

**PREPARATORY COMMITTEE  
FOR THE  
WORLD TRADE ORGANIZATION**

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SUB-COMMITTEE ON INSTITUTIONAL,  
PROCEDURAL AND LEGAL MATTERS

ORIGINAL: ENGLISH

RULES OF ETHICAL CONDUCT FOR  
THE SETTLEMENT OF DISPUTES

Communication from the United States

The following communication, dated 7 November 1994, has been received from the Office of the United States Trade Representative in Geneva, with the request that it be circulated to the Members of the Sub-Committee.

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In their Declaration of April 15, 1994, at Marrakesh, Ministers welcomed "the stronger and clearer legal framework they have adopted for the conduct of international trade, including a more effective and reliable dispute settlement mechanism." In order to achieve a "reliable" dispute settlement mechanism, it is essential that the integrity and impartiality of proceedings conducted under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) be maintained.

The avoidance of conflicts of interest is specifically addressed in Article 17:3 of the DSU in relation to the Appellate Body. In addition, the impartiality of the WTO Secretariat is specifically addressed in Article 27:2 of the DSU in relation to the manner in which legal advice and assistance are provided by the Secretariat to developing country Members.

In addition to these specific provisions, the operation of the DSU should be further strengthened by rules of ethical conduct adopted by the appropriate WTO body that would apply generally for the settlement of disputes. These rules would ensure that each person serving on a panel or the Appellate Body, as well as a Secretariat official serving such persons, avoid impropriety and the appearance of impropriety and observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

The United States submits the attached draft rules of ethical conduct<sup>1</sup> for the consideration of the Subcommittee on Institutional, Procedural and Legal Matters. The rules are self-explanatory, but certain basic elements should be noted:

- 1) The rules are designed to ensure strict adherence to the rules and procedures that were negotiated in the Uruguay Round and codified in the DSU. They would in no way modify the basic rights and obligations of Members with respect to dispute settlement under the WTO.
- 2) The rules provide for disclosure to the WTO Members involved in a dispute by panelists, the Appellate Body or Secretariat officials of pertinent information before dispute settlement

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<sup>1</sup>See Annex 1.

proceedings are underway so that potential conflicts of interest can be avoided. Draft disclosure statements to be used for this purpose have been attached.

- 3) Panelists, Appellate Body members and Secretariat officials would be required to take care in the performance of their duties during dispute settlement proceedings to adhere to the rules of ethical conduct in order to maintain their independence and avoid creation of potential conflicts of interest. The WTO Members would provide (by means of a separate decision, a draft of which is attached)<sup>2</sup> for the disqualification of any panelist, Appellate Body member or Secretariat official committing a material violation of the rules.

The United States plans to introduce the attached draft rules of ethical conduct and accompanying documents for consideration by the Subcommittee at its meeting scheduled for November 11, 1994. The United States further proposes that these rules be approved by the Subcommittee for inclusion among the recommendations of the WTO Preparatory Committee to the WTO bodies.

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<sup>2</sup>See Annex 2.

## ANNEX 1

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

#### *I. Preamble*

##### **Members:**

Affirming the importance of maintaining the integrity and impartiality of proceedings conducted pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to achieve confidence in the dispute settlement system,

Hereby establish the following rules of ethical conduct.

#### *II. General Principle*

The governing principle of these rules is that each person serving on a panel or the Appellate Body (hereinafter panelist) shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

This principle is to be observed by means of: (1) a duty to disclose the existence of any interest, relationship or matter that is likely to affect that person's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias; (2) care in the performance of duties to maintain independence and avoid creation of an appearance of impropriety or an apprehension of bias, and (3) adherence to the provisions of the DSU.

An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that the affected person's ability to carry out his or her duties with integrity, impartiality and competence is impaired.

Disclosure obligations should not be interpreted so that the burden of detailed disclosure makes it impractical for otherwise qualified persons to serve, thereby depriving the Members of the services of those persons who might be best qualified to serve on panels, the Appellate Body, or in other dispute settlement roles. Thus, potential panelists should not be called upon to disclose interests, relationships or matters whose bearing on their role in the proceeding would be trivial.

#### *III. Independence and Impartiality*

##### **A. A panelist shall:**

- (1) be independent and impartial,
- (2) avoid creating an appearance of impropriety or an apprehension of bias,

(3) avoid any relationship, or acquiring any financial interest, that is likely to affect the panelist's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias; and

(4) consider only those issues raised in the proceeding and necessary to fulfill that person's mandate and shall not delegate the duty to fulfill this mandate to any other person.

