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advice or to conclude that no weight at all should be given to what has been received.

The thrust of Articles 12 and 13, taken together, is that the DSU accords to a panel established by the DSB, and engaged in a dispute settlement proceeding, ample and extensive authority to undertake and to control the process by which it informs itself both of the relevant facts of the dispute and of the legal norms and principles applicable to the dispute.

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data. Brazil later proposed a methodology using the then-available data which relied on a particular assumption. Data that could prove or disprove that assumption was in the control of the United States but not available to Brazil or to the Panel. Brazil had already explained the problems caused by the aggregation of data. At the Panel's request, Brazil explained the methodology which it would apply to the unavailable data, which showed the Panel that it was both necessary and appropriate to use its powers under Article 13 of the DSU to access the data in a suitable format that would permit Brazil to run its methodology. At that stage, it was not clear to the Panel what the data would show, nor what the results of Brazil's methodology would be. Thigh-67(-6fn Trd4-T(h 61cT)1hor48 68.(ety7.16y)0.7de1r (s) (emai)8 96ady7w a[3

likely to be necessary to ensure due process and a proper adjudication of the relevant claim(s)." <sup>24</sup>

20. In

Panel also noted that Australia had attempted unsuccessfully to obtain the data in question from the private entities responsible for its collection. The Panel was mindful of the Appellate Body's observation that due process is connected, inter alia, to the right of parties to be affected.

considered that the fact that the requested information underlay published articles did not, in itself, shield it from scrutiny under Article 13 of the DSU." <sup>31</sup>

#### 1.3.1.5 Other international intergovernmental organizations

##### 1.3.1.5.1 General

26. In *India – Quantitative Restrictions*, the Panel consulted with the IMF on India's balance-of-payments situation. In this context, the question arose whether in the light of Article XV:2, which speaks of consultations between the CONTRACTING PARTIES and the IMF, a panel could engage in such consultations with the IMF. The United States, the complaining party, opined that the terms of Article XV:2 of GATT 1994, read in accordance with paragraph 2(b) of the Incorporation Clause of GATT 1994 in Annex 1A, do not require such consultations.

1.3.1.6 Discretion not to seek information

29. In *Argentina – Textiles and Apparel*, Argentina argued on appeal that the Panel had failed to make "a n objective assessment of the matter" because it had not acceded to the request of the parties in seeking information from, and

"We also wish to underline that although panels enjoy a discretion, pursuant to Article 13 of the DSU, to seek information 'from any relevant source', Article 11 of the DSU imposes no obligation on panels to conduct tU7 0 Td(n)-8 ( ottom 1m Td [(up)2]TJ -0.01 Tc 0.-0.0080)0.6 /TT05t ctw



the content of their report until it is made public". The Arbitrators also feared that such conditions, if they were to be accepted, could make access to evidence more difficult in future cases under the DSU. As a result, they decided not to use the information submitted. <sup>44</sup>

#### 1.4 Article 13.2

1.4.1 Discretion to consult with individual experts rather than expert review group pursuant to Appendix 4

40. As of August 2022, no dispute settlement

this to be a reference to the types of issues common to SPS disputes, and not to suggest a limitation as to the scope or nature of questioning that would be permitted in such disputes. Thus, while the language of Article 11.2 indicates that experts should be consulted in disputes involving scientific or technical issues, it does not mandate that the advice sought be confined to such issues. This understanding is also consonant with the scope and nature of questioning permitted under Article 13 of the DSU, which grants panels 'the right to seek information and technical advice from any individual or body which it deems appropriate', to 'seek information from any relevant source', and to 'consult experts to obtain their opinion on certain aspects of the matter'. On the basis of the foregoing, we do not consider that either Article 11.2 of the SPS Agreement or Article 13 of the DSU imposes constraints on a panel's consultation with experts, including with any relevant international organizations, and we see no basis for understanding Article 11.2 of the SPS Agreement to circumscribe the authority or discretion a panel enjoys under Article 13 of the DSU in SPS disputes. For these reasons, we disagree that Article 11.2 of the SPS Agreement limits the permissible scope of a panel's consultations with an international organization in the manner suggested by India. To the contrary, these provisions apply cumulatively and harmoniously in SPS disputes, and reinforce the comp

even argue that the 'determination of sorption levels' is an alternative measure which meets the three elements under Article 5.6. "<sup>48</sup>

#### 1.4.5 Panel may not delegate legal characterization to experts

45. In Australia – Apples, the Appellate Body noted that the Panel asked the experts whether restricting to mature, symptomless apples would 11.3 (h22w 22Asae723(e5)1072(G)-3. (05540670(1e7)346