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as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

1.2 Article 1.1: "covered agreements"

1.2.1 Text of Appendix 1

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

- (A) Agreement Establishing the World Trade Organization
- (B) Multilater1.3BD4.56 0 Td[(a)-7N66ppeabld'.004 Tc -

"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 a determination under Article 17.3 (on) of the DSU.

Agreement in this case. Schedule LXXX is annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (the 'Marrakesh Protocol'), and is an

1.3 Article 1.2: "special or additional rules and procedures"

1.3.1 Text of Appendix 2

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES
CONTAINED IN THE COVERED AGREEMENTS

Agreement	Rules and Procedures
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	

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 P

1.3.4.2 Annex V information – gathering procedures

18. In *US – Large Civil Aircraft (2nd complaint)*, the Appellate Body found that the initiation of an Annex V procedure occurs automatically when there is a request for initiation of such a procedure and the DSB establishes a panel, even in the absence of DSB consensus.¹⁹ The Appellate Body observed that:

"All of Annex V, together with, *inter alia*, Articles 6.6, 7.4, 7.5, and 7.6 of the SCM Agreement, are listed as special or additional rules and procedures under Appendix 2 to the DSU. We recall in this connection that, pursuant to Article 1.2 of the DSU, the provisions of both the SCM Agreement and the DSU apply in the context of a dispute involving allegations of actionable subsidies causing serious prejudice, except that, to the extent that there is a conflict, those provisions of the SCM Agreement identified in Appendix 2 to the DSU prevail, including over Article 2.4 of the DSU."²⁰

19. The Appellate Body found support for its interpretation in the fact that Annex V procedures are among the special or additional rules and procedures identified in Appendix 2:

"Additional relevant context, in our view, is found in Article 1.2 of the DSU, which deals with the special or additional dispute settlement rules found in other agreements (including Annex V and Article 7.4 of the SCM Agreement). The last sentence of Article

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 – US), the Panel offered the following general observations on Article 7.8 of the SCM Agreement as a "special or additional" rule or procedure:

"Article 7.8 of the SCM Agreement is one of the 'special or additional rules and procedures on dispute settlement contained in the covered agreements', which prevail over the general DSU rules and procedures to the extent that there is a conflict between them. Article 7.8 specifies what an implementing Member must do following the adoption of a panel and/or Appellate Body report in which it is determined that any subsidy has caused adverse effects within the meaning of Article 5 of the SCM Agreement. In particular, Article 7.8 prescribes that any 'Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy'. It follows that in order to determine whether an implementing Member has complied with the recommendations and rulings adopted by the DSB in cases involving actionable subsidies, one of the questions that an Article 21.5 panel will have to evaluate is whether the Member concerned has acted in conformity with the requirement to 'take

make the establishment of such a group mandatory and, in our view, this possibility is not incompatible with the overall possibility given in Article 13 of the Understanding of consulting experts individually. The two provisions can be seen as complementary."³³

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³³ Panel Report, EC – Asbestos, para. 8.10.