

**PREPARATORY COMMITTEE  
FOR THE  
WORLD TRADE ORGANIZATION**

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**SUB-COMMITTEE ON INSTITUTIONAL,  
PROCEDURAL AND LEGAL MATTERS**

IMPLEMENTATION OF ARTICLE 4 OF THE AGREEMENT  
ON PRESHIPMENT INSPECTION

Background Note by the Secretariat

1. Article 4 of the Agreement on Preshipment Inspection (PSI) establishes procedures for reviewing disputes between an exporter and a PSI entity to be administered by an "independent entity". The independent entity is to be "constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters". The negotiators of the PSI Agreement agreed that, for the time-being, these two organizations would be the International Federation of Inspection Agencies (IFIA) and the International Chamber of Commerce (ICC) respectively. These two organizations have declared their agreement to carry out this responsibility.

2. The independent entity, which must be operational from the entry into force of the WTO Agreement, is responsible solely for administering the review procedures: it will be the custodian of the lists of experts available to serve on panels (one list of experts drawn up by ICC and one by IFIA, and a list of independent experts drawn up by the independent entity itself) and will carry out the various administrative tasks in connection with the review. Thus, in addition to drawing up the list of independent experts, it will:

- ascertain whether the parties to the dispute wish to have a 1-member or a 3-member panel;
- in the case of a 3-member panel, request each party to select an expert (the exporter from the list drawn up by ICC, the PSI entity from the list drawn up by IFIA);
- in all cases, appoint an independent expert, from its own list, to chair a 3-member panel, or to serve as the sole member of a one-member panel;
- implement procedures giving effect to the provisions of Article 4 relating to the speedy completion of the review (selection of panel members with regard to the location of the dispute, 8-day dead-line for communicating the panel's decision to the parties);
- carry out the necessary financial transactions (acceptance of deposits by the parties at the start of the review, financial settlement with the parties at the end of the review according to the panel's apportionment of the costs, payment of panel members);
- with respect to the lists of experts (to be up-dated annually), make them publicly available and notify them to the WTO.

The decision of an independent review panel will be binding only on the parties - exporter and PSI entity.

3. ICC and IFIA have agreed that the independent entity will be located in the offices of the ICC International Maritime Bureau (IMB) in London and that the Deputy Director of the IMB will serve as the independent entity's chairman. ICC and IFIA further envisage setting up a joint supervisory board for the independent entity, and would wish for WTO participation either as chairman of the supervisory board or in the capacity of observer. They have also agreed a budget for the first three years of operation.

4. As concerns the legal status of the independent entity, in particular its legal liabilities (e.g. in case an Article 4 review decision were not rendered within the specified eight working days), it would appear that, being established under an Agreement annexed to the WTO Agreement (see paragraph 1 above), the independent entity would enjoy the same privileges and immunities as are enjoyed by other WTO bodies by virtue of Article VIII of the WTO Agreement.

5. In summary, the following points need to be formalized between the WTO on the one hand and ICC and IFIA on the other:

- the status of ICC and IFIA under Article 4 of the PSI Agreement;
- the legal status of the independent entity.