B. A panelist shall not:

(1) be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Member or fear of criticism,

(2) allow past or existing financial, business, professional, family or social relationships or responsibilities to influence that person's conduct or judgment,

(3) directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of that person's dispute settlement duties, or

(4) use the dispute settlement position to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence that person.

#### IV. *Specific Disclosure Requirements*

A. A person requested to serve as a panelist shall disclose to the Registrar for consideration by the parties to the dispute any interest, relationship or matter that is likely to affect that person's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, such persons shall make all reasonable efforts to become aware of any such interests, relationships and matters. They shall disclose such interests, relationships and matters by completing a Disclosure Statement provided by the Dispute Settlement Registrar and sending it to the Registrar, and shall provide an up to date and complete *curriculum vitae* prior to final selection as a panelist.

B. A person requested to serve as a panelist shall, after reviewing the request for the establishment of a panel, and in the case of the Appellate Body the factual portion of the panel's report, shall disclose the following information as well as any other information pertinent to paragraph A:

(1) any financial, business or professional interest in:

(a) the proceeding in which the person has been requested to serve or its outcome,

(b) another proceeding under the Agreement Establishing the World Trade Organization involving issues that may be decided or the subject matter of the proceeding in which the person has been requested to serve, and

(c) any domestic court or administrative proceeding involving the issues that may be decided or the subject matter of the proceeding in which the person has been requested to serve; and

(2) any financial, business or professional interest of the person's employer (if the employer is other than a government), business associate or immediate family member in:

(a) the proceeding in which the person has been requested to serve or its outcome,

(b) another proceeding under the Agreement Establishing the World Trade Organization involving issues that may be decided or the subject matter of the proceeding in which the person has been requested to serve, and

(c) any domestic court or administrative proceeding involving the issues that may be decided or the subject matter of the proceeding in which the person has been requested to serve.

C. Each panelist shall have a continuing duty to make all reasonable efforts to become aware of any interests, relationships or matters referred to in sections A and B and shall disclose them. The panelist shall disclose such interests, relationships and matters by communicating them in writing to the Registrar for consideration by the parties to the dispute.

#### V. *Confidentiality*

A. A panelist shall not:

(1) at any time disclose or use any information identified as confidential or government-sensitive concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding, or

(2) in any case, disclose or use any such information to gain personal advantage or advantage for others.

B. A panelist shall not:

(1) engage in *ex parte* contacts concerning the proceeding, or

(2) make any public statements specifically addressing a proceeding or the issues in dispute in which that person is participating, until the DSB decides whether to adopt the report in the proceeding, or

(3) disclose the contents of a panel report or an Appellate Body report, as the case may be, prior to its issuance.

#### VI. *Application to Other Persons*

A. These Rules shall also apply to persons serving as arbitrators pursuant to Articles 21.3(c) or 22.6 of the DSU, providing information or technical advice under Article 13.2 of the DSU, or providing administrative or legal support under Article 17.7 of the DSU. They shall also apply to Secretariat officers designated to assist in a panel proceeding.

B. The disclosure statement made under Section IV above by a Secretariat officer designated to assist in a panel proceeding shall include his or her involvement in any past disputes involving the same or similar subject matter. A Secretariat official who has provided advice to a Member concerning the measures at issue in a dispute may not participate in the panel proceeding.

VII. *Procedures Concerning Disqualification*

Any communication on matters covered by these Rules from persons other than those required to disclose information under these rules and determinations of whether a panelist or other person should be disqualified from further participation in the dispute settlement proceeding shall conform to the Decision of the WTO General Council with respect to procedures concerning Rules of Ethical Conduct in proceedings conducted pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes.

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DISCLOSURE STATEMENT  
FOR PROSPECTIVE PANELISTS

1. I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Ethical Conduct for the DSU (Rules). I am aware of my duties while serving as a panelist to avoid impropriety and the appearance of impropriety and to observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

2. I have read the request for the establishment of a panel with reference to the dispute at issue, and have made all reasonable efforts to determine whether I have any interest, relationship or matter that is likely to affect my independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. I have disclosed any such interest, relationship or matter in the attachment to this Statement, and have provided an up-to-date *curriculum vitae*.

I am aware that an appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that my ability to carry out my duties as a panelist with integrity, impartiality and competence is impaired.

In particular, I have disclosed in the attachment to this Statement any financial, business or professional interest of mine or my employer (if my employer is other than a government), business associates, or my immediate family members in:

(a) the proceeding in which I have been requested to serve or its outcome,

(b) another proceeding under the Agreement Establishing the World Trade Organization involving issues that may be decided or the subject matter of the proceeding in which I have been requested to serve, and

(c) any domestic court or administrative proceeding involving the issues that may be decided or the subject matter of the proceeding in which I have been requested to serve.

