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Committee on Subsidies and Countervailing Measures

*DRAFT RULES OF PROCEDURE  
FOR THE PERMANENT GROUP OF EXPERTS*

Revision

As indicated by the Chairman at the last meeting of the Committee on Subsidies and Countervailing Measures, the Permanent Group of Experts prepared a revised draft Rules of Procedure and requested that it be circulated in view of the meeting of the Committee on 26 July 1996.

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**DRAFT RULES OF PROCEDURE  
FOR THE PERMANENT GROUP OF EXPERTS**

**PART I**

**DEFINITIONS**

1. In these Rules of Procedure for the Permanent Group of Experts,

"SCM Agreement" means the Agreement on Subsidies and Countervailing Measures which is in Annex 1A to the WTO Agreement;

"SCM Committee" means the Committee on Subsidies and Countervailing Measures established by Article 24.1 of the SCM Agreement;

"DSB" means the Dispute Settlement Body established under Article 2 of the DSU;

"DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes which is Annex 2 to the WTO Agreement;

"Expert" means an person elected by the SCM Committee to serve on the PGE in accordance with Article 24.3 of the SCM Agreement;

"party to the dispute" means any WTO Member who is a complaining or defending party in the panel dispute, but does not include a third party;

"PGE" means the Permanent Group of Experts established by the SCM Committee pursuant to Article 24.3 of the SCM Agreement;

"Rules" means these Rules of Procedure for the PGE;

"Secretariat" means the Secretariat of the World Trade Organization;

"third party" means any WTO Member who has notified the DSB of its substantial interest in the matter before the panel pursuant to paragraph 2 of Article 10 of the DSU;

"WTO" means the World Trade Organization;

"WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, Morocco, on 15 April 1994;

~~"WTO Member" means any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations that has accepted or acceded to the WTO in accordance with Articles XI, XII or XIV of the WTO Agreement.~~

## PART II

### EXPERTS

#### *Duties and Responsibilities*

2. (1) An Expert shall abide by the terms and conditions of the SCM Agreement, these Rules and any decisions of the SCM Committee affecting the PGE.
- (2) An Expert shall exercise his/her office without accepting or seeking instructions from any international, governmental, or non-governmental organization or any private source.
- (3) Whenever an Expert considers that his/her family relationships and/or past or present professional or financial activities are incompatible with his/her independent participation in a particular proceeding before the PGE, he/she shall immediately inform the Chairman of the PGE. The Chairman of the PGE shall exclude the Expert for that particular proceeding.
- (4) Whenever an Expert has reasons to believe that his/her family relationships and/or past or present professional or financial activities may be incompatible with his/her independent participation in a particular proceeding before the PGE, he/she shall immediately inform the Chairman of the PGE. The Chairman of the PGE may, after consultation with the other Experts, excuse the Expert for that particular proceeding.
- (5) An Expert shall keep the Secretariat informed on how to contact him/~~or~~ her.
- (6) An Expert shall not communicate to any person or entity any unpublished information made known to him/her in the course of performing his/her duties as a member of the PGE, except upon authorization by the Director General of the WTO.

#### *Chairman of the PGE*

3. (1) There shall be a Chairman of the PGE who shall be elected by the Experts.
- (2) The term of office of the Chairman of the PGE shall be one year. In order to ensure rotation of the Chairmanship, no Expert shall serve as Chairman for more than one term consecutively.
- (3) The Chairman of the PGE shall be responsible for the overall direction of PGE business, and in particular, his/her responsibilities shall include:
  - (a) the supervision of the internal functioning of the PGE;
  - (b) such duties as are assigned to him/her under these Rules; and
  - (c) any other duties the Experts may agree to entrust to him/her.
- (4) Where the office of the Chairman of the PGE becomes vacant due to permanent incapacity as a result of illness or death or by resignation or expiration of his/her term,

the Experts shall elect a new Chairman who shall serve a full term in accordance with paragraph 2, but not exceeding the term of that Expert.

- (5) In the event of a temporary unavailability or incapacity of the Chairman of the PGE, the PGE shall authorize another Expert to act as Chairman *ad interim*, and the Expert so authorized shall temporarily exercise all the powers, duties and functions of the Chairman of the PGE until the Chairman is capable of resuming his/her functions.

