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Article 14

Consultation and Dispute Settlement

14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

14.2 At the request of a party to a dispute, or at its own initiative, a Panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.

14.3 Technical expert groups shall be governed by the procedures of Annex 2.

14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

ANNEX 2

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the Panel's authority. Their terms of reference and detailed working procedures shall be decided by the Panel, and they shall report to the Panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the Panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on a technical expert group. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by a technical expert group for such information as the technical expert group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided

to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the Panel.

1.2 Article 14.2: Technical Expert Groups

1. In *EC – Asbestos*, the Panel, having determined that the case raised scientific or technical issues, decided to consult experts on an individual basis, rather than in the form of a technical expert group, as foreseen in Article 14 and Annex 2 of the TBT Agreement. In response to an argument by the European Communities that expert consultations under the TBT Agreement should be conducted in the form of technical expert groups, the Panel observed:

"Article 14:2 of the TBT Agreement is among the provisions mentioned in Appendix 2 to the DSU and which, under Article 1:2 of that Understanding, will prevail over the provisions of the Understanding to the extent that there is a difference between the two. The Panel notes, however, that it is only 'to the extent that there is a difference' between the rules and procedures of the Understanding and a special or additional rule or procedure in Appendix 2 to the DSU that the latter will prevail. Yet, as stated by the Appellate Body, it is only where the provisions of the DSU and the special or additional rules of Appendix 2 cannot be read as complementing each other that the special or additional provisions will prevail over those of the DSU, that is, in a situation where the two provisions would be mutually incompatible.¹ In the present case, Article 14:2 of the TBT Agreement provides that a Panel 'may' establish a technical expert group. Like Article 13:2 of the DSU, this text envisages the possibility of establishing a technical expert group and lays down the procedures that would be applicable in the event. Nevertheless, it does not exclusively prescribe the establishment of a technical expert group, and this possibility, in our opinion, is not incompatible with the general authorization given under Article 13 of the DSU to consult with individual experts. The two provisions can be read as complementing each other.

The Panel believes that in this case the consultation of experts on an individual basis is the more appropriate form of consultation, inasmuch as it is the one that will better enable the Panel usefully to gather opinions and information on the scientific or technical issues raised by this dispute. Considering in particular the range of areas of competence that might be required, it is appropriate in this case to gather information and different individual opinions rather than asking for a collective report on the various scientific or technical matters in question. In the light of the foregoing, the Panel wishes to underline that its decision to consult experts on an individual basis is without prejudice to the applicability of the TBT Agreement to the measure in question, on which the parties disagree."²

2. In *EC – Approval and Marketing of Biotech Products*, the Panel decided to consult with individual scientific experts to obtain their advice on certain scientific and/or technical issues raised by the Parties' submissions and for which the Panel might benefit from expert advice.³

Current as of: December 2022

¹ (footnote original) Appellate Body Report on *Guatemala – Cement*, paras. 65-66.

² Panel Report, *EC – Asbestos*, paras. 5.18-5.19.

³ Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.18.