1 ARTICLE 4

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
dentity and the exporter which are parties to the dispute.

1.2 General

1. A 1994 Secretariat Note on implementation of Article 4 of the PSI Agreement records that
the negotiators of the PSI Agreement agreed that for the time being, the two organizations
referred to in Article 4(a) would be the International Federation of Inspection Agencies (IFIA),
representing preshipment inspection entities, and the International Chamber of Commerce (ICC),
representing exporters, and that these organizations agreed in 1994 to jointly constitute the
Independent Entity (IE).¹

2. In order to ensure that the IE, including its panels, benefits 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), it was decided that the IE would be established as a subsidiary body of
the Council on Trade in Goods, that the IE would be located in Geneva and staffed by
WTO Secretariat staff, that IE panelists would be WTO officials for this purpose, and that there
would be an agreement between the WTO, the ICC and IFIA confirming the respective roles of
each and defining their functions.² 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.³ The annexes to this Decision included an Agreement between the WTO, the ICC
and the IFIA by which the ICC and the IFIA agreed to establish the IE, and entrusted the WTO with
the task of setting it up and determining its rules of procedure (Annex I); agreed provisions on the
structure and functions of the IE, including its management and operational procedures
(Annex II); and the rules of procedure for the operation of independent reviews under Article 4 of
the PSI Agreement (Annex III).

3. On 26 April 1996, the Independent Entity announced that it would commence operations as
from 1 May 1996.⁴ On 28 March 1996, the IE issued the list of experts for panels provided for in
Article 4(b).⁵ The IE has submitted reports to the Council for Trade in Goods on an annual basis.⁶

¹ 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 and G/C/M/1, para. 3.3.
² WT/G/PSI/W/1, “Legal Status of the Independent Entity under Article 4 of the Agreement on Preshipment
³ WT/G/PSI/W/1/Rev.1, “Legal Status of the Independent Entity under Article 4 of the Agreement on Preshipment
⁴ WT/L/125/Rev.1.
⁵ G/PSI/IE/1.
⁶ G/PSI/IE/1 (updated once, on 26 April 1997, G/PSI/IE/1/Rev.1).
4. In 1999, the final report of the 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, or because of exporters' reluctance to confront the PSI companies, or because of the cost of IE proceedings. IFIA suggested that PSI companies and exporters had settled problems between them.⁷

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.⁸ 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; it completed its proceedings in 39 days.⁹ In both instances, the costs of the procedure were divided between the parties.

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⁷ G/L/300, para. 9.