#### *Incapacity*

4. (1) An Expert who is prevented from serving by reason of illness or for other serious reasons shall give notice and duly explain such reasons to the Chairman of the PGE.
- (2) Upon receiving such notice, the Chairman of the PGE shall forthwith inform the SCM Committee.

#### *Resignation*

5. (1) An Expert who intends to resign from his/her office shall notify his/her intentions in writing to the Chairman of the PGE who shall immediately inform the Chairman of the SCM Committee and the other Experts.
- (2) The resignation shall take effect 90 days after the notification has been made pursuant to paragraph 1, unless the SCM Committee decides otherwise.

### PART III

#### ASSISTANCE TO PANELS

##### *Commencement of Procedure*

6. (1) The PGE shall provide assistance at the request of a panel with respect to whether a measure is a prohibited subsidy, as provided in Article 4.5 of the SCM Agreement.
- (2) The request for assistance should be made in writing, within ~~fourteen (14)~~ ten (10) days of the date of composition and establishment of the terms of reference of the panel, and should be directed to the Chairman of the PGE through the Secretariat.<sup>1</sup>
- (3) The request should identify the measure(s) with respect to which the panel seeks the assistance of the PGE.
- (4) The request should be accompanied by any relevant documentation, including any correspondence relating to the panel dispute between the panel or the WTO Secretariat and the parties to the dispute or the third parties and any other documentation submitted to the panel. It should also include the service address of each party to the dispute and third party, as notified to the Secretariat.

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<sup>1</sup> The panel should immediately inform the parties to the dispute and third parties as well as the SCM Committee of its request for assistance to the PGE.

### *Collegiality*

7. (1) All conclusions shall be rendered on behalf of the PGE. Except where an Expert is excluded or excused pursuant to Rules 2(3), 2(4) or 19, conclusions of the PGE shall be deemed to be prepared and rendered collegially by the five Experts.
- (2) Except where an Expert is excluded or excused pursuant to Rules 2(3) or 2(4), all five Experts shall contribute to the conclusions of the PGE on each request for assistance. However, where appropriate necessary, the Chairman of the PGE may, in consultation agreement with the other Experts, select three Experts to examine and respond to a request for assistance from a panel.
- (3) The three Experts selected pursuant to paragraph 2 shall be selected on a basis which shall ensure, to the maximum extent possible, that the composition of each group of three Experts will not be predictable. The Chairman of the PGE may serve as one of the three Experts.
- (4) An Expert selected pursuant to paragraph 2 above shall make best endeavours to be available for that service. In the event an Expert is prevented from serving on the basis of nationality pursuant to Rule 19, due to incapacity or resignation under Rules 4 and 5, or is otherwise unavailable to serve, the Chairman of the PGE will assign the next Expert on the basis set forth in paragraph 3.
- (5) Where three Experts have been selected by the Chairman of the PGE pursuant to paragraph 2 or 4, they shall, in the interests of consistency and coherence, consult with the other Experts(s) regarding the matter under review and shall circulate the report to the other Experts for comments before presenting it to the panel. Experts excused or excluded pursuant to Rules 2(3), or 2(4) or 19 shall not be consulted.

### *Presiding Member*

8. (1) For each proceeding, the PGE or Each group of three Experts appointed pursuant to Rule 7(2) above shall have a Presiding Member, who shall be elected by the members of the PGE or the members of the group of three Experts as the case may be three Experts.
- (2) The responsibilities of the Presiding Member shall include:
- (a) coordinating the overall conduct of the proceeding;
  - (b) chairing all oral hearings and meetings related to that proceeding; and
  - (c) coordinating the drafting of the report.
- (3) When a matter is referred to a group of three Experts, in the event that a Presiding Member becomes incapable of performing his/her duties, the other members of the group of three Experts and the member selected as a replacement pursuant to Rule 7(4) shall elect one of their number as Presiding Member.

***Written Submissions***

9. (1) The parties to the dispute and any third parties so desiring shall, within seven (7) days after the date of a request for assistance, make a written submission to the PGE through the Secretariat and serve a copy of the submission on the other parties to the dispute and on any third parties.
- (2) A written submission referred to in paragraph 1 shall address the issue whether the measure identified by the panel in its request for assistance is a prohibited subsidy. It shall contain any relevant information regarding the measure including any legislation, regulations or other documentation relating to the establishment and operation of the measure.
- (3) Any parties to the dispute so desiring, but not third parties, may, within fourteen (14) days after the date of a request for assistance, make a written rebuttal submission to the PGE through the Secretariat and shall serve a copy of any such submission on the other parties to the dispute and on any third parties.