3. I recognize that, during the proceeding, I have a continuing duty to make all reasonable efforts to become aware of any interests, relationships or matters referred to in the preceding paragraph, and to disclose them by communicating them in writing to the Registrar for consideration by the parties to the dispute.

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Signature

\_\_\_\_\_  
Name (Typed)

\_\_\_\_\_  
Date

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Date

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Registrar

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DISCLOSURE STATEMENT  
FOR APPELLATE BODY MEMBERS

1. I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Ethical Conduct for the DSU (Rules). I am aware of my duties while serving on the Appellate Body to avoid impropriety and the appearance of impropriety and to observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved.

2. I have read the factual portion of the panel's report and have made all reasonable efforts to determine whether I have any interest, relationship or matter that is likely to affect my independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. I have disclosed any such interest, relationship or matter in the attachment to this Statement, and have provided an up-to-date *curriculum vitae*.

I am aware that an appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that my ability to carry out my duties as an Appellate Body member with integrity, impartiality and competence is impaired.

In particular, I have disclosed in the attachment to this Statement any financial, business or professional interest of mine or my employer, business associates, or my immediate family members in:

(a) the proceeding in which I have been requested to serve or its outcome,

(b) another proceeding under the Agreement Establishing the World Trade Organization involving issues that may be decided or the subject matter of the proceeding in which I have been requested to serve, and

(c) any domestic court or administrative proceeding involving the issues that may be decided or the subject matter of the proceeding in which I have been requested to serve.

3. I recognize that, during the proceeding, I have a continuing duty to make all reasonable efforts to become aware of any interests, relationships or matters referred to in the preceding paragraph, and to disclose them by communicating them in writing to the Registrar for consideration by the parties to the dispute.

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Signature

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Name (Typed)

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Date

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Registrar

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DISCLOSURE STATEMENT  
FOR SECRETARIAT OFFICERS

1. I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Ethical Conduct for the DSU (Rules). I am aware of my duties while assisting the panel to avoid impropriety and the appearance of impropriety and to observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

2. I have read the request for the establishment of a panel with reference to the dispute at issue, and have made all reasonable efforts to determine whether I have any interest, relationship or matter that is likely to affect my independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. I have disclosed any such interest, relationship or matter in the attachment to this Statement, and have provided an up-to-date *curriculum vitae*.

I am aware that an appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that my ability to carry out my duties assisting the panel with integrity, impartiality and competence is impaired.

In particular, I have disclosed in the attachment to this Statement any financial, business or professional interest of mine or my immediate family members in:

(a) the proceeding in which I have been requested to serve or its outcome,

(b) another proceeding under the Agreement Establishing the World Trade Organization involving issues that may be decided or the subject matter of the proceeding in which I have been requested to serve, and

(c) any domestic court or administrative proceeding involving the issues that may be decided or the subject matter of the proceeding in which I have been requested to serve.

3. I recognize that, during the proceeding, I have a continuing duty to make all reasonable efforts to become aware of any interests, relationships or matters referred to in the preceding paragraph, and to disclose them by communicating them in writing to the Registrar for consideration by the parties to the dispute.

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Signature

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Date

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Registrar

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ANNEX 2**DRAFT DECISION WITH RESPECT TO THE RULES OF ETHICAL CONDUCT IN PROCEEDINGS CONDUCTED PURSUANT TO THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES**

1. Any Member, or any person involved in a proceeding conducted pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes, possessing information suggesting the possibility of a violation of the Rules of Ethical Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes shall promptly provide the Chairman of the Dispute Settlement Body (DSB) with the information on a confidential basis.
2. Upon receipt of information under paragraph 1, the Chairman of the DSB shall provide the information to, and shall consult with, the parties to the dispute, the person who is the subject of the information, and as the case may be, panelists, the persons serving on the Appellate Body hearing the appeal, or the arbitrator appointed pursuant to Article 21.3(c) or 22.6 of the Understanding. If the subject of the information is an employee of the Secretariat, the DSB Chairman shall also notify the Director-General.
3. The parties to the dispute shall consult, and if they agree that a material violation of the rules has occurred, the person who is the subject of the information shall be disqualified from further consideration of the dispute.
4. If the parties to the dispute do not agree, the matter shall be referred to the Director-General, and the person who is the subject of the information shall be disqualified from further consideration of the dispute, unless the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, decides that no material violation of the rules has occurred.
5. All persons and Members concerned shall endeavor to resolve matters involving possible violations of the rules as expeditiously as possible so as not to delay completion of proceedings under the DSU.
6. Except to the extent otherwise necessary to carry out this decision, all information concerning possible and actual violations of the rules shall be kept confidential.