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1 SECTION IV: PERSONS COVERED BY THE RULES OF CONDUCT

1.1 Text of Section IV

IV. Scope

1. These Rules shall apply, as specified in the text, to each person serving: (a) on a panel; (b) on the Standing Appellate Body; (c) as an arbitrator pursuant to the provisions mentioned in Annex "1a"; or (d) as an expert participating in the dispute settlement mechanism pursuant to the provisions mentioned in Annex "1b". These Rules shall also apply, as specified in this text and the relevant provisions of the Staff Regulations, to those members of the Secretariat called upon to assist the panel in accordance with Article 27.1 of the DSU or to assist in formal arbitration proceedings pursuant to Annex "1a"; to the Chairman of the Textiles Monitoring Body (hereinafter called "TMB") and other members of the TMB Secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the WTO Agreement on Textiles and Clothing; and to Standing Appellate Body support staff called upon to provide the Standing Appellate Body with administrative or legal support in accordance with Article 17.7 of the DSU (hereinafter "Member of the Secretariat or Standing Appellate Body support staff"), reflecting their acceptance of established norms regulating the conduct of such persons as international civil servants and the Governing Principle of these Rules.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Members' requests for assistance and information.

3. These Rules shall apply to the members of the TMB to the extent prescribed in Section V.

1.2 Applicability of the Rules of Conduct to the Appellate Body, panels, Secretariat staff, and experts

1. In the context of several Appellate Body proceedings involving requests by the parties for additional procedures to protect confidential information, the Appellate Body has confirmed that Appellate Body Members, the staff of the Appellate Body Secretariat, and experts advising panels are subject to the confidentiality requirements in the Rules of Conduct.¹ Panels have made similar statements in respect of panellists, Secretariat staff and experts advising panels.²

1.3 Non-applicability of the Rules of Conduct to legal counsel representing Members

2. In *Korea – Alcoholic Beverages*, Korea indicated that it wished to have the right to private counsel at the substantive meetings of the Panel. The United States expressed the view that the Panel should impose appropriate safeguards with respect to the conduct of such persons. The Panel decided to permit the appearance of private counsel, and stated that:

¹ Appellate Body Reports, *Canada – Aircraft*, para. 146; *Brazil – Aircraft*, para. 124; *EC and certain member States – Large Civil Aircraft*, Annex III, para. 17; and *US/Canada – Continued Suspension*, paras. 435 and 442.

² See e.g. Panel Reports, *Australia – Salmon (Article 21.5 – Canada)*, para. 7.7; *EC – Export Subsidies on Sugar (Australia)*, paras. 2.13, 2.18 and fn 8; and *Australia – Apples*, para. 7.24.

"The United States offered several suggestions for new rules and procedures in regard to these questions. However, in our view, the broader question of establishing further rules on confidentiality and possibly rules of conduct specifically directed at the role of non-governmental advisors generally is a matter more appropriate for consideration by the Dispute Settlement Body and is not within the terms of reference of this Panel."³

3. In *EC – Tariff Preferences*, the European Communities raised several procedural issues concerning the joint representation of India and Paraguay by the Advisory Centre on WTO Law. In addressing this set of procedural issues, the Panel made no reference to the Rules of Conduct. It noted that:

"[T]he WTO has not itself elaborated any rules governing the ethical conduct of legal counsel representing WTO Members in particular disputes. Accordingly, the Panel considers there are no directly applicable legal provisions or guidelines to which it can have reference in order to resolve any issues raised in respect of the joint representation of a party and a third party."⁴

4. Nonetheless, the Panel in *EC – Tariff Preferences* considered that "it is incumbent on the Panel to clarify whether the ACWL's joint representation of India and Paraguay poses any ethical concerns of the kind raised by the European Communities".⁵ The Panel proceeded to discuss "the responsibility of legal counsel to ensure that it is not placing itself in a position of actual or potential conflict of interest when agreeing to represent, and thereafter representing, one or more WTO Members in a dispute under the DSU".⁶

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³ Panel Report, *Korea – Alcoholic Beverages*, para. 10.33.

⁴ Panel Report, *EC – Tariff Preferences*, para. 7.5.

⁵ Panel Report, *EC – Tariff Preferences*, para. 7.8.

⁶ Panel Report, *EC – Tariff Preferences*, para. 7.9.