***Oral Hearing***

10. (1) The PGE or the group of three Experts selected pursuant to Rule 7(2), as the case may be, may hold one oral hearing at the request of at least one of the parties to the dispute or on its own initiative. This hearing should be held, as a general rule, twenty-one (21) days after the request of the panel for assistance.
- (2) The parties to the dispute shall, in the written submissions submitted pursuant to Rule 9(1), specify whether they request the PGE to hold an oral hearing. When an oral hearing is to be held pursuant to paragraph 1, requested or when the PGE or the group of three Experts decides of its own initiative to hold an oral hearing, the Chairman or the Presiding Member of a group of three Experts shall, at the earliest possible date, notify all parties to the dispute and third parties of the date and place for the oral hearing.
- (3) Any party to the dispute or third party who has made a submission pursuant to Rule 9(1) may appear to make an oral arguments or presentations at the oral hearing.
- (4) During the oral hearing, each party to the dispute or third party referred to under paragraph 3 shall be entitled to make one single oral presentation or submission of oral arguments in the presence of the other parties to the dispute. The complaining party(ies) before the panel shall make its/their oral arguments or presentation(s) first. Third parties may attend the oral hearing only for the duration of their oral presentations or submissions of oral arguments. The Chairman or the Presiding Member, with the agreement of the other members of the PGE or of the other members of the group of three Experts as the case may be, of a group of three Experts, as the case may be, may, as necessary appropriate, set time limits adapt the rules for oral arguments and presentations.

***Written Responses***

11. (1) At any time during the proceeding, including during any oral hearing, the PGE or the group of three experts may address questions orally or in writing to any party to the

dispute or third party, and specify the time periods within which written responses shall be received.

- (2) Any such written questions and responses shall be made available served on to the other parties to the dispute, who shall be given an opportunity to respond.

#### ***Conclusions of the PGE***

12. (1) Except under the circumstances contemplated under Rule 13(1) or unless otherwise requested by the panel pursuant to Article 4.5 of the SCM Agreement, the PGE should present its conclusions to the panel within forty-two (42) ~~two (42)~~ six (46) days of the request for assistance.
- (2) The PGE's conclusions shall be presented in a written report. Pursuant to Article 4.5 of the SCM Agreement, the conclusions shall be restricted to a determination whether the measure in question is a prohibited subsidy.
- (3) The PGE's report shall also set out a summary of the arguments presented by the parties and third parties, the findings of fact, the applicability of relevant provisions and the basic rationale behind its conclusions.
- (4) When applicable, the PGE's report shall also specify whether one or more Experts were excused or excluded for the proceeding pursuant to Rules 2(3), or 2(4), or 19.

#### ***General Provisions***

13. (1) In exceptional circumstances, where strict adherence to a time period set out in these Rules would result in a manifest unfairness, the PGE or the group of three Experts as the case may be may, at the request of a party to the dispute, modify a time period set out in these Rules for the filing of documents or the date set out in the working schedule for the oral hearing. Where such a request is granted, any modification of time shall be notified to the parties to the dispute and to third parties in a revised working schedule. Under those circumstances, the ~~Chairman of the PGE~~ Presiding Member may postpone the date of presentation of the report to the panel by a number of days to be agreed with the panel.
- (2) In computing any time period stipulated in these Rules, within which a communication must be made or an action taken by a WTO Member to exercise or preserve its rights, the day from which the time period begins to run shall be excluded and, subject to paragraph 1, the last day of the time-period shall be included.
- (3) The PGE or the group of three Experts, as the case may be, may extend the time periods provided for in Rules 6, 9, 10 and 12 with the consent of the parties to the dispute and the panel.
- (34) The DSB Decision on "Expiration of Time-Periods in the DSU", WT/DSB/M/7, shall apply *mutatis mutandis* to matters considered by the PGE.

### *Working Procedures and Schedule*

14. (1) Forthwith after being requested to assist a panel, the PGE or the group of three Experts, as the case may be, shall draw up an appropriate working schedule in accordance with the time periods stipulated in these Rules.
- (2) The working schedule shall set forth precise