAL: English
DATE: April 30, 1997

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO GENERAL ASSEMBLY

Twenty-First Session (13th Ordinary)
Geneva, September 22 to October 1, 1997

BACKGROUND INFORMATION DOCUMENT
TO THE
PROPOSED TREATY ON THE SETTLEMENT OF DISPUTES BETWEEN STATES
IN THE FIELD OF INTELLECTUAL PROPERTY

Memorandum prepared by the International Bureau

1. At its September/October 1996 session, the WIPO General Assembly decided that the International Bureau should prepare by April 1997 revised drafts of the proposed Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property (with accompanying explanatory notes) and the proposed Regulations under that Treaty, and should update certain background information documents (see document WO/GA/XIX/4, paragraphs 20, 22 and 23).

2. The revised drafts of the proposed Treaty and the proposed Regulations under that Treaty are contained in document WO/GA/XXI/2. The present document consolidates the updated versions of the background information documents, which consist of the following three texts:

(i) Treaties in the Field of Intellectual Property and Provisions on Dispute Settlement Therein; Provisions on Dispute Settlement in GATT and WTO Instruments (Part I of the present document);

(ii) Provisions on the Status of Intergovernmental Organizations Set Forth in Treaties and Rules of Procedure of Diplomatic Conferences in the Field of Intellectual Property (Part II of the present document);

(iii) Provisions in Selected Treaties Concerning the Relationship Between Different Dispute Settlement Systems (Part III of the present document).

PART I

TREATIES IN THE FIELD OF INTELLECTUAL PROPERTY AND PROVISIONS ON DISPUTE SETTLEMENT THEREIN; PROVISIONS ON DISPUTE SETTLEMENT IN GATT AND WTO INSTRUMENTS

CONTENTS

I. LIST OF MULTILATERAL TREATIES IN THE FIELD OF INTELLECTUAL PROPERTY AND PROVISIONS ON DISPUTE SETTLEMENT THEREIN

A. Treaties in force administered by WIPO or by WIPO in association with other intergovernmental organizations

B. Treaties not yet in force that provide for administration by WIPO or by WIPO in association with other intergovernmental organizations

C. Other instruments

II. PROVISIONS ON DISPUTE SETTLEMENT IN THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) INSTRUMENTS

III. PROVISIONS ON DISPUTE SETTLEMENT IN THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION AND RELATED INSTRUMENTS.

I. LIST OF MULTILATERAL TREATIES IN THE FIELD OF INTELLECTUAL PROPERTY AND PROVISIONS ON DISPUTE SETTLEMENT THEREIN

A. Treaties in force administered by WIPO or by WIPO in association with other intergovernmental organizations[1]

1. Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967, and amended on September 28, 1979

The provision on dispute settlement reads as follows:

"(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

"(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

"(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General." (Article 28)

2. Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, and amended on September 28, 1979

The provision on dispute settlement reads as follows:

"(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

[1] A periodically updated list of the States party to WIPO and to the treaties administered by WIPO is contained in WIPO document No. 423, and is available on request.

"(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

"(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General." (Article 33)

3. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, revised at Lisbon on October 31, 1958

No provision on dispute settlement

4. *Madrid Agreement* Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967

No provision on dispute settlement

5. The Hague Agreement Concerning the International Deposit of Industrial Designs, of November 6, 1925, as revised at The Hague on November 28, 1960, and supplemented at Stockholm on July 14, 1967, and amended in 1979

No provision on dispute settlement

6. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Geneva on May 13, 1977, and amended on September 28, 1979;

No provision on dispute settlement

7. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967, and amended on September 28, 1979

No provision on dispute settlement

8. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961

The provision on dispute settlement reads as follows:

> "Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement." (Article 30)

9. Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, and amended on September 28, 1979

No provision on dispute settlement

10. Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970, amended on September 28, 1979, and modified on February 3, 1984

The provisions on dispute settlement read as follows:

> "Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States." (Article 59)

> "Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply." (Article 64(5)).

11. Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended on September 28, 1979

No provision on dispute settlement

12. Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, of October 29, 1971

No provision on dispute settlement

13. Trademark Registration Treaty, done at Vienna on June 12, 1973, as amended on September 26, 1980

The provision on dispute settlement reads as follows:

"(1) [International Court of Justice] Any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

"(2) [Reservation] Each Contracting State may, at the time it signs this Treaty or deposits its instrument of ratification or accession, declare by notification deposited with the Director General that it does not consider itself bound by paragraph (1). With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, paragraph (1) shall not apply.

"(3) [Withdrawal of Reservation] Any Contracting State having made a declaration in accordance with paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General." (Article 46)

14. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, done at Vienna on June 12, 1973, and amended on October 1, 1985

The provision on dispute settlement reads as follows:

"(1) Any dispute between two or more countries of the Special Union concerning the interpretation or application of this Agreement, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the special Union.

"(2) Each country may, at the time it signs this Agreement or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between any country having made such a declaration and any other country of the Special Union, the provisions of paragraph (1) shall not apply.

"(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General." (Article 16)

15. Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, done at Brussels on May 21, 1974

No provision on dispute settlement

16. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, and amended on September 26, 1980

No provision on dispute settlement

17. Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981

No provision on dispute settlement

18. Treaty for the International Registration of Audiovisual Works (FRT), adopted at Geneva on April 18, 1989

No provision on dispute settlement

19. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989

No provision on dispute settlement

20. Trademark Law Treaty (TLT), done at Geneva on October 27, 1994

No provision on dispute settlement

B. Treaties not yet in force that provide for administration by WIPO or by WIPO in association with other intergovernmental organizations

21. Vienna Agreement for the Protection of Type Faces and their International Deposit, done at Vienna on June 12, 1973

The provision on dispute settlement reads as follows:

"(1) Any dispute between two or more Contracting States concerning the interpretation or application of this Agreement or the Regulations, not settled by negotiation, may, by any of the Contracting States concerned, be brought before the International Court of

Justice by application in conformity with the Statute of the Court, unless the Contracting States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

"(2) Each Contracting State may, at the time it signs this Agreement or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of paragraph (1) shall not apply.

"(3) Any Contracting State having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General." (Article 30)

22. Geneva Treaty on the International Recording of Scientific Discoveries, adopted at Geneva on March 3, 1978

No provision on dispute settlement

23. Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, done at Madrid on December 13, 1979

The provisions on dispute settlement read as follows:

"The Contracting States may...make reservations as regards the provisions contained in Articles... and 17. ..." (Article 12)

"(1) A dispute between two or more Contracting States concerning the interpretation or in the matter of application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

"(2) Any State may, at the time of signing this Convention or depositing its instrument of ratification, acceptance or accession, declare that it does not consider itself bound by the provisions of paragraph 1. In the event of a dispute between that State and any other Contracting State, the provisions of paragraph 1 shall not apply.

"(3) Any State that has made a declaration in accordance with paragraph 2 may at any time withdraw it by notification addressed to the Secretary-General of the United Nations." (Article 17)

24. Washington Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on May 26, 1989

The provision on dispute settlement reads as follows:

"(1) [Consultations]

(a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

"(2) [Other Means of Settlement] If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

"(3) [Panel]

(a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall convene a panel of three members to examine the matter. The members of the panel shall not, unless the parties to the dispute agree otherwise, be from either party to the dispute. They shall be selected from a list of designated governmental experts established by the Assembly. The terms of reference for the panel shall be agreed upon by the parties to the dispute. If such agreement is not achieved within three months, the Assembly shall set the terms of reference for the panel after having consulted the parties to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views. If both parties to the dispute so request, the panel shall stop its proceedings.

(b) The Assembly shall adopt rules for the establishment of the said list of experts, and the manner of selecting the members of the panel, who shall be governmental experts of the Contracting Parties, and for the conduct of the panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to

submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account the comments and shall promptly transmit its report to the Assembly. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the parties to the dispute.

"(4) [Recommendation by the Assembly] The Assembly shall give the report of the panel prompt consideration. The Assembly shall, by consensus, make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel." (Article 14)

25. WIPO Copyright Treaty, adopted at Geneva on December 20, 1996

No provision on dispute settlement

26. WIPO Performances and Phonograms Treaty, adopted at Geneva on December 20, 1996

No provision on dispute settlement

C. Other instruments

27. Convention on Patents of Invention, First South American Congress on Private International Law, Montevideo, January 10, 1889

No provision on dispute settlement

28. Convention on Literary and Artistic Property, Montevideo, First South American Congress on Private International Law, January 11, 1889

No provision on dispute settlement

29. Convention on Trademarks, First South American Congress on Private International Law, Montevideo, January 16, 1889

No provision on dispute settlement

30. Treaty on Patents of Inventions, Industrial Drawings and Models and Trade-Marks, signed at Mexico City, January 27, 1902, at the Second International American Conference

No provision on dispute settlement

31. Convention on Patents of Invention, Drawings and Industrial Models, Trade Marks, on Literary and Artistic Property, signed at Rio de Janeiro, August 23, 1906, at the Third International American Conference

No provision on dispute settlement

32. Convention on Literary and Artistic Copyright, signed at Buenos Aires on August 11, 1910, at the Fourth International Conference of American States and revised on February 11, 1928, at the Sixth International American Conference

No provision on dispute settlement

33. Convention on Patents of Inventions, Designs and Industrial Models, signed at Buenos Aires, August 20, 1910, at the Fourth International Conference of American States

No provision on dispute settlement

34. Convention on the Protection of Trade Marks, signed at Buenos Aires, August 20, 1910 at the fourth International Conference of American States

No provision on dispute settlement

35. Agreement on Patents and Privileges of Invention, signed at the Bolivarian Congress, Caracas, July 18, 1911

No provision on dispute settlement

36. Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names, signed at Santiago, April 28, 1923, at the Fifth International Conference of American States

No provision on dispute settlement

37. General Inter-American Convention for Trade Mark and Commercial Protection, signed at Washington, February 20, 1929, at the Pan American Trade Mark Conference

The provision on dispute settlement reads as follows:

> "The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law.

