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2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements

"Article 1.1 of the DSU establishes an integrated dispute settlement system which applies to all of the agreements listed in Appendix 1 to the DSU (the 'covered agreements'). The DSU is a coherent system of rules and procedures for dispute settlement which applies to 'disputes brought pursuant to the consultation and dispute settlement provisions of the covered agreements. The Anti-Dumping Agreement is a covered agreement listed in Appendix 1 of the DSU; the rules and procedures of the DSU, therefore, apply to disputes brought pursuant to the consultation and dispute settlement provisions contained in Article 17 of that Agreement." ²

1.2.3 The DSU

3. In *India – Patents (US)*, the Appellate Body examined the Panel's interpretation of various provisions of the TRIPS Agreement and noted that "as one of the covered agreements under the DSU, the TRIPS Agreement is subject to the dispute settlement rules and procedures of that Understanding" ³.

4. In *Argentina – Poultry Anti-Dumping Duties*, Argentina objected to Brazil's decision to make the entirety of its written submission available to the public, and asked the Panel to express its view on whether doing so was consistent with Article 18.2 of the DSU. The United States, a third party in that case, argued that Article 18.2 of the DSU fell outside of the Panel's terms of reference, and that the Panel should decline to provide views on the proper interpretation of that provision. The Panel disagreed:

"By virtue of Article 1.1 of the DSU, the TRIPS Agreement is a covered agreement under the DSU. The DSU is a coherent system of rules and procedures for dispute settlement which applies to 'disputes brought pursuant to the consultation and dispute settlement provisions of the covered agreements'. The Anti-Dumping Agreement is a covered agreement listed in Appendix 1 of the DSU; the rules and procedures of the DSU, therefore, apply to disputes brought pursuant to the consultation and dispute settlement provisions contained in Article 17 of that Agreement." ²

additional provisions of the covered agreement. In our view, it is only where the provisions of the DSU and the special or additional rules and procedures of a covered agreement cannot be read as complementing each other that the special or additional provisions are to prevail. A special or additional provision should only be found to prevail over a provision of the DSU in a situation where adherence to the one provision will lead to a violation of the other provision, that is, in the case of a conflict between them. An interpreter must, therefore, identify an inconsistency or a difference between a provision of the DSU and a special or additional provision of a covered agreement before concluding that the latter prevails and that the provision of the DSU does not apply."⁹

1.3.2.2 Agreements / provisions not included in Appendix 2 of the DSU

10. In *India – Quantitative Restrictions*, India appealed the Panel's conclusion that the Panel was competent to review the justification of India's balance-of-payments (BOP) restrictions under Article XVIII:B of the GATT 1994. India argued that the Panel had erred by failing to give proper consideration to the "institutional balance" embodied in the WTO Agreement; according to India, BOP measures were within the exclusive competence of the BOP Committee and the General Council. India claimed that in view of the competence of the BOP Committee and the General Council with respect to balance-of-payments restrictions under Article XVIII:12 of GATT 1994 and the BOP Understanding, the Panel erred in finding that it was competent to review the justification of balance-of-payments restrictions. The Appellate Body ruled:

"We note that Appendix 1 to the DSU lists 'Multilateral Agreements on Trade in Goods' () 0. 0 Td

rules and procedures. Accordingly, we believe that the provisions of the DSU and the Anti-dumping Agreement must be read together in a coherent manner."¹²

1.3.3 Anti-Dumping Agreement

1.3.3.1 General

13. In examining the relationship between Article 17 of the Anti-Dumping Agreement and the rules and procedures of the DSU, the Panel in Guatemala – Cement I found that Article 17 of the Anti-Dumping Agreement "provides for a coherent set of rules for dispute settlement specific to anti-dumping cases ... that replaces the more general approach of the DSU". However, the Appellate Body disagreed with the Panel and held:

