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1.1 Text of Article 4

Article 4

Independent Review Procedures

Members shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of paragraph 21 of Article 2, either party may refer the dispute to independent review. Members shall take such reasonable measures as may be available to them to ensure that the following procedures are established and maintained to this end:

- (a) these procedures shall be administered by an independent entity constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters for the purposes of this Agreement;
- (b) the independent entity referred to in subparagraph (a) shall establish a list of experts as follows:
 - (i) a section of members nominated by an organization representing preshipment inspection entities;
 - (ii) a section of members nominated by an organization representing exporters;
 - (iii) a section of independent trade experts, nominated by the independent entity referred to in subparagraph (a).

The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously. This list shall be drawn up within two months of the entry into force of the WTO Agreement and shall be updated annually. The list shall be publicly available. It shall be notified to the Secretariat and circulated to all Members;

- (c) an exporter or preshipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in subparagraph (a) and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the above list by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the above list by the independent entity referred to in subparagraph (a). No objections shall be made to any independent trade expert drawn from section (iii) of the above list;
- (d) the independent trade expert drawn from section (iii) of the above list shall serve as the chairman of the panel. The independent trade expert shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to

meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

- (e) if the parties to the dispute so agree, one independent trade expert could be selected from section (iii) of the above list by the independent entity referred to in subparagraph (a) to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;
- (f) the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this Agreement. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;
- (g) decisions by a three-member panel shall be taken by majority vote. The decision on the dispute shall be rendered within eight working days of the request for independent review and be communicated to the parties to the dispute. This time-limit could be extended upon agreement by the parties to the dispute. The panel or independent trade expert shall apportion the costs, based on the merits of the case;
- (h) the decision of the panel shall be binding upon the preshipment inspection entity and the exporter which are parties to the dispute.

1.2 General

1. A 1994 Secretariat Note on the implementation of Article 4 of the Agreement on Preshipment Inspection (PSI Agreement) explains that the negotiators of the PSI Agreement had agreed on the two organizations who had yet to be identified in Article 4(a) of the PSI Agreement. For the time being, the negotiators had agreed that the two organizations would be the International Federation of Inspection Agencies (IFIA)¹, representing preshipment inspection entities, and the International Chamber of Commerce (ICC), representing exporters. The Note also explains that these organizations agreed in 1994 to jointly constitute the Independent Entity (IE).²

2. To ensure that the IE, including its panels, would benefit from immunities for the independent exercise of its functions (in particular, protection against legal suit by the parties to a review or by third parties), the following was decided: the IE would be established as a subsidiary body of the Council on Trade in Goods, the IE would be located in Geneva and staffed by WTO Secretariat staff, IE panellists would be WTO officials for this purpose, that there would be an agreement between the WTO, the ICC and IFIA confirming the respective roles of each and defining their functions.³ Accordingly, in its meeting of 13 and 15 December 1995, the General Council adopted a Decision establishing the IE as a subsidiary body of the Council for Trade in Goods.⁴ The annexes to this Decision included an Agreement between the WTO, the ICC and the IFIA. Pursuant to the Agreement, the ICC and the IFIA did the following: they agreed to establish the IE and entrusted the WTO with the task of setting it up and determining its rules of procedure (Annex I); they agreed on provisions on the structure and functions of the IE, including its management and operational procedures (Annex II); and they agreed on the rules of procedure for the operation of independent reviews under Article 4 of the PSI Agreement (Annex III).

¹ As noted in the Analytical Index file for Article 9 of the PSI Agreement, the association known as the Independent Federation of Inspection Agencies (IFIA) changed its name to the Testing, Inspection, and Certification Council (TIC Council) in 2019.

² [PC/IPL/W/8](#), "Implementation of Article 4 of the Agreement on Preshipment Inspection – Background Note by the Secretariat", 4 October 1994. See also [PC/IPL/M/6](#), para. 60; [G/C/M/1](#), para. 3.3.

³ [G/PSI/W/1](#), "Legal Status of the Independent Entity under Article 4 of the Agreement on Preshipment Inspection", 20 July 1995.

⁴ [WT/GC/M/9](#), section 1(f); [WT/L/125/Rev.1](#).

3. On 26 April 1996, the IE announced that it would commence operations as from 1 May 1996.⁵ On 28 March 1996, the IE issued the list of experts for panels provided for in Article 4(b) of the PSI Agreement.⁶ The IE has submitted reports to the Council for Trade in Goods on an annual basis.⁷

4. In 1999, the final report of the Working Party on Preshipment Inspection (PSI Working Party) noted that exporters had been reluctant to use the IE. The ICC suggested that this could be because the Agreement had reduced sources of disputes between inspection agencies and exporters, because exporters were reluctant to confront the PSI companies, or because of the cost of IE proceedings. The IFIA suggested that PSI companies and exporters had settled problems bilaterally.⁸

5. Two panels have been established under the IE, in 2005 and 2006. Both involved disputes brought by Alcatel CIT against the Société Générale de Surveillance – SGS Holding France ("SGS"), concerning preshipment review conducted by SGS in connection with a tender for mobile telephony equipment in Mauritania. The 2005 proceedings were concluded in 31 days, with an amicable settlement between the parties.⁹ The 2006 dispute, based on a separate verification certificate issued by SGS, concerned Alcatel's claim that the price of certain services should not be included in the customs value of the goods concerned. The panel applied provisions of the Agreement on Customs Valuation and guidance from the Technical Committee on Customs Valuation to the facts at issue. The panel completed its proceedings in 39 days.¹⁰ In both instances, the costs of the procedure were divided between the parties.

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⁵ [G/PSI/IE/2](#).

⁶ [G/PSI/IE/1](#) (updated once, on 26 April 1997, [G/PSI/IE/1/Rev.1](#)).

⁷ Reports of the Independent Entity: [G/L/120](#) for 1996; [G/L/208](#) for 1997; [G/L/269](#) for 1998; [G/L/330](#) for 1999, [G/L/410](#) for 2000, [G/L/489](#) for 2001, [G/L/757](#) for 2005, [G/L/802](#) for 2006, [G/L/841](#) for 2007, [G/L/864](#) for 2008; [G/L/908](#) for 2009; [G/L/945](#) for 2010; [G/L/976](#) for 2011; [G/L/1015](#) for 2012; [G/L/1042](#) for 2013; [G/L/1083](#) for 2014; [G/L/1136](#) for 2015; [G/L/1161](#) for 2016; [G/L/1236](#) for 2017; [G/L/1274](#) for 2018; [G/L/1330](#) for 2019; [G/L/1373](#) for 2020; and [G/L/1411](#) for 2021.

⁸ [G/L/300](#), para. 9.

⁹ [G/PSI/IE/R/1](#), "Independent Review Procedure (PSI/IE/2005/1) – Decision of the Panel", 2 November 2005.

¹⁰ [G/PSI/IE/R/2](#), "Independent Review Procedure (PSI/IE/2006/1) – Decision of the Panel", 14 November 2006.