"Any differences which may arise with respect to the interpretation or application of the principles of this Convention shall be settled by the courts of justice of each State, and only in case of the denial of justice shall they be submitted to arbitration."
(Article 32)

38. Protocol on the Inter-American Registration of Trade Marks, signed at Washington, February 20, 1929, at the Pan American Trade Mark Conference

No provision on dispute settlement

39. Treaty on Intellectual Property, Second South American Congress on Private International Law, Montevideo, August 4, 1939

No provision on dispute settlement

40. Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works, signed at Washington, D.C., June 22, 1946, at the Inter-American Conference of Experts on Copyright

No provision on dispute settlement

41. European Convention Relating to the Formalities Required for Patent Applications, Paris, December 11, 1953

No provision on dispute settlement

42. European Agreement Concerning Program Exchanges by Means of Television Films (Paris, December 15, 1958)

No provision on dispute settlement

43. European Agreement on the Protection of Television Broadcasts (Strasbourg, June 22, 1960) and additional Protocol (Strasbourg, January 22, 1965)

No provision on dispute settlement

44. UPOV Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on October 23, 1978, and on March 19, 1991[2]

No provision on dispute settlement

45. Benelux Convention Concerning Trademarks of March 19, 1962

The provision on dispute settlement reads as follows:

"As soon as a Benelux Court of Justice has been established, it shall take cognizance of any questions of interpretation of the Uniform Law."[3] (Article 10)

46. Agreement relating to the creation of an African and Malagasy Office of Industrial Property, Libreville, September 13, 1962

No provision on dispute settlement

47. Convention on the Unification of Certain Points of Substantive Laws on Patents for Invention (Strasbourg, November 27, 1963)

No provision on dispute settlement

48. European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories (Strasbourg, January 22, 1965)

No provision on dispute settlement

49. Benelux Designs Convention (of October 25, 1966)

The provision on dispute settlement reads as follows:

> "As soon as a Benelux Court of Justice has been established, it shall take cognizance of any questions of interpretation of the Uniform Law."[4] (Article 10)

---

[2] The States party to the International Convention for the Protection of New Varieties of Plants constitutes a Union for the Protection of New Varieties of Plants, for which WIPO provides administrative and financial services.

[3] According to Article 1 of the Benelux Convention Concerning Trademarks, "the High Contracting Parties shall incorporate into their national legislation the Uniform Benelux Trademark Law, annexed to this Convention... ." The Treaty Concerning the Creation and the Statute of the Benelux Court of Justice was adopted on March 31, 1965, and entered into force on January 1, 1974.

[4] According to Article 1 of the Benelux Designs Convention, "The High Contracting Parties shall incorporate into their national legislation the Uniform Benelux Designs Law, annexed to this

[Footnote continued on next page]

50. Central American Agreement for the Protection of Industrial Property (Marks, Trade Names and Advertising Slogans or Signs) (San José, June 1, 1968)

The provision on dispute settlement reads as follows:

"The Signatory States shall agree to settle in the spirit of this Agreement and through the Executive Board or Central American Economic Council, as appropriate, any differences that may arise as to the interpretation of any of its provisions. If they are unable to reach agreement, the dispute shall be settled by arbitration. In constituting the Arbitration Tribunal, each Contracting Party shall propose to the Secretariat General of the Organization of Central American States the names of three judges from their respective Supreme Courts of Justice. The Secretary General of the Organization of Central American States and the government representatives to that body shall select by ballot from the full list of candidates one arbitrator for each Contracting Party, each one of whom shall be of a different nationality. A decision by the Arbitration Tribunal shall be reached upon the concurring vote of at least three members and shall take effect as *res judicata* for all Contracting Parties in regard to any point relating to the interpretation of the provisions of this Agreement." (Article 235)

51. Convention Relating to the Protection of Appellations of Origin, Abidjan, January 10, 1969

No provision on dispute settlement

52. Universal Copyright Convention, adopted at Geneva (1952) and revised at Paris on July 24, 1971

The provision on dispute settlement reads as follows:

"A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it." (Article XV)

53. Council of Mutual Economic Assistance (CMEA), Agreement on the Legal Protection of Inventions, Industrial Designs, Utility Models and Trademarks in the Framework of Economic, Scientific and Technical Cooperation (Moscow, April 12, 1973)

No provision on dispute settlement

[Footnote continued from previous page]

Convention... ." The Treaty Concerning the Creation and the Statute of the Benelux Court of Justice was adopted on March 31, 1965, and entered into force on January 1, 1974.

54. Convention on the Grant of European Patents (European Patent Convention) of October 5, 1973, amended by Decision of the Administrative Council of the European Patent Organization of December 21, 1978

The provision on dispute settlement reads as follows:

"(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavor to bring about agreement between the States concerned.

"(2) If such agreement is not reached within six months from the date when the Administrative Council was seized of the dispute, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision." (Article 173)

55. Council of Mutual Economic Assistance (CMEA), Agreement on the Unification of Requirements for the Execution and Filing of Applications for Inventions (Leipzig, July 5, 1975)

No provision on dispute settlement

56. Convention for the European Patent for the Common Market (Community Patent Convention) of December 15, 1975

The provisions on dispute settlement read as follows:

"CONSIDERING that it is essential that this Convention be interpreted in a uniform manner so that the rights and obligations flowing from a Community patent be identical throughout the Community and that therefore jurisdiction be conferred on the Court of Justice of the European Communities," (Preamble)

"(1) Any dispute between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Select Committee of the Administrative Council, which shall endeavor to bring about agreement between the States concerned.

"(2) If agreement is not reached within six months from the date when the Select Committee was seized of the dispute, any one of the States concerned may submit the dispute to the Court of Justice of the European Communities.

"(3) If the Court of Justice finds that a Contracting State has failed to fulfill an obligation under this Convention, that State shall be required to take the necessary measures to comply with the judgment of the Court of Justice." (Article 101)

57. Agreement on the Creation of an Industrial Property Organization for English-Speaking Africa, Lusaka, December 7, 1976

The provision on dispute settlement reads as follows:

"Any disputes arising out of the interpretation or application of any of the provisions of this Agreement which cannot be settled by the members of the Organization concerned, shall be submitted to the Council, whose decision on the matter shall be final and binding on all the members of the Organization." (Article XIII)

58. Council of Mutual Economic Assistance (CMEA), Agreement on the Mutual Recognition of Inventors' Certificates and Other Titles of Protection for Inventions, Havana, December 18, 1976

No provision on dispute settlement

59. Agreement Relating to the Creation of an African Intellectual Property Organization, Constituting a Revision of the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property, Bangui, March 2, 1977

No provision on dispute settlement

60. Protocol on Patents and Industrial Designs Within the Framework of the Industrial Property Organization for English-Speaking Africa (ESARIPO) adopted on December 10, 1982, at Harare

No provision on dispute settlement

61. Agreement relating to Community Patents, signed at Luxembourg in December 1989

The provisions on dispute settlement read as follows:

"CONSIDERING that it is essential that this Agreement must not operate against the application of the provisions of the Treaty establishing the European Economic Community and that the Court of Justice of the European Communities must be able to ensure the uniformity of the Community legal order; (Preamble)

"(1) Any dispute between Contracting States concerning the interpretation or application of this Agreement which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Select Committee or to the Administrative Committee as the case may be. The body to which the dispute is submitted shall endeavor to bring about agreement between the States concerned.

"(2) If agreement is not reached within six months from the date when the Select Committee or the Administrative Committee was seized of the dispute, any one of the States concerned may submit the dispute to the Court of Justice of the European Communities.

"(3) If the Court of Justice finds that a Contracting State has failed to fulfill an obligation under this Agreement, that State shall be required to take the necessary measures to comply with the judgment of the Court of Justice." (Article 14)

62. Eurasian Patent Convention, signed at Moscow on September 9, 1994

The provision on dispute settlement reads as follows:

"Where any dispute arises concerning the interpretation or implementation of this Convention, the Director General of WIPO shall, at the request of any of the parties to the dispute, mediate in order to lead the parties to a settlement of the dispute." (Article 24)

63. Protocol of Amendment to the Central American Agreement for the Protection of Industrial Property (Trademarks and other distinctive signs), signed at San Salvador on November 30, 1994

The provision on dispute settlement reads as follows:

"The Contracting States agree to settle in the spirit of this Agreement, through the governing body of central American economic integration, any dispute that might arise between them concerning the interpretation of its provisions." (Article 123)

II. PROVISIONS ON DISPUTE SETTLEMENT IN THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) INSTRUMENTS

64. General Agreement on Tariffs and Trade, Geneva, October 30, 1947[5]

"Article XXII

Consultation

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

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

Article XXIII

Nullification or Impairment

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

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

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

(c) the existence of any other situation,

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

---

[5] The General Agreement on Tariffs and Trade (GATT) includes a number of provisions requiring contracting parties to enter into consultations or providing for other procedures that can be used for the settlement of disputes. The present document reproduces only Articles XXII and XXIII of the said General Agreement since these two Articles are considered to contain the basic GATT mechanism for the settlement of disputes.

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

65. Procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties, adopted by the CONTRACTING PARTIES on November 10, 1958

"1. Any contracting party seeking a consultation under Article XXII shall, at the same time, so inform the Executive Secretary for the information of all contracting parties.

2. Any other contracting party asserting a substantial trade interest in the matter shall, within forty-five days of the notification by the Executive Secretary of the request for consultation, advise the consulting countries and the Executive Secretary of its desire to be joined in the consultation.

3. Such contracting party shall be joined in the consultation provided that the contracting party or parties to which the request for consultation is addressed agree that the claim of substantial interest is well-founded; in that event they shall so inform the contracting parties concerned and the Executive Secretary.

4. If the claim to be joined in the consultation is not accepted, the applicant contracting party shall be free to refer its claim to the CONTRACTING PARTIES.

5. At the close of the consultation, the consulting countries shall advise the Executive Secretary for the information of all contracting parties of the outcome.

6. The Executive Secretary shall provide such assistance in these consultations as the parties may request."

66. Procedures under Article XXIII, decided by the CONTRACTING PARTIES on April 5, 1966[6]

"The CONTRACTING PARTIES,

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

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

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

Decide that:

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed contracting party complaining of the measures may refer the matter which is the subject of consultations to the Director-General so that, acting in an *ex officio* capacity, he may use his good offices with a view to facilitating a solution.

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

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

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

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending

6 The Decision is referred to in paragraphs 41-47 of the Report of the Committee on Trade and Development. See pages 139 and 140 of BISD (Basic Instruments and Selected Documents), Fourteenth Supplement.

appropriate solutions. The members of the panel shall act in a personal capacity and shall be appointed in consultation with, and with the approval of, the contracting parties concerned.