"Article 17.3 of the Anti-Dumping Agreement is not listed in Appendix 2 of the DSU as a special or -A53 0 Td [(D)136.7- (u)]4.6 (pr)i2 (i)]TJ 0 Tc 0 Tw 4.533 2Td [()5 (A)3 (g)-4.7 (re)9.3-4me t o r 39ti(TJ2o

difference between those provisions and the provisions of the DSU. Quoting its previous Report in Guatemala – Cement I, the Appellate Body considered the extent to which Article 17.6 of the Anti-Dumping Agreement can properly be read as "complementing" the rules and procedures of the DSU or, conversely, the extent to which Article 17.6 "conflicts" with the DSU. With respect to Article 17.6(i) and the first sentence of Article 17.6(i), the Appellate Body saw no "conflict" between these provisions and the DSU.¹⁵ With respect to the second sentence of Article 17.6(ii), the Appellate Body characterized it as "supplementing, rather than replacing" the DSU:

"[A]lthough the second sentence of Article 17.6(ii) of the Anti-Dumping Agreement imposes obligations on panels which are not found in the DSU, we see Article 17.6(ii) as supplementing, rather than replacing, the DSU, and Article 11 in particular. Article 11 requires panels to make an 'objective assessment of the matter' as a whole. Thus, under the DSU, in examining claims, panels must make an 'objective assessment' of the legal provisions at issue, their 'applicability' to the dispute, and the 'conformity' of the measures at issue with the covered agreements. Nothing in Article 17.6(ii) of the Anti-Dumping Agreement suggests that panels examining claims under that Agreement should not conduct an 'objective assessment' of the legal provisions of the Agreement, their applicability to the dispute, and the conformity of the measures at issue with the Agreement. Article 17.6(ii) simply adds that a panel shall find that a measure is in conformity with the Anti-Dumping Agreement if it rests upon one permissible interpretation of that Agreement."¹⁶

1.3.3.3 Implementation

16. In US – Zeroing (Japan) (Article 21.5 – Japan), a question arose as to whether actions or omissions that occur after the expiry of the reasonable period of time due to domestic judicial proceedings are excluded from the implementing Member's compliance obligations. The Appellate Body stated that:

"According to the United States, the relevant provisions for purposes of deciding the question before us are Article 13 and footnote 20 to Article 9.3.1 of the Anti-Dumping Agreement. Japan, by contrast, refers to several provisions of the DSU that it considers indicate the actions that a respondent Member must take to implement the DSB's recommendations and rulings. We note, in this regard, that neither provision of the Anti-Dumping Agreement to which the United States refers is listed in Appendix 2 of the DSU as a special or additional rule and procedure that would prevail in case of conflict, in accordance with Article 1.2 of the DSU. Accordingly, the rule in Article 1.2 is inapplicable in this case. Therefore, both the Anti-Dumping Agreement and the DSU should be taken into account in this dispute and should be interpreted harmoniously. We begin our analysis with the provisions of the Anti-Dumping Agreement that the United States considers relevant to the issue raised on appeal, after which we will turn to the provisions of the DSU."¹⁷

¹⁷ [eddvthaTw 26 \(0.006 0.7e\)07-1.7 \(\[.10Tw -1c -0.011 Tw -3](#)

DSB's recommendations and rulings in a case involving such actionable subsidies, a panel would have to assess whether the Member concerned has taken one of the actions foreseen in Article 7.8 of the SCM Agreement. We agree, therefore, with the Panel that we must also take into account Article 7.8 of the SCM Agreement in order to determine the proper scope of these Article 21.5 proceedings."²⁶

24. In EC and certain member States – Large Civil Aircraft (Article 21.5

26. In US – FSC (Article 22.6 – United States) , the Arbitrator stated that:

"As we have already noted in our analysis of the text of Article 4.10 of the SCM Agreement above, there is, by contrast, no such indication of an explicit quantitative benchmark in that provision. It should be recalled here that Articles 4.10 and 4.11 of the SCM Agreement are 'special or additional rules' under Appendix 2 of the DSU , and that in accordance with Article 1.2 of the DSU, it is possible for such rules or procedures to prevail over those of the DSU . There can be no presumption, therefore, that the drafters intended the standard under Article 4.10 to be necessarily coextensive with that under Article 22.4 so that the notion of 'appropriate countermeasures' under Article 4.10 would limit such countermeasures to an amount 'equivalent to the level of nullification or impairment' suffered by the complaining Member. Rather, Articles 4.10 and 4.11 of the SCM Agreement use distinct language." (para. 11.3)

