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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. For a table providing information on individual opinions in panel reports (and Appellate Body reports and Article 22.6 decisions), see the chapter of the Analytical Index on "DS information tables".

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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.