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

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

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

9. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant recommendation of the CONTRACTING PARTIES or the Council, and that any benefit accruing directly or indirectly under the General Agreement continues in consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

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

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

---

[7] BISD, Seventh Supplement, page 7.

67. Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on November 28, 1979 by the CONTRACTING PARTIES

> "1. The CONTRACTING PARTIES reaffirm their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII.[8] With a view to improving and refining the GATT mechanism, the CONTRACTING PARTIES agree as follows:
>
> *Notification*
>
> 2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.
>
> 3. Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Contracting parties should endeavor to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly ex post facto. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.
>
> *Consultations*
>
> 4. Contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures employed by contracting parties. In that connection, they undertake to respond to requests for consultations promptly and to attempt to conclude consultations expeditiously, with a view to reaching mutually satisfactory conclusions. Any requests for consultations should include the reasons therefore.
>
> 5. During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties.
>
> 6. Contracting parties should attempt to obtain satisfactory adjustment of the matter in accordance with the provisions of Article XXIII:1 before resorting to Article XXIII:2.

---

[8] It is noted that Article XXV may, as recognized by the CONTRACTING PARTIES, inter alia, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930), also afford an appropriate avenue for consultation and dispute settlement in certain circumstances.

Dispute settlement

7. The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966[9] and that these remain available to less-developed contracting parties wishing to use them.

8. If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.

9. It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

10. It is agreed that if a contracting party invoking Article XXIII:2 requests the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice. It is also agreed that the CONTRACTING PARTIES would similarly decide to establish a working party if this were requested by a contracting party invoking the Article. It Is further agreed that such requests would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES.

11. When a panel is set up, the Director-General, after securing the agreement of the contracting parties concerned, should propose the composition of the panel, of three or five members depending on the case, to the CONTRACTING PARTIES for approval. The members of a panel would preferably be governmental. It is understood that citizens of countries whose governments[10] are parties to the dispute would not be members of the panel concerned with that dispute. The panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES.

---

[9] BISD 14S/18

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

12. The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

13. In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement, and who could be available for serving on panels. For this purpose, each contracting party would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work.[11]

14. Panel members would serve in their individual capacities and net as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience[12].

15. Any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.

16. The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2. In this connection, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

17. Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. The report of a panel should normally set out the rationale behind any findings and recommendations that it makes. Where a

---

[11] The coverage of travel expenses should be considered within the limits of budgetary possibilities.

[12] A statement is included in the Annex describing the current practice with respect to inclusion on panels of persons from developing countries.

bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

18. To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.

19. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any contracting party with an interest in the matter has a right to enquire about and be given appropriate information about that solution in so far as it relates to trade matters.

20. The time required by panels will vary with the particular case.[13] However, panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement. In cases of urgency the panel would be called upon to deliver its findings within a period normally of three months from the time the panel was established.

21. Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned.

22. The CONTRACTING PARTIES shall keep under surveillance any matter on which they have made recommendations or given rulings. If the CONTRACTING PARTIES' recommendations are not implemented within a reasonable period of time, the contracting party bringing the case may ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution.

23. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what further action they might take which would be appropriate to the circumstances.

Surveillance

24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in

---

[13] An explanation is included in the Annex that “in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months”.

accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding.

Technical assistance

25. The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connection with matters dealt with in this understanding.

ANNEX

Agreed Description of the Customary Practice of the GATT
in the Field of Dispute Settlement (Article XXIII:2)

1. Any dispute which has not been settled bilaterally under the relevant provisions of the General Agreement may be referred to the CONTRACTING PARTIES[14] which are obliged, pursuant to Article XXIII:2, to investigate matters submitted to them and make appropriate recommendations or give a ruling on the matter as appropriate. Article XXIII:2 does not indicate whether disputes should be handled by a working party or by a panel.[15]

2. The CONTRACTING PARTIES adopted in 1966 a decision establishing the procedure to be followed for Article XXIII consultations between developed and less-developed contracting parties.[16] This procedure provides, *inter alia*, for the Director-General to employ his good offices with a view to facilitating a solution, for setting up a panel with the task of examining the problem in order to recommend appropriate solutions, and for time-limits for the execution of the different parts of this procedure.

3. The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters. In this connection, panels have consulted regularly with the parties to the dispute and have given them adequate opportunity to develop a mutually satisfactory solution. Panels have taken appropriate account of the particular interests of developing countries. In cases of failure of the parties to reach a mutually satisfactory settlement, panels have normally given assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2.

4. Before bringing a case, contracting parties have exercised their judgment as to whether action under Article XXIII:2 would be fruitful. Those cases which have come before the CONTRACTING PARTIES under this provision have, with few exceptions, been brought to a satisfactory conclusion. The aim of the CONTRACTING PARTIES has always been to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement. The last resort which Article XXIII provides to the country invoking this procedure is the possibility of suspending the application of concessions or other

---

[14] The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.

[15] At the Review Session (1955) the proposal to institutionalize the procedures of panels was not adopted by CONTRACTING PARTIES mainly because they preferred to preserve the existing situation and not to establish judicial procedures which might put excessive strain on the GATT.

[16] BISD 14S/18

obligations on a discriminatory basis vis-à-vis the other contracting party, subject to authorization by the CONTRACTING PARTIES of such measures. Such action has only rarely been contemplated and cases taken under Article XXIII:2 have led to such action in only one case.

5. In practice, contracting parties have had recourse to Article XXIII only when in their view a benefit accruing to them under the General Agreement was being nullified or impaired. In cases where there is an infringement of the obligations assumed under the General Agreement, the action is considered prima facie to constitute a case of nullification or impairment. A Prima facie case of nullification or impairment would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations, if the contracting party bringing the complaint so requests. This means that there is normally a presumption that a breach of the rules has an adverse impact on other contracting parties, and in such cases, it is up to the contracting parties against whom the complaint has been brought to rebut the charge. Paragraph 1(b) permits recourse to Article XXIII if nullification or impairment results from measures taken by other contracting parties whether or not these conflict with the provisions of the General Agreement, and paragraph 1(c) if any other situation exists. If a contracting party bringing an Article XXIII case claims that measures which do not conflict with the provisions of the General Agreement have nullified or impaired benefits accruing to it under the General Agreement, it would be called upon to provide a detailed justification.

6. Concerning the customary elements of the procedures regarding working parties and panels, the following elements have to be noted:

(i) working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the Council." Working parties set up their own working procedures. The practice for working parties has been to hold one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter. Generally working parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of the Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision.

(ii) In the case of disputes, the CONTRACTING PARTIES have established panels (which have been called by different names) or working parties in order to assist them in examining questions raised under Article XXIII:2. Since 1952, panels have become the usual procedure. However, the Council has taken such decisions only after the party concerned has had an occasion to study the complaint and prepare its response before the Council. The terms of reference are discussed and approved by the Council.

Normally, these terms of reference are "to examine the matter and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII". When a contracting party having recourse to Article XXIII:2 raised questions relating to the suspension of concessions or other obligations, the terms of reference were to examine the matter in accordance with the provisions of Article XXIII:2. Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country;

(iii) Members of panels are expected to act impartially without instructions from their governments. In a few cases, in view of the nature and complexity of the matter, the parties concerned have agreed to designate non-government experts. Nominations are proposed to the parties concerned by the GATT secretariat. The composition of panels (three or five members depending on the case) has been agreed upon by the parties concerned and approved by the GATT Council. It is recognized that a broad spectrum of opinion has been beneficial in difficult cases, but that the number of panel members has sometimes delayed the composition of panels, and therefore the process of dispute settlement.

(iv) Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invited the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute. Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views. Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute. Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter. Panels may seek advice or assistance from the secretariat in its capacity as guardian of the General Agreement, especially on historical or procedural aspects. The secretariat provides the secretary and technical services for panels.

(v) Where the parties have failed to develop a mutually satisfactory solution, the panel has submitted its findings in a written form. Panel reports have normally set out findings of fact, the applicability of relevant provisions, and the basic rationale behind any findings and recommendations that it has made. Where a bilateral settlement of the matter has been found, the report of the panel has been confined to a brief description of the case and to reporting that a solution has been reached.

(vi) The reports of panels have been drafted in the absence of the parties in the light of the information and the statements made.

(vii) To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel has normally first submitted the descriptive part of its report to the parties concerned, and also their

conclusions, or an outline thereof, a reasonable period of time before they have been circulated to the CONTRACTING PARTIES.

(viii) In accordance with their terms of reference established by the CONTRACTING PARTIES panels have expressed their views on whether an infringement of certain rules of the General Agreement arises out of the measure examined. Panels have also, If so requested by the CONTRACTING PARTIES, formulated draft recommendations addressed to the parties. In yet other cases panels were invited to give a technical opinion on some precise aspect of the matter (e.g. on the modalities of a withdrawal or suspension in regard to the volume of trade involved). The opinions expressed by the panel members on the matter are anonymous and the panel deliberations are secret.

(ix) Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months.

The 1966 decision by the CONTRACTING PARTIES referred to in paragraph 2 above lays down in its paragraph 7 that the Panel shall report within a period of sixty days from the date the matter was referred to it."

68. Ministerial Declaration adopted by the Contracting Parties on November 29, 1982 (section on "Dispute Settlement Procedures")

"The CONTRACTING PARTIES:

Settlement negotiated during the Tokyo Round (hereinafter referred to as the "Understanding") provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end;

And agree further that:

(i) With reference to paragraph 8 of the Understanding, if a dispute is not resolved through consultations, any party to a dispute may, with the agreement of the other party, seek the good offices of the Director-General or of an individual or group of persons nominated by the Director-General. This conciliatory process would be carried out expeditiously, and the Director-General would inform the Council of the outcome of the conciliatory process. Conciliation proceedings, and in particular positions taken by the parties to the dispute during conciliation, shall be confidential, and without prejudice to the rights of either party in any further proceedings under Article XXIII:2. It would remain open at any time during any conciliatory process for either party to the dispute to refer the matter to the CONTRACTING PARTIES.

(ii) In order to ensure wore effective compliance with the provisions of paragraphs 11 and 12 of the Understanding, the Director-General shall inform the Council of any case in which it has not been found possible to meet the time-limits for the establishment of a panel.

(iii) With reference to paragraph 13 of the Understanding, contracting parties will cooperate effectively with the Director-General in making suitably qualified experts available to serve on panels. Where experts are not drawn from Geneva, any expenses, including travel and subsistence allowance, shall be met from the GATT budget.

