

1 ARTICLE 14.....	1
1.1 Text of Article 14	1
1.2 Article 14.1: confidentiality of deliberations	1
1.3 Article 14.3: individual opinions	2
1.3.1 Table of individual opinions in panel reports	2

1 ARTICLE 14

1.1 Text of Article 14

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.

1.2 Article 14.1: confidentiality of deliberations

1. In *Brazil – Aircraft (Article 21.5 – Canada II)*, Brazil argued that Canada acted inconsistently with Article 14 of the DSU by sharing a copy of Brazil's oral statement with certain private parties. The Panel rejected Brazil's objection for various reasons, and noted that "[c]ontrary to Brazil, we do not think that Article 14 of the DSU is relevant to the issue before us. Article 14 focuses on panels and their obligations in respect of confidentiality; it does not address itself to the obligations of the parties in respect of confidentiality."¹

2. In *US/Canada – Continued Suspension*, the Panel opened its hearings to the public at the request of the disputing parties. In the course of reviewing the provisions of the DSU pertaining to confidentiality, the Panel made the following observations on Article 14.1, and in particular the term "deliberations":

"Regarding the requirement in Article 14.1 of the DSU that '[p]anel deliberations shall be confidential', the Panel first notes that one of the ordinary meanings of the word 'deliberations' is 'careful consideration, weighing up with a view to decision'. The term 'deliberations' also applies to '[c]onsideration and discussion of a question by a legislative assembly, a committee, etc.; debate'. However, the Panel is not of the view that a panel hearing is similar to a consideration by a legislative body or a committee. Even though exchanges of points of view take place in both instances, the nature of the exchange of arguments by parties to a dispute before an adjudicating body remains different from that of an assembly or a committee. This suggests that the term 'deliberation' was not intended to cover the exchange of arguments between the parties, but rather the internal discussion of the Panel with a view to reach its conclusions. We note that our interpretation of the term 'deliberation' conforms to the use of that term in the statutes of other international judicial bodies.² It is also

¹ Panel Report, *Canada – Aircraft (Article 21.5 – Canada II)*, fn 13.

² (*footnote original*) Article 46 of the Statute of International Court of Justice provides that "[t]he hearing in Court shall be public, unless the Court decides otherwise, or unless the parties demand that the public be not admitted". Article 54.3 of the Statute provides that "[t]he deliberations of the Court shall take place in private and remain secret ...". Article 26 of the Statute of the International Tribunal for the Law of the Sea provides that "[t]he hearing shall be public, unless the Tribunal decides otherwise, or unless the parties demand that the public be not admitted". Article 42 of the Rules of the Tribunal provides that "[t]he deliberations of the Tribunal shall take place in private and remain secret ..." Article 20 of the Statute of the International Criminal Tribunal for Former Yugoslavia provides that "[t]he hearing in Court shall be public,

confirmed by the context of Article 14.1. Article 14 deals with confidentiality in the work of panels *stricto sensu* (deliberations, drafting of the panel report, opinions of panelists), whereas the provisions dealing with the conduct of the proceedings with the parties are contained in Article 12. The Panel therefore concludes that Article 14.1 of the DSU does not apply to panel hearings and that opening the Panel's substantive meetings with the parties to public observation does not breach that provision."³

1.3 Article 14.3: individual opinions

1.3.1 Table of individual opinions in panel reports

3. The following table provides information on individual opinions in panel reports. For information on individual opinions in Appellate Body Reports and Article 22.6 arbitrations, see the Sections on Articles 17.11 and Article 22.6 of the DSU.

