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## 1 ARTICLE 11

### 1.1 Text of Article 11

#### Article 11

##### Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a Panel should seek advice from experts chosen by the Panel in consultation with the parties to the dispute. To this end, the Panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.



On 4 August 2004, the Panel informed the Parties that it considered that certain aspects of the Parties' submissions raised scientific and/or technical issues in respect of which the Panel might benefit from expert advice.

agreed with the Panel's decision to hear from individual experts rather than to establish an expert review group.<sup>10</sup>

"[I]n disputes involving scientific or technical issues, neither Article 11.2 of the SPS Agreement, nor Article 13 of the DSU prevents Panels from consulting with individual experts. Rather, both the SPS Agreement and the DSU leave to the sound discretion of a Panel the determination of whether the establishment of an expert review group is necessary or appropriate."<sup>11</sup>

12. In *EC – Hormones*, with respect to the role of individual scientific experts, the Panel noted that:

"It is of particular importance that we made clear to the experts advising the Panel that we were not seeking a consensus position among the experts but wanted to hear all views."<sup>12</sup>

#### 1.2.4.5 Number of experts

13. In *Australia – Apples*, Australia expressed a preference for two experts to be consulted in each of the three relevant areas of expertise and complained that one area of expertise only had one expert assigned to it. The Panel acknowledged that, in general, more experts might provide more advice than just one expert and this might be useful to a panel. The Panel considered that while this does not imply that consulting one competent expert would not be sufficiently useful for a panel in a given dispute, it would necessarily narrow the range of scientific expert advice that the Panel would receive, nor that the parties would be prejudiced by the selection of only one expert on a given subject.<sup>13</sup> The Panel also noted that neither Article 13 of the DSU, nor Article 11.2 of the SPS Agreement, which jointly provide the legal basis for WTO Panels to seek the advice of experts in SPS disputes, specify the number of experts that should be selected for each particular issue.<sup>14</sup> In arriving at its decision to use only one expert for a specific area of expertise, the Panel took into account the fact that there was a limited available pool of experts as well as the inappropriateness of further delaying the selection process, given that this would have hindered the objective of seeking a prompt settlement of the dispute, contrary to Article 3.3 of the DSU and the expressed interest of both Parties.<sup>15</sup>

#### 1.2.4.6 International organizations

14. In *EC – Approval and Marketing of Biotech Products*, although the complaining parties disagreed with the Panel's decision to consult with international organizations, the Panel found it relevant to seek assistance from certain international organizations in order to clarify certain aspects of the parties' submissions. The Panel considered that the concepts at issue "raised scientific and/or technical issues" in respect of which it might benefit from experts' advice:

"[T]he Panel decided that it would seek information from certain international organizations which might assist the Panel in determining the meaning of selected terms and concepts. Most of these terms and concepts appear in the WTO agreements at issue in this dispute (e.g., 'pest'). We note in this regard that the European

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<sup>10</sup> Panel Reports, *EC – Hormones (Canada)*, para. 8.7; and *EC – Hormones (US)*, para. 8.7. The Panel ruled:

"[W]e decided to request the opinion of experts on certain scientific and other technical matters raised by the parties to this dispute. For our examination of this dispute, we considered it more useful to leave open the possibility of receiving a range of opinions from individual experts on specific scientific and technical questions, rather than to establish an expert review group which would have been required to reach a consensus view on the basis of general terms of reference given to it by the Panel. We considered that neither Article 11.2 of the SPS Agreement nor Article 13.2 of the DSU limits our right to seek information from individual experts as provided for in Article 11.2, first sentence, of the SPS Agreement and Articles 13.1 and 13.2, first sentence, of the DSU. The procedures we adopted in this respect and the views expressed by the experts are set out in paragraphs 6.1 and following."

<sup>11</sup> Appellate Body Report, *EC – Hormones*, para. 147.

<sup>12</sup> Panel Reports, *EC – Hormones (Canada)*, para. 8.9; and 8–





"The Panel ... expressed the view that Drs. Boisseau and Boobis, by virtue of their work as scientists, could be relied upon to be objective in their assessment of critiques of their work, as well as of new scientific evidence that might require altering the conclusions of their prior work . . . .

We recognize that scientists will often be asked to review studies performed by other scientists and that the scientific community must constantly reassess theories in the light of scientific progress. However, ... the Panel did not ask Drs. Boisseau and Boobis about JECFA's work and risk assessments. In the consultations with experts, the Panel asked Drs. Boisseau and Boobis to evaluate the European Communities' risk assessment and they did so using JECFA's evaluations as a benchmark. This is problematic.

(e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).'

...