(iv) The secretariat of GATT has the responsibility of assisting the panel, especially on the legal, historical and procedural aspects of the matters dealt with.

(v) The terms of reference of a panel should be formulated so as to permit a clear finding with respect to any contravention of GATT provisions and/or on the question of nullification and impairment of benefits. In terms of paragraph 16 of the Understanding, and after reviewing the facts of the case, the applicability of GATT provisions and the arguments advanced, the panel should come to such a finding. Where a finding establishing a contravention of GATT provisions or nullification and impairment is made, the panel should make such suggestions as appropriate for dealing with the matter as would assist the CONTRACTING PARTIES in making recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate.

(vi) Panels would aim to deliver their findings without undue delay, as provided in paragraph 20 of the Understanding. If a complete report cannot be made within the period foreseen in that paragraph, panels would be expected to so advise the Council and the report should be submitted as soon as possible thereafter.

(vii) Reports of panels should be given prompt consideration by the CONTRACTING PARTIES. Where a decision on the findings contained in a report calls for a ruling or recommendation by the Council, the Council may allow the contracting party concerned a reasonable specified time to indicate what action it proposes to take with a view to a satisfactory settlement of the matter, before making any recommendation or ruling on the basis of the report.

(viii) The recommendation or ruling made by the CONTRACTING PARTIES shall be aimed at achieving a satisfactory settlement of the matter in accordance with GATT obligations. In furtherance of the provisions of paragraph 22 of the Understanding the Council shall periodically review the action taken pursuant to such recommendations. The contracting party to which such a recommendation has been addressed, shall report within a reasonable specified period on action taken or on its reasons for not implementing the recommendation or ruling by the CONTRACTING PARTIES. The contracting party bringing the case may also ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution as provided in paragraph 22 of the Understanding.

(ix) The further action taken by the CONTRACTING PARTIES in the above circumstances might include a recommendation for compensatory adjustment with

respect to other products or authorization for the suspension of such concessions or other obligations as foreseen in Article XXIII:2, as the CONTRACTING PARTIES may determine to be appropriate in the circumstances.

(x) The Parties to a dispute would fully participate in the consideration of the matter by the CONTRACTING PARTIES under paragraph (vii) above, including the consideration of any rulings or recommendations the CONTRACTING PARTIES might make pursuant to Article XXIII:2 of the General Agreement, and their views would be fully recorded. They would likewise participate and have their views recorded in the considerations of the further actions provided for under paragraphs (viii) and (ix) above. The CONTRACTING PARTIES reaffirmed that consensus will continue to be the traditional method of resolving disputes; however, they agreed that obstruction in the process of dispute settlement shall be avoided.[17] It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement."

(69) Dispute settlement procedures. Action taken by the Contracting Parties on November 30, 1984 at the Fortieth Session of the Contracting Parties.

I. The CONTRACTING PARTIES adopted the following proposal in L/5718/Rev.1:

"At the 1982 Ministerial it was agreed that the Dispute Settlement "Understanding" provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end.

However, if improvement in the whole system is to be achieved, it is necessary not only to make specific procedural improvements, but also to obtain a clear cut understanding by and commitment from the CONTRACTING PARTIES (or Signatories to the Codes) with respect to the nature and time-frame of (a) the panel process; (b) the decision on the dispute matter to be taken by the CONTRACTING PARTIES (or the Code Committee) on the basis of the panel's report; and (c) the follow-up to be given to that decision by the parties to the dispute.

A number of procedural problems related to the panel process have been encountered which can be addressed within the existing framework. Such problems include the formation of panels in a timely manner, and the timely completion of panel work. Although the "Understanding" provides guidelines for these procedures (thirty days for the formation of a panel and three to nine months to complete the panel's work), experience has shown these time targets are seldom met. These are only a couple of difficulties related to the dispute settlement mechanism, so addressing them alone will not cure all its deficiencies. However, procedural improvements can lead to improvements in the quality of panel reports. Therefore, the CONTRACTING PARTIES agree that, as a first step, the following approach should be adopted, on a trial

---

[17] This does not prejudice the provisions on decision making in the General Agreement.

basis, for a period of one year in order to continue the process of improving the operation of the system.[18]

Formation of panels

1. Contracting parties should indicate to the Director-General the names of persons they think qualified to serve as panelists, who are not presently affiliated with national administrations but who have a high degree of knowledge of international trade and experience of the GATT. These names should be used to develop a short roster of non-governmental panelists to be agreed upon by the CONTRACTING PARTIES in consultation with the Director-General. The roster should be as representative as possible of contracting parties.

2. The Director-General should continue the practice of proposing panels composed preferably of governmental representatives but may also draw as necessary on persons on the approved roster. The parties should retain the ability to respond to the Director-General's proposal, but shall not oppose nominations except for compelling reasons.

3. In the event that panel composition cannot be agreed within thirty days after a matter is referred by the CONTRACTING PARTIES, the Director-General shall, at the request of either party and in consultation with the Chairman of the Council, complete the panel by appointing persons from the roster of non-governmental panelists to resolve the deadlock, after consulting both parties.

Completion of panel work

1. Panels should continue to set their own working procedures and, where possible, panels should provide the parties to the dispute at the outset with a proposed calendar for the panel's work.

2. Where written submissions are requested from the parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines."

II. The CONTRACTING PARTIES referred proposals by Canada (L/5720) and Nicaragua (L/5731) to the Council for any appropriate action.

70. Improvements to the GATT Dispute Settlement Rules and Procedures decided by the Contracting Parties on April 12, 1989

"Following the meetings of the Trade Negotiations Committee at Ministerial level in December 1988 and at the level of high officials in April 1989, the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade

---

[18] In November 1986, the GATT Council agreed to extend the list of non-governmental panelists in L/5906 for an additional year (C/M/204, p. 27).

Approve the improvements of the GATT dispute settlement rules and procedures set out below and their application on the basis set out in this Decision:

A. General Provisions

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.

2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from May 1, 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.

4. All the points set out in this Decision shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18).

B. Notification

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

C. Consultations

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting

party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty-day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

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

D. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

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

3. The Director-General may, acting in an *ex officio* capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

E. Arbitration

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

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be

notified to all contracting parties sufficiently in advance of the actual commencement of the arbitration process.

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and Working Party Procedures

(a) Establishment of a Panel or a Working Party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel or a working party with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.[19]

(b) Standard Terms of Reference

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

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/ ... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of Panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

[19] References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215).

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for Multiple Complainants

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

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

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

(e) Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

(f) Time Devoted to Various Phases of a Panel

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

2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

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

4. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party’s submission. Any subsequent written submissions shall be submitted simultaneously.

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

6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how

long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.

4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

H. Technical Assistance

1. While the Secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the Secretariat shall make available a qualified legal expert within the Technical Cooperation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the Secretariat.

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

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

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

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

III. PROVISIONS ON DISPUTE SETTLEMENT IN THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION AND RELATED INSTRUMENTS

71. Agreement Establishing the World Trade Organization (Marrakesh, April 15, 1994)

Article III
Functions of the WTO

...

"3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the 'Dispute Settlement Understanding' or 'DSU') in Annex 2 to this Agreement."

...

Article IV
Structure of the WTO

"3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfillment of those responsibilities."

...

Article IX
Decision-Making

"2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X."

72. Agreement on Trade-Related Aspects of Intellectual Property Rights (included in Annex 1C to the Agreement establishing the World Trade Organization (Marrakesh, April 15, 1994)

Article 64
Dispute Settlement

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

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

"3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process."

73. Understanding on Rules of Procedure Governing the Settlement of Disputes (included in Annex 2 of the Agreement Establishing the World Trade Organization
(Marrakesh, April 15, 1994))

Article 1
Coverage and Application

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

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

Article 2
Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members

that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

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

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.[20]

Article 3
General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

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

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

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

---

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

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

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

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

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

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

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

immediately prior to the date of entry into force of the WTO Agreement shall continue to apply[21].

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

Article 4
Consultations

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

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former[22].

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

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

---

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

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

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

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

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

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

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

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

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements[23], such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of

---

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

GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5
Good Offices, Conciliation and Mediation

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

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

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

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Article 6
Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.[24]

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and

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

provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7
Terms of Reference of Panels

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

"To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

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

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

Article 8
Composition of Panels

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

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

3. Citizens of Members whose government[25] are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

---

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

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

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

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

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

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

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

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

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

Article 9
Procedures for Multiple Complainants

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

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

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

Article 10
Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

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

Article 11
Function of Panels

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

Article 12
Panel Procedures

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

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

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

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

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

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

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

found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

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

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

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

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

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

Article 13
Right to Seek Information

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

formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14
Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

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

Article 15
Interim Review Stage

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

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

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

Article 16
Adoption of Panel Reports

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

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

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

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting[26] unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

Article 17
Appellate Review
Standing Appellate Body

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

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the term of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All

---

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

persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

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

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

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

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

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

Procedures for Appellate Review

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

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

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

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

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

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.[27] This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18
Communications with the Panel or Appellate Body

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

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19
Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned[28] bring the measure into conformity with that agreement[29] In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

---

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

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

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

Article 20
Time-frame for DSB Decisions

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

Article 21
Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days[30] after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.[31] In such arbitration, a guideline for the arbitrator[32] should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date

---

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

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

[32] The expression “arbitrator” shall be interpreted as referring either to an individual or a group.

of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

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

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

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

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

Article 22
Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements.

Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

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

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

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, “sector” means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[33]

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[34] appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator[35] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator

---

[33] The list in document MTN.GNS/W/120 identifies eleven sectors.