Reference	Description	Issue
Panel Report, <i>EC – Poultry</i> , paras. 289-292	Opinion by a member of the Panel	Whether a CIF import price includes customs duties under Article 5.1(b) of the Agreement on Agriculture
Panel Report, <i>US – Certain EC Products</i> , paras. 6.60-6.61	One panelist's view	Whether a bonding requirement was to be considered as a "restriction" contrary to Article XI of the GATT 1994 or as a duty or charge under Article II of the GATT 1994, and whether Article XX(d) of the GATT 1994 may also include measures taken to comply with WTO law
Panel Report, <i>US – Carbon Steel</i> , paras. 10.1-10.15	Dissenting opinion	Whether the <i>de minimis</i> standard applies to sunset reviews under Article 21.3 of the SCM Agreement
Panel Report, <i>EC – Tariff Preferences</i> , paras. 9.1-9-21	Dissenting opinion	Whether the Enabling Clause is an exception to Article I of the GATT 1994
Panel Report, <i>US – Softwood Lumber V</i> , paras. 9.1-9.24	Dissenting opinion	Whether model zeroing is prohibited in original investigations under the Anti-Dumping Agreement
Panel Report, <i>US – Zeroing (EC)</i> , para. 7.285	Additional observations	Whether zeroing in administrative reviews is consistent with the Anti-Dumping Agreement
Panel Report, <i>US – Zeroing (EC)</i> , paras. 9.1-9.62	Dissenting opinion	Whether zeroing is permissible in assessment proceedings under Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement
Panel Report, <i>US – Continued Zeroing</i> , paras. 9.1-9.10	Separate opinion	Whether model zeroing is permissible under the AD Agreement
Panel Report, <i>US – Orange Juice (Brazil)</i> , para. 7.143	One panelist's view	Relationship between the "fair comparison" requirement under the first sentence of Article 2.4 of the Anti-

unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence". Rule 78 of its Rules of Procedure and Evidence provides: "[a]ll proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided." Rule 29 provides that "[t]he deliberations of the Chambers shall take place in private and remain secret."

³ Panel Reports, *US – Continued Suspension*, para. 7.49, *Canada – Continued Suspension*, para. 7.47.

Reference	Description	Issue
		Dumping to the last sentence of Article 2.4
Panel Report, <i>US – Tuna II (Mexico)</i> , paras. 7.146-7.188	Separate opinion	Whether the measure at issue is a "technical regulation", as opposed to a "standard", within the meaning of Annex 1.1 of the TBT Agreement
Panel Report, <i>Canada – Renewable Energy / Feed-In Tariff Program</i> , paras. 9.1-9.23	Dissenting opinion	Whether complainants demonstrated that financial contribution conferred a "benefit" within the meaning of Article 1.1(b) of the SCM Agreement
Preliminary ruling (WT/DS437/4), <i>US – Countervailing Measures (China)</i> , paras. 6.1-6.18	Dissenting opinion	Whether the panel request complied with requirements of Article 6.2 of the DSU
Panel Report, <i>US – Countervailing and Anti-Dumping Measures (China)</i> , paras. 7.212-7.241	Dissenting opinion	Whether the law at issue was a measure "effecting an advance" in a rate of duty or imposing a "new or more burdensome requirement" within the meaning of Article X:2 of the GATT 1994
Panel Reports, <i>China – Rare Earths</i> , paras. 7.118-7.138	Dissenting opinion	Whether the general exceptions in Article XX of the GATT 1994 are available to justify a breach of the obligation in Paragraph 11.3 of China's Accession Protocol
Panel Report, <i>US – Tuna II (Mexico) (Article 21.5 – Mexico)</i> , paras. 7.264-7.283, 7.606-7.607	Separate opinion	Whether the different certification requirements at issue were inconsistent with Article 2.1 of the TBT Agreement and/or the chapeau of Article XX of the GATT 1994
Panel Reports, <i>Brazil – Taxation</i> , paras. 7.1123-7.1131	Separate opinion	Whether notification obligation in paragraph 4(a) of the Enabling Clause was satisfied
Panel Report, <i>Indonesia – Chicken</i> , paras. 7.690-7.707	Separate opinion	Whether the panel had jurisdiction over measures amended in the course of the proceeding
Panel Report, <i>US – OCTG (Korea)</i> , Annex E-1, fn 2	Disagreement with two sentences of a paragraph	Whether all of the reasons for rejecting a request for a partial open hearing were valid