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1 ARTICLE 1

1.1 Text of Article 1

Article 1

General Provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

1.2 Article 1.1

1. In *EC – Approval and Marketing of Biotech Products*, the panel referred to Article 1.1 of the TBT Agreement in the context of interpreting the term "additives" in Annex A(1)(b) of the SPS Agreement. The panel stated that "[h]ad the drafters of the *SPS Agreement* intended for terms like "additives" to have the meaning given to them by definitions contained in relevant international standards, etc., we think Annex A(1) would have made this clear", and noted that "[w]e find instructive in this regard the provisions of Article 1.1 of the *TBT Agreement*".¹

2. In *US - Tuna II (Mexico)*, the Panel provided an overview of Article 1.1 and the definitions contained in Annex 1:

"Article 1.1 of the TBT Agreement provides that '[g]eneral terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object

¹ Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.300 and fn 449.

and purpose of this Agreement.' In addition, Annex 1 of the TBT Agreement, entitled 'Terms and their definitions for the purpose of this Agreement', provides that:

"The terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities, shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide taking into account that services are excluded from the coverage of this Agreement.'

Annex 1 also provides specific definitions for the terms: 'technical regulation', 'standard', 'conformity assessment procedures', 'international body or system', 'regional body or system', 'central government body', 'local government body' and 'non-governmental body'. As expressed by the Appellate Body in *EC – Sardines*: '[A]ccording to the Chapeau [of Annex 1], the terms defined in Annex 1 apply for the purposes of the TBT Agreement only if their definitions depart from those in the ISO/IEC Guide 2: 1991 (the 'ISO/IEC Guide'). This is underscored by the word "however"²³

1.3 Article 1.2

3. On the definition of "technical regulation", see the Section on Annex 1.1 of the TBT Agreement. On the definition of "standard", see the Section on Annex 1.2.

1.4 Article 1.4

4. In *EC – Trademarks and Geographical Indications (Australia)*, the European Communities argued that a particular measure relating to marks of origin could not be subject to Article 2.1 of the TBT Agreement due to the terms of Article IX of GATT 1994 on marks of origin. The panel considered it unnecessary to reach a "definitive" view on this argument, but noted that "Article 1.4 and 1.5 specifically exclude certain purchasing specifications addressed in the Agreement on Government Procurement and sanitary and phytosanitary measures as defined in the SPS Agreement, but there is no express exclusion for marks of origin".⁴

1.5 Article 1.5

5. The Panel in *EC – Hormones* referred to Article 1.5 of the TBT Agreement and stated: "[s]ince the measures in dispute are sanitary measures, we find that the TBT Agreement is not applicable to this dispute."⁵

6. In *EC – Approval and Marketing of Biotech Products*, Canada and Argentina made alternative claims under the TBT Agreement, including Article 2.2, in the event that the measures were found to be covered by the TBT Agreement in addition to, or instead of, the SPS Agreement. The panel found that the measures at issue were SPS measures, and consequently did not address the claims under the TBT Agreement.⁶

7. In *US – Clove Cigarettes*, Indonesia made claims under the TBT Agreement, and made conditional claims under the SPS Agreement in the event that the United States took the position that the measure at issue in that dispute was an SPS measure. The United States did not take the position that the measure was an SPS measure, and Indonesia refrained from pursuing its SPS claims. The Panel stated that it would therefore not examine the SPS claims, and that it therefore did "not need to decide between Indonesia's SPS and TBT claims as the starting point of our analysis". The Panel noted that:

"If Indonesia's SPS claims were to be examined by this Panel, the first threshold issue would have been whether the Panel should start its analysis by Indonesia's conditional

² (footnote original) Appellate Body Report, *EC – Sardines*, para. 224.

³ Panel Report, *US – Tuna II (Mexico)*, paras. 7.661-7.662.

⁴ Panel Report, *EC – Trademarks and Geographical Indications (Australia)*, para. 7.461.

⁵ Panel Reports, *EC – Hormones (Canada)*, para. 8.32, and *EC – Hormones (US)*, para. 8.29.

⁶ Panel Report, *EC – Approval and Marketing of Biotech Products*, paras. 7.2524, 7.2528, 7.3412-7.3413, 8.38, 8.42-8.46, 8.53, 8.57-8.62.

SPS claims or rather by Indonesia's TBT claims. Indeed, whether the measure at issue is an SPS measure would have been of particular relevance in deciding the order of analysis in this dispute because Article 1.5 of the *TBT Agreement* specifically provides that SPS measures, as defined in Annex A of the *SPS Agreement*, are *excluded* from the scope of the *TBT Agreement*.⁷

Current as of: December 2020

⁷ Panel Report, *US – Clove Cigarettes*, para. 7.14 and fn 89.