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

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

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

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[36]

Article 23
Strengthening of the Multilateral System

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

2. In such cases, Members shall:

---

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

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

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

Article 24
Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25
Arbitration

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

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be

followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

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

Article 26

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

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

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

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

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

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

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27
Responsibilities of the Secretariat

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

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

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

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1 A: Multilateral Agreements on Trade in Goods
Annex 1 B: General Agreement on Trade in Services
Annex 1 C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES
CONTAINED IN THE COVERED AGREEMENTS

Agreement	*Rules and Procedures*
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9,6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	7.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

1. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:	
(1) complaining Party:	3-6 weeks
(2) Party complained against:	2-3 weeks
(b) Date, time and place of first substantive meeting with the parties; third party session:	1-2 weeks
(c) Receipt of written rebuttals of the parties:	2-3 weeks
(d) Date, time and place of second substantive meeting with the parties:	1-2 weeks
(e) Issuance of descriptive part of the report to the parties:	2-4 weeks
(f) Receipt of comments by the parties on the descriptive part of the report:	2 weeks
(g) Issuance of the interim report, including the findings and conclusions, to the parties:	2-4 weeks
(h) Deadline for party to request review of part(s) of report:	1 week
(i) Period of review by panel, including possible additional meeting with parties:	2 weeks
(j) Issuance of final report to parties to dispute:	2 weeks
(k) Circulation of the final report to the Members:	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4
EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

PART II

PROVISIONS ON THE STATUS OF INTERGOVERNMENTAL ORGANIZATIONS SET FORTH IN TREATIES AND RULES OF PROCEDURE OF DIPLOMATIC CONFERENCES IN THE FIELD OF INTELLECTUAL PROPERTY

CONTENTS

PART A
[Provisions in Treaties]

1. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, and amended on September 26, 1980

2. Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on May 26, 1989

3. Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on June 27, 1989

4. International Convention for the Protection of New Varieties of Plants, of December 2, 1961, as revised at Geneva on March 19, 1991 (Act of 1991)

5. Trademark Law Treaty, adopted at Geneva on October 27, 1994

6. WIPO Copyright Treaty, adopted at Geneva on December 20, 1996

7. WIPO Performances and Phonograms Treaty, adopted at Geneva on December 20, 1996

8. Draft Treaty Supplementing the Paris Convention for the Protection of Industrial Property as Far as Patents are Concerned (Patent Law Treaty) (December 1990)

9. Draft Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property (March 1997)

PART B
[Provisions in Rules of Procedure]

10. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest, April 1977)

11. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (Washington, D.C., May 1989)

12. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid, June 1989)

13. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (First Part; The Hague, June 1991)

14. Rules of Procedure of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants (Geneva, March 1991)

15. Rules of Procedure of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty (October 1994)

16. Rules of Procedure of the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions (Geneva, December 1996)

17. Proposed Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property, as established by the Preparatory Meeting (February 1994)

PART A
[Provisions in Treaties]

1. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, and amended on September 26, 1980

"Article 2 (Definitions)

"For the purposes of this Treaty and the Regulations:

...

"(v) 'intergovernmental industrial property organization' means an organization that has filed a declaration under Article 9(1);

..."

"Article 9 (Intergovernmental Industrial Property Organizations)

"(1) (a) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1)(a), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 16(1), the declaration referred to in the preceding sentence shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.

"(b) The said organization shall have the right provided for in Article 3(1)(b).

"(2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organizations is revised or amended, any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:

"(i) where the notification has been received before the date on which the revision or amendment enters into force, on that date;

"(ii) where the notification has been received after the date referred to in (i), on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.

"(3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1)(a) by notification addressed to the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from the date on which the declaration took effect.

"(4) The withdrawal referred to in paragraph (2) or (3) by an intergovernmental industrial property organization whose communication under Article (7)(1) has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General has received the notification of withdrawal.

"(5) Any declaration referred to in paragraph (1)(a), notification of withdrawal referred to in paragraph (2) or (3), assurances furnished under Article (6)(1), second sentence, and included in a declaration made in accordance with Article (7)(1)(a), request made under Article 8(1) and communication of withdrawal referred to in Article 8(2) shall require the express previous approval of the supreme governing organ of the intergovernmental industrial property organization whose members are all the States members of the said organization and in which decisions are made by the official representatives of the governments of such States."

2. Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on May 26, 1989

"Article 2 (Definitions)

"For the purposes of this Treaty:

...

"(v) 'Contracting Party' means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,

"(vi) 'territory of a Contracting Party' means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,

...

"(x) 'Intergovernmental Organization' means an Organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty."

"Article 5 (National Treatment)

...

"(3) [Application of Paragraphs (1) and (2) to Intergovernmental Organizations] Where the Contracting Party is an Intergovernmental Organization, 'nationals' in paragraph (1) means nationals of any of the States members of that Organization."

"Article 9 (Assembly)

"(1) [Composition]

"(a) The Union shall have an Assembly consisting of the Contracting Parties.

"(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

...

"(3) [Voting]

"(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

"(b) Any Contracting Party that is an Intergovernmental Organization shall exercise its right to vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty and which are present at the time the vote is taken. No such Intergovernmental Organization shall exercise its right to vote if any of its member States participates in the vote."

...

"Article 15 (Becoming Party to the Treaty)

"(1) [Eligibility]

"(a) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

"(b) Any Intergovernmental Organization which meets the requirements of Article 2(x) may become party to this Treaty. The Organization shall inform the Director General of its competence, and any subsequent changes in its competence, with respect to the matters governed by this Treaty. The Organization and its member States may, without, however, any derogation from the obligations under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty.

"(2) [Adherence] A State or Intergovernmental Organization shall become party to this Treaty by:

"(i) signature followed by the deposit of an instrument of ratification, acceptance or approval, or

"(ii) the deposit of an instrument of accession."

...

"Article 16 (Entry into Force of the Treaty)

"(1) [Initial Entry Into Force] This Treaty shall enter into force, with respect to each of the first five States or Intergovernmental Organizations which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

"(2) [States and Intergovernmental Organizations Not Covered by the Initial Entry Into Force] This Treaty shall enter into force with respect to any State or Intergovernmental Organization not covered by paragraph (1) three months after the date on which that State or Intergovernmental Organization has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument; in the latter case, this Treaty shall enter into force with respect to the said State or Intergovernmental Organization on the date thus indicated."

...

3. Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on June 27, 1989

"Article 1 (Membership in the Madrid Union)

"...Any reference in this Protocol to 'Contracting Parties' shall be construed as a reference to both Contracting States and Contracting Organizations."

"Article 2 (Securing Protection through International Registration)

...

"(4) For the purposes of this Protocol, 'territory of a Contracting Party' means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies."

"Article 10 (Assembly)

"(1) (a) The Contracting Parties shall be members of the same Assembly as the countries party to the Madrid (Stockholm) Agreement.

"(b) Each Contracting Party shall be represented in that Assembly by one delegate, who may be assisted by alternate delegates, advisors, and experts.

...

"(3) (a) Each Contracting Party shall have one vote in the Assembly..."

"Article 14 (Becoming Party to the Protocol; Entry into Force)

"(1) (a) Any State that is a party to the Paris Convention for the Protection of Industrial Property may become party to this Protocol.

"(b) Furthermore, any intergovernmental organization may also become party to this Protocol where the following conditions are fulfilled:

"(i) at least one of the member States of that organization is a party to the Paris Convention for the Protection of Industrial Property;

"(ii) that organization has a regional Office for the purposes of registering marks with effect in the territory of the organization, provided that such Office is not the subject of a notification under Article 9quater.

"(2) Any State or organization referred to in paragraph (1) may sign this Protocol. Any such State or organization may, if it has signed this Protocol, deposit an instrument of ratification, acceptance or approval of this Protocol or, if it has not signed this Protocol, deposit an instrument of accession to this Protocol."

...

"(4) (a) This Protocol shall enter into force three months after four instruments of ratification, acceptance, approval or accession have been deposited, provided that at least one of those instruments has been deposited by a country party to the Madrid (Stockholm) Agreement and at least one other of those instruments has been deposited by a State not party to the Madrid (Stockholm) Agreement or by any of the organizations referred to in paragraph (1)(b).

"(b) With respect to any other State or organization referred to in paragraph (1), this Protocol shall enter into force three months after the date on which its ratification, acceptance, approval or accession has been notified by the Director General."

...

4. International Convention for the Protection of New Varieties of Plants, of December 2, 1961, as revised at Geneva on March 19, 1991 (Act of 1991)

"Article 1 (Definitions)

"For the purposes of this Act:

...

"(vii) 'Contracting Party' means a State or an intergovernmental organization party to this Convention;

"(viii) 'territory,' in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

...

"Article 4 (National Treatment)

...

"(2) ['Nationals'] For the purposes of the preceding paragraph, 'nationals' means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization."

"Article 23 (Members)

"The Contracting Parties shall be members of the Union."

"Article 26 (The Council)

"(1) [Composition] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.

...

"(6) [Votes]

"(a) Each member of the Union that is a State shall have one vote in the Council.

"(b) Any Contracting Party that is an intergovernmental organization may, in matters within its competence, exercise the rights to vote of its member States that are members of the Union. Such an intergovernmental organization shall not exercise the

rights to vote of its member States if its member States exercise their right to vote, and vice versa."

"Article 29 (Finances)

"(1) [Income] The expenses of the Union shall be met from

"(i) the annual contributions of the States members of the Union,

"(ii) payments received for services rendered,

"(iii) miscellaneous receipts."

...

"(7) [Contributions of intergovernmental organizations] Any Contracting Party which is an intergovernmental organization shall not be obliged to pay contributions. If, nevertheless, it chooses to pay contributions, the provisions of paragraphs (1) to (4) shall be applied accordingly.

"Article 34 (Ratification, Acceptance or Approval; Accession)

"(1) [States and certain intergovernmental organizations]

(a) Any State may, as provided in this Article, become party to this Convention.

"(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it

"(i) has competence, in respect of matters governed by this Convention,

"(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and

"(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention."

...

"Article 37 (Entry into Force; Closing of Earlier Acts)

"(1) [Initial entry into force] This Convention shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

"(2) [Subsequent entry into force] Any State not covered by paragraph (1) or any intergovernmental organization shall become bound by this Convention one month after

the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be."

...

5. Trademark Law Treaty, adopted at Geneva on October 27, 1994

"Article 1 (Abbreviated Expressions)

"For the purposes of this Treaty, unless expressly stated otherwise:

...

"(ix) 'Contracting Party' means any State or intergovernmental organization party to this Treaty";

"Article 19 (Becoming Party to the Treaty)

"(1) [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 20(1) and (3), become party to this Treaty:

"(i) any State member of the Organization in respect of which marks may be registered with its own Office;

"(ii) any intergovernmental organization which maintains an Office in which marks may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its member States or in those of its member States which are designated for such purpose in the relevant application, provided that all the member States of the intergovernmental organization are members of the Organization;

"(iii) any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;

"(iv) any State member of the Organization in respect of which marks may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;

"(v) any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.

"(2) [Ratification or Accession] Any entity referred to in paragraph (1) may deposit

"(i) an instrument of ratification, if it has signed this Treaty,

"(ii) an instrument of accession, if it has not signed this Treaty.

"(3) [Effective Date of Deposit]

"(a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

"(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

"(ii) in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;

"(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

"(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;

"(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

"(b) Any instrument of ratification or accession (referred to in this subparagraph as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

"(c) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

"Article 20 (Effective Date of Ratifications and Accessions)"

"(1) [Instruments to Be Taken Into Consideration] For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 19(1) and that have an effective date according to Article 19(3) shall be taken into consideration.

"(2) [Entry Into Force of the Treaty] This Treaty shall enter into force three months after five States have deposited their instruments of ratification or accession.

"(3) [Entry Into Force of Ratifications and Accessions Subsequent to the Entry Into Force of the Treaty] Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession."

6. WIPO Copyright Treaty, adopted at Geneva on December 20, 1996

"Article 15 (Assembly)

...

"(2)(b) The Assembly shall perform the function allocated to it under Article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

...

"(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

"(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

...

"Article 17 (Eligibility for Becoming Party to the Treaty)

"(1) Any Member State of WIPO may become party to this Treaty.

"(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

"(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty."

"Article 19 (Signature of the Treaty)

"This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community."

"Article 21 (Effective Date of Becoming Party to the Treaty)

"This Treaty shall bind

...

"(iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 20, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

"(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession."

"Article 24 (Languages of the Treaty)

"(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

"(2) An official text in any language other than those referred to in paragraph (i) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved."

7. WIPO Performances and Phonograms Treaty, adopted at Geneva on December 20, 1996

The relevant provisions of this Treaty are identical to those of the WIPO Copyright Treaty, above.

8. Draft Treaty Supplementing the Paris Convention for the Protection of Industrial Property as Far as Patents are Concerned (Patent Law Treaty)[37] (December 1990)

"Article 1 (Establishment of a Union)

"The States and intergovernmental organizations party to this Treaty (hereinafter called "the Contracting Parties") constitute a Union for the purposes of this Treaty."

"Article 27 (Assembly)

"(1) [Composition]

"(a) The Union shall have an Assembly consisting of the Contracting Parties.

"(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

...

"(4) [Voting]

"(a) Subject to subparagraph (e), each Contracting Party that is a State shall have one vote and shall vote only in its own name.

"(b) Any intergovernmental organization referred to in Article 33(1)(ii) that is a Contracting Party may exercise the right to vote of its member States that are Contracting Parties, [whether] present [or absent] at the time of voting. The intergovernmental organization may not, in a given vote, exercise the right to vote if any of its member States participates in the vote or expressly abstains.

"(c) Provided that all its member States that are Contracting Parties have notified the Director General that their right to vote may be exercised by it, any intergovernmental organization referred to in Article 33(1)(iii) that is a Contracting Party may so exercise the right to vote of its member States that are Contracting Parties, [whether] present [or absent] at the time of voting. The intergovernmental organization may not, in a given vote, exercise the right to vote of any of its member States if any of them participates in the vote or expressly abstains.

"(d) The right to vote of a State that is a Contracting Party may not, in a given vote, be exercised by more than one intergovernmental organization.

---

37 The text of the Draft Treaty, which is reproduced in document PLT/DC/3, is the basic proposal submitted by the Director General of WIPO in accordance with Rule 29(1) of the Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents are Concerned. The first part of that Diplomatic Conference was held in The Hague in June 1991.

"(e) No Contracting Party shall have the right to vote on questions concerning matters in respect of which it has made a declaration under Article 35."

...

"Article 33 (Becoming Party to the Treaty)

"(1) [Eligibility] The following may become party to this Treaty:

"(i) any State which is a party to the Paris Convention for the Protection of Industrial Property and in respect of which patents may be obtained either through the State's own Office or through the Office of another Contracting Party;

"(ii) any intergovernmental organization which is competent in matters governed by this Treaty and which has established, on such matters, norms that are binding on all its member States, provided that all those States are party to the Paris Convention for the Protection of Industrial Property;

"(iii) any intergovernmental organization which maintains an Office granting patents with effect in more than one State, provided that all of its member States are party to the Paris Convention for the Protection of Industrial Property."

...

"Article 34 (Entry Into Force of the Treaty)

"(1) [Entry Into Force] This Treaty shall enter into force three months after eight States or intergovernmental organizations have deposited their instruments of ratification or accession (hereinafter referred to as "instrument").

"(2) [Entities Not Covered by the Entry Into Force] Any State or intergovernmental organization not covered by paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument, unless a later date has been indicated in the instrument. In the latter case, the said State or intergovernmental organization shall become bound by this Treaty on the date thus indicated.

"Article 36 (Special Notifications)

...

"(2) [Intergovernmental Organizations Referred to in Article 33(1)(ii)]

"(a) Any intergovernmental organization referred to in Article 33(1)(ii) shall notify the list of its member States and, if its norms deal with only some of the matters covered by Articles 3 to 26, shall notify this fact and shall, among the provisions of the said Articles, identify those provisions with which its norms deal. The other provisions of the said Articles shall not bind the intergovernmental organization.

"(b) If the norms of the intergovernmental organization referred to in subparagraph (a) later deal with any matter covered by Articles 3 to 26 concerning which the intergovernmental organization has not made a notification under subparagraph (a), the intergovernmental organization shall be bound by the corresponding provisions of this Treaty and shall promptly notify the relevant changes in its norms.

"(3) [Intergovernmental Organizations Referred to in Article 33(1)(iii)]

"(a) Any intergovernmental organization referred to in Article 33(1)(iii) shall notify the list of its member States and, if its norms do not deal with any of the matters covered by Articles 19 to 26, shall notify this fact and shall, among the provisions of the said Articles, identify those provisions with which its norms do not deal. The latter provisions shall not bind the intergovernmental organization.

"(b) If the norms of the intergovernmental organization referred to in subparagraph (a) later deal with any matter concerning which the intergovernmental organization has made a notification under subparagraph (a), the intergovernmental organization shall be bound by the corresponding provisions of this Treaty and shall promptly notify the relevant changes in its norms."

9. Draft Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property (March 1997)[38]

"Article 1 (Use of Terms and Abbreviated Expressions)

"For the purposes of this Treaty, unless expressly stated otherwise:

"(i) 'Contracting Party' means a State or an intergovernmental organization that is party to this Treaty;"

...

"Article 9 (Assembly)

"(1) [Composition]

"(a) The Union shall have an Assembly consisting of the Contracting Parties.

"(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

...

[38] The text of the Draft Treaty is reproduced in document WO/GA/XXI/2, submitted for the consideration of the Twenty-First Session (September-October 1997) of the WIPO General Assembly.

"(4) [Voting]

"(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

"(b) Provided that all its member States that are Contracting Parties have notified the Director General that their right to vote may be exercised by it, any intergovernmental organization that is a Contracting Party may so exercise the right to vote of its member States that are Contracting Parties and are present at the time of voting. The intergovernmental organization may not, in a given vote, exercise the right to vote if any of its member States participates in the vote or expressly abstains.

"(c) The right to vote of a State that is a Contracting Party may not, in a given vote, be exercised by more than one intergovernmental organization."

...

"Article 14 (Becoming Party to the Treaty)

"(1) [Eligibility] The following may become party to this Treaty:

"(i) any State that is a member of the Organization and any other State member of the United Nations or of any other specialized agency brought into relationship with the United Nations;

"(ii) any intergovernmental organization that is a party to a multilateral treaty in the field of intellectual property or that, without being party to it, has accepted an obligation or obligations under such a treaty."

...

"Article 15 (Entry Into Force of the Treaty)

"(1) [Entry Into Force] This Treaty shall enter into force three months after five States or intergovernmental organizations have deposited their instruments of ratification or accession.

"(2) [Ratifications and Accessions Subsequent to the Entry Into Force of the Treaty] Any State or intergovernmental organization not covered by paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession, unless a later date has been indicated in the said instrument. In the latter case, the said State or intergovernmental organization shall become bound by this Treaty on the date thus indicated."

PART B
[Provisions in Rules of Procedure]

10. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures (Budapest, 1977)

"Rule 2: Composition

"(1) The Conference shall consist of Delegations (see Rule 4) of the States members of the International Union for the Protection of Industrial Property ('Paris Union') invited to the Conference. Only the said Delegations shall have the right to vote. They are referred to hereinafter as 'Member Delegations'.

"(2) Delegations of other States (hereinafter referred to as 'Observer Delegations') and representatives of intergovernmental and non-governmental organizations invited by the Director General of the World Intellectual Property Organization (WIPO) (hereinafter referred to as 'Observer Organizations') may participate in the Conference, as specified in these Rules of Procedure.

"(3) The term 'Delegations,' as hereinafter used, shall, unless otherwise expressly indicated, include both Member Delegations and Observer Delegations. It does not include the representatives of Observer Organizations."

...

"Rule 35: Voting Rights

"Each Member Delegation shall have one vote in each body of which it is a member. A Member Delegation may represent and vote in the name of its own Government only."

"Rule 50: Observers

"(1) Any Observer Delegation and any representative of any intergovernmental organization may, upon the invitation of the Presiding Officer, participate without the right to vote in the deliberations of the Plenary and the Main Committee."

...

11. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (Washington, D.C., May 1989)

"Rule 2: Composition

"(1) The Conference shall consist of:

"(i) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as 'the Paris Union'), the States members of the International (Berne) Union for the Protection of Literary and Artistic Works (hereinafter referred to as 'the Berne Union'), the States members of WIPO not members of the Paris Union or of the Berne Union, and the European Communities,

"(ii) delegations of the States members of the United Nations other than those referred to in item (i),

"(iii) representatives of intergovernmental and non-governmental organizations invited to the Conference.

"(2) Hereinafter, delegations referred to in paragraph (1)(i) are called 'Member Delegations,' delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' and representatives of organizations referred to in paragraph (1)(iii) are called 'representatives of Observer Organizations.' The term 'Delegations,' as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term 'Delegations' does not include the representatives of Observer Organizations.

"(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work."

"Rule 33: Right to Vote

"Each Delegation of a State member of the Paris Union, the Berne Union or WIPO shall have the right to vote. Each such Delegation shall have one vote and shall represent and vote only in the name of its State. However, the Delegations of States which are members of the European Communities may, for any given vote, not exercise their right to vote in order to enable the Delegation of the European Communities to vote with a number of votes equal to the number of member States of the European Communities participating in the Diplomatic Conference."

12. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid, June 1989)

"Rule 2: Composition

"(1) The Conference shall, subject to paragraph (3), consist of:

"(i) delegations of the States members of the Special Union for the International Registration of Marks (Madrid Union) and of the States members of the European Communities not members of the Madrid Union,

"(ii) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property other than those referred to in item (i),

"(iii) representatives of intergovernmental and non-governmental organizations invited to the Conference.

"(2) Hereinafter, delegations referred to in paragraph (1)(i) are called 'Member Delegations,' delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' and representatives of organizations referred to in paragraph (1)(iii) are called 'representatives of Observer Organizations.' The term 'Delegations,' as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term 'Delegations' does not include the representatives of Observer Organizations.

"(3) The Delegation of the European Communities shall have the status of a Member Delegation.

"(4) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work."

"Rule 33: Right to Vote

"Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, shall represent only itself and shall vote only in its own name."

13. Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (First Part: The Hague, June 1991)

"Rule 2: Composition

"(1) The Conference shall consist of:

"(i) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as 'the Paris Union'),

"(ii) delegations of the States members of the World Intellectual Property Organization (WIPO) other than those referred to in item (i),

"(iii) delegations of the European Patent Organization and the Organisation africaine de la propriété intellectuelle and

"(iv) representatives of other intergovernmental and of non-governmental organizations invited to the Conference.

"(2) Hereinafter, delegations referred to in paragraph (1)(i) are called 'Member Delegations,' delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' delegations referred to in paragraph (1)(iii) are called 'Special Delegations,' and representatives referred to in paragraph (1)(iv) are called 'representatives of Observer Organizations.' The term 'Delegations,' as hereinafter

used, shall, unless otherwise expressly indicated, include Member Delegations, Observer Delegations and Special Delegations; it shall not include the representatives of Observer Organizations.

"(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work."

"Rule 33: Right to Vote

"Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, shall represent only itself and shall vote only in its name."

"Rule 46: Special Delegations

"Special Delegations shall have the same status as Member Delegations, except that Special Delegations shall not have the right

"(i) to vote,

"(ii) to make proposals and to second proposals, or

"(iii) to have their delegates elected as officers."

14. Rules of Procedure of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants (Geneva, March 1991)

"Rule 2: Composition

"(1) The Conference shall consist of:

"(i) delegations of the member States of the International Union for the Protection of New Varieties of Plants (hereinafter referred to as 'the Union' or 'UPOV');

"(ii) delegations of States other than those referred to in (i) above, a list of which was drawn up by the Council of UPOV at its twenty-fourth ordinary session (see Annex I);

"(iii) representatives of intergovernmental and international non-governmental organizations, a list of which was drawn up by the Council of UPOV at its twenty-fourth ordinary session (see Annex II).

"(2) Hereinafter, the delegations referred to in paragraph (1)(i) are called 'Member Delegations,' the delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' and the representatives referred to in paragraph (1)(iii) are called 'representatives of Observer Organizations.' The term 'Delegations,' as used hereinafter includes, unless expressly indicated otherwise, both Member Delegations and Observer Delegations; it does not include the representatives of Observer Organizations.

"(3) The Conference may invite to any meeting any person whose technical advice it may consider useful for the work of that meeting.

"(4) The representatives of the European Communities shall have the same status as Observer Delegations."

"Rule 33: Voting Rights

"All Member Delegations shall have the right to vote. Each one of them shall have one vote, may represent itself only and may vote in its name only."

15. Rules of Procedure of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty (Geneva, October 1994)

"Rule 2: Composition

"(1) The Conference shall consist of:

"(i) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as 'the Paris Union'),

"(ii) delegations of the States members of the World Intellectual Property Organization (WIPO) other than those referred to in item (i),

"(iii) delegations of any organization described in Article 22(1)(ii) of the basic proposal,

"(iv) representatives of other intergovernmental and of non-governmental organizations invited to the Conference.

"(2) Hereinafter, the delegations referred to in paragraph (1)(i) are called 'Member Delegations,' the delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' the delegations referred to in paragraph (1)(iii) are called 'Special Delegations,' and the representatives referred to in paragraph (1)(iv) are called 'representatives of Observer Organizations.' The term 'Delegations,' as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations, Observer Delegations and Special Delegations; it shall not include the representatives of Observer Organizations.

"(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work."

"Rule 33: Right to Vote

"Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, may represent itself only and may vote in its name only."

"Rule 46: Special Delegations

"Special Delegations shall have the same status as Member Delegations, except that Special Delegations shall not have the right

"(i) to vote, or

"(ii) to be elected member of the Credentials Committee."

16. Rules of Procedure of the Diplomatic Conference On Certain Copyright and Neighboring Rights Questions (Geneva, December 1996)

"Rule 2: Composition of the Conference

"(1) The Conference shall consist of:

"(i) delegations of the States members of the World Intellectual Property Organization (hereinafter referred to as "the Member Delegations"),

"(ii) the special delegation of the European Community (hereinafter referred to as the "Special Delegation"),

"(iii) the delegations of States members of the United Nations other than the States members of the World Intellectual Property Organization invited to the Conference as observers (hereinafter referred to as "the Observer Delegations"),

"(iv) representatives of intergovernmental and non-governmental organizations invited to the Conference as observers (hereinafter referred to as "the Observer Organizations").

"(2) References in these Rules of Procedure to Member Delegations shall be considered, except as otherwise provided (see Rules 11(2), 33 and 34), as references also to the Special Delegation.

"(3) References in these Rules of Procedure to "Delegations" shall be considered as references to the three kinds (Member, Special and Observer) of Delegations but not to Observer Organizations."

"Rule 22: Procedure in Receiving the Floor

"(1) Member Delegations asking for the floor are generally given precedence over observer Delegations asking for the floor, and Member Delegations and Observer Delegations are generally given precedence over Observer Organizations.

...

"Rule 33: Right to Vote

"(1) Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, may represent itself only and may vote in its name only.

"(2) The Special Delegation has no right to vote and, for the purposes of paragraph (1) of this Rule and Rule 34, the Special Delegation is not covered by the term "Member Delegations."

"(3) The Special Delegation may, under the authority of the European Community, exercise the rights to vote of the Member States of the European Community which are represented at the Diplomatic Conference, provided that

"(i) the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if the Member States exercise their rights to vote and vice versa, and

"(ii) the number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference and that are present at and entitled to participate in the vote.

"Rule 46: Status of Observers

"(1) Observer Delegations may attend, and make oral statements in, the Plenary meetings of the Conference and the meetings of the Main Committees.

"(2) Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committees. Upon the invitation of the Presiding Officer, they may make oral statements in those meetings on questions within the scope of their activities.

"(3) Written statements submitted by Observer Delegations or by Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the written statements were made available to it."

17. Proposed Rules of Procedure of the Diplomatic Conference for the Conclusion of a Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property, as established by the Preparatory Meeting (February 1994)[39]

"Rule 2: Composition

"(1) The Conference shall consist of:

"(i) delegations of the States members of the World Intellectual Property Organization (WIPO) and the States party to any of the treaties administered by WIPO,

"(ii) delegations of the States members of the United Nations and/or of any of the specialized agencies other than those referred to in item (i),

"(iii) the delegations of the European Patent Organisation and the European Communities, as well as the delegation of any other intergovernmental organization that is eligible to become, in accordance with Article 14(1)(ii) of the basic proposal, a party to the Treaty,

"(iv) representatives of other intergovernmental and of non-governmental organizations invited to the Conference.

"(2) Hereinafter, the delegations referred to in paragraph (1)(i) are called 'Member Delegations,' the delegations referred to in paragraph (1)(ii) are called 'Observer Delegations,' the delegations referred to in paragraph (1)(iii) are called 'Special Delegations,' and the representatives referred to in paragraph (1)(iv) are called 'representatives of Observer Organizations.' The term 'Delegations,' as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations, Observer Delegations and Special Delegations; it shall not include the representatives of Observer Organizations.

"(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work."

"Rule 33: Right to Vote

"Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, may represent itself only and may vote in its name only."

---

[39] See document SD/PM/6, Annex II.

"Rule 46: Special Delegations

"Special Delegations shall have the same status as Member Delegations, except that Special Delegations shall not have the right

"(i) to vote,

"(ii) to make proposals and to second proposals,

"(iii) to have their delegates elected as officers, or

"(iv) to be elected member of the Credentials Committee."

PART III

PROVISIONS IN SELECTED TREATIES CONCERNING THE RELATIONSHIP BETWEEN DIFFERENT DISPUTE SETTLEMENT SYSTEMS

CONTENTS

1. American Treaty on Pacific Settlement (Pact of Bogota) (April 30, 1948)

2. General Act for the Pacific Settlement of International Disputes (April 28, 1949)

3. European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950)

4. European Convention for the Peaceful Settlement of Disputes (April 29, 1957)

5. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (March 18, 1965)

6. International Covenant on Civil and Political Rights (December 16, 1966)
   Optional Protocol
   Rules of Procedure of the Committee

7. Vienna Convention on the Law of Treaties (May 22, 1969)

8. American Convention on Human Rights (November 22, 1969)
Regulations of the Inter-American Commission on Human Rights

9. United Nations Convention on the Law of the Sea (December 10, 1982)

10. Canada-United States of America Free Trade Agreement (January 2, 1988)

11. Provisions for a CSCE [Conference on Security and Cooperation in Europe] Procedure for Peaceful Settlement of Disputes (February 8, 1991)

12. Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe (December 15, 1992)

13. North American Free Trade Agreement (between the Governments of Canada, Mexico and the United States of America, December 17, 1992)

14. Treaty Establishing the Common Market for Eastern and Southern Africa (November 5, 1993)

15. Marrakesh Agreement Establishing the World Trade Organization (April 15, 1994)

16. Understanding on Rules and Procedures Governing the Settlement of Disputes (included in Annex 2 to the Agreement Establishing the World Trade Organization, April 15, 1994)

17. Declarations Recognizing as Compulsory the Jurisdiction of the International Court of Justice

1. American Treaty on Pacific Settlement (Pact of Bogota) (April 30, 1948)

Article II

"The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

"Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution."

Article III

"The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided."

Article IV

"Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded."

2. General Act for the Pacific Settlement of International Disputes (April 28, 1949)

Article 29

"1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

"2. The present General Act shall not affect any agreements in force by which conciliation procedure is established between the Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present General Act concerning judicial settlement or arbitration shall be applied in so far as the parties have acceded thereto."

Article 30

"If a party brings before a Conciliation Commission a dispute which the other party, relying on conventions in force between the parties, has submitted to the

Permanent Court of International Justice or an Arbitral Tribunal, the Commission shall defer consideration of the dispute until the Court or the Arbitral Tribunal has pronounced upon the conflict of competence. The same rule shall apply if the Court or the Tribunal is seized of the case by one of the parties during the conciliation proceedings."

3. <u>European Convention for the Protection of Human Rights and Fundamental Freedoms</u> (November 4, 1950)

<u>Article 27</u>

"(1) The Commission shall not deal with any petition submitted under Article 25 which:

"(a) is anonymous, or

"(b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information."

...

4. <u>European Convention for the Peaceful Settlement of Disputes</u> (April 29, 1957)

<u>Article 28</u>

"(1) The provisions of this Convention shall not apply to disputes which the parties have agreed or may agree to submit to another procedure of peaceful settlement. Nevertheless, in respect of disputes falling within the scope of Article 1, the High Contracting Parties shall refrain from invoking as between themselves agreements which do not provide for a procedure entailing binding decisions.

"(2) This Convention shall in no way affect the application of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4th November 1950, or of the Protocol thereto signed on 20th March 1952."

<u>Article 38</u>

"(1) Disputes relating to the interpretation or application of this Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the International Court of Justice. However, an objection concerning the obligation of a High Contracting Party to submit a particular dispute to arbitration can only be submitted to the Court within a period of three months after the notification by one party to the other of its intention to resort to arbitration. Any such objection made after that period shall be decided upon by the arbitral tribunal. The decision of the Court shall be binding on the body dealing with the dispute.

"(2) Recourse to the International Court of Justice in accordance with the above provisions shall have the effect of suspending the conciliation or arbitration proceeding concerned until the decision of the Court is known."

5. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (March 18, 1965)

Article 26

"Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention."

6. International Covenant on Civil and Political Rights (December 16, 1966)

Optional Protocol

Article 5

...

"2. The Committee shall not consider any communication from an individual unless it has ascertained that:

"(a) The same matter is not being examined under another procedure of international investigation or settlement;

"(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged."

...

Rules of Procedure of the Committee

Rule 90

"1. With a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain:

...

"(e) that the same matter is not being examined under another procedure of international investigation or settlement;

..."

7. Vienna Convention on the Law of Treaties (May 22, 1969)

Article 30

"1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

"2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

"3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59[40], the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

"4. When the parties to the later treaty do not include all the parties to the earlier one:

"(a) as between States parties to both treaties the same rule applies as in paragraph 3;

"(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

"5. Paragraph 4 is without prejudice to article 41[41], or to any question of the termination or suspension of the operation of a treaty under article 60[42] or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty."

8. American Convention on Human Rights (November 22, 1969)

Article 46

"1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

...

---

[40] Article 59 concerns the termination or suspension of the operation of a treaty implied by conclusion of a later treaty

[41] Artcile 41 concerns agreements to modify multilateral treaties between certain of the parties only.

[42] Article 60 concerns the termination or suspension of the operation of a Treaty as a consequence of its breach.

"(c) that the subject of the petition or communication is not pending before another international procedure for settlement,...

..."

Article 47

"The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

"(a) any of the requirements indicated in Article 46 has not been met;

...

"(d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization."

Regulations of the Inter-American Commission on Human Rights

Article 36

"1. The Commission shall not consider a petition in cases where the subject of the petition:

"(a) is pending settlement in another procedure under an international governmental organization of which the state concerned is a member;

"(b) essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member.

"2. The Commission shall not refrain from taking up and examining a petition in cases provided for in paragraph 1 when:

"(a) the procedure followed before the other organization or agency is one limited to an examination of the general situation on human rights in the state in question and there has been no decision on specific facts that are the subject of the petition submitted to the Commission, or is one that will not lead to an effective settlement of the violation denounced;

"(b) the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the organization in reference is a third party or a nongovernmental entity having no mandate from the former."

9. United Nations Convention on the Law of the Sea (December 10, 1982)

Article 282

"If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree."

10. Canada-United States of America Free Trade Agreement (January 2, 1988)

Article 1801

"1. Except for the matters covered in Chapter Seventeen (Financial Services) and Chapter Nineteen (Binational Panel Dispute Settlement in Antidumping and Countervailing Duty Cases), the provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes regarding the interpretation or application of this Agreement or whenever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Article 2011[43], unless the Parties agree to use another procedure in any particular case.

"2. Disputes arising under both this Agreement and the General Agreement on Tariffs and Trade, and agreements negotiated thereunder (GATT), may be settled in either forum, according to the rules of that forum, at the discretion of the complaining Party.

---

43 "Article 2011 (Nullification and Impairment) reads as follows:
"1. If a Party considers that the application of any measure, whether or not such measure conflicts with the provisions of this Agreement, causes nullification or impairment of any benefit reasonably expected to accrue to that Party, directly or indirectly under the provisions of this Agreement, that Party may, with a view to the satisfactory resolution of the matter, invoke the consultation provisions of Article 1804 and, if it considers it appropriate, proceed to dispute settlement pursuant to Articles 1805 and 1807 or, with the consent of the other Party, proceed to arbitration pursuant to Article 1806.
"2. The provisions of paragraph 1 shall not apply to Chapter Nineteen and Article 2005."

"3. Once the dispute settlement provisions of this Agreement or the GATT have been initiated pursuant to Article 1805[44] or the GATT with respect to any matter, the procedure initiated shall be used to the exclusion of any other."

11. Provisions for a CSCE [Conference on Security and Cooperation in Europe] Procedure for Peaceful Settlement of disputes (February 8, 1991)

Section III

"The procedure described below will not apply if the dispute has previously been dealt with, or is being addressed, under some other procedure for the settlement of disputes, as referred to in Section VIII[45], or is covered by any other process which parties to the dispute have accepted."

12. Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe (December 15, 1992)

Article 19

"1. A Conciliation Commission or an Arbitral Tribunal constituted for a dispute shall take no further action in the case:

"(a) If, prior to being submitted to the Commission or the Tribunal, the dispute has been submitted to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept, or if such a body has already given a decision on the merits of the dispute;

"(b) If the parties to the dispute have accepted in advance the exclusive jurisdiction of a jurisdictional body other than a Tribunal in accordance with this Convention which has jurisdiction to decide, with binding force, on the dispute submitted

---

[44] Article 1805 (Initiation of Procedures) reads as follows:
"1. If the Parties fail to resolve a matter through consultations within 30 days of a request for consultations under Article 1804, either Party may request in writing a meeting of the Commission. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 days and shall endeavour to resolve the dispute promptly.
"2. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to both Parties, in an effort to reach a mutually satisfactory resolution of the dispute."

[45] Section VIII reads as follows: "The comment or advice of the Mechanism may relate to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure which it may indicate in relation to the circumstances of the dispute, or to any aspect of any such procedure."

to it, or if the parties thereto have agreed to seek to settle the dispute exclusively by other means.

“2. A Conciliation Commission constituted for a dispute shall take no further action if, even after the dispute has been submitted to it, one or all of the parties refer the dispute to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept.

“3. A Conciliation commission shall postpone examining a dispute if this dispute has been submitted to another body which has competence to formulate proposals with respect to this dispute. If those prior efforts do not lead to a settlement of the dispute, the Commission shall resume its work at the request of the parties or one of the parties to the dispute, subject to the provisions of Article 26, paragraph 1.

“4. A State may, at the time of signing, ratifying or acceding to this Convention, make a reservation in order to ensure the compatibility of the mechanism of dispute settlement that this Convention establishes with other means of dispute settlement resulting from international undertakings applicable to that State.

“5. If, at any time, the parties arrive at a settlement of their dispute, the Commission or Tribunal shall remove the dispute from its list, on receiving written confirmation from all the parties thereto that they have reached a settlement of the dispute.

“6. In the event of disagreement between the parties to the dispute with regard to the competence of the Commission or the Tribunal, the decision in the matter shall rest with the Commission or the Tribunal.”

13. North American Free Trade Agreement (between the Governments of Canada, Mexico and the United States of America, December 17, 1992)

Article 2005

“1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

“2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

“3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (Relation to Environmental and Conservation

Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

"4. In any dispute referred to in paragraph 1 that arises under Section B of Chapter Seven (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures):

(a) concerning a measure adopted or maintained by a Party to protect its human, animal or plant life or health, or to protect its environment, and

(b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

"5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007[46].

"6. Once dispute settlement procedures have been initiated under Article 2007[7] or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.

"7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXIII:2 of the *General Agreement on Tariffs and Trade 1947*, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code."

14. Treaty Establishing the Common Market for Eastern and Southern Africa (November 5, 1993)

Article 34

[46] Article 2007 (Commission - Good Offices, Conciliation and Mediation) lays down time limits within which, and the instances in which, a request may be made for convening a meeting of the Free Trade Commission and prescribes the content of the request and of the proceedings of that Commission.

"1. Any dispute concerning the interpretation or application of this Treaty or any of the matters referred to the Court pursuant to this Chapter shall not be subjected to any method of settlement other than those provided for in this Treaty.

"2. Where a dispute has been referred to the Court, the Member States shall refrain from any action which might be detrimental to the resolution of the dispute or might, aggravate the dispute."

15. Marrakesh Agreement Establishing the World Trade Organization (April 15, 1994)

Article IX

...

"2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

..."

16. Understanding on Rules and Procedures Governing the Settlement of Disputes (included in Annex 2 to the Agreement Establishing the World Trade Organization, April 15, 1994)

Article 1

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

"2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the

establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict."

17. Declarations Recognizing as Compulsory the Jurisdiction of the International Court of Justice

A number of declarations, made pursuant to Article 36(2) of the Statute of the International Court of Justice (ICJ), recognize its jurisdiction but exclude disputes that are subject to other means agreed upon by the parties. The texts of two such declarations follow:

Declaration by the United Kingdom (January 1, 1969)

"[This declaration applies to all disputes] other than:

"(i) any dispute which the United Kingdom

(a) has agreed with the other Party or Parties thereto to settle by some other method of peaceful settlement;

...

Declaration by Japan (September 15, 1958)

"This declaration does not apply to disputes which the parties thereto have agreed or shall agree to refer for final and binding decision to arbitration or judicial settlement."

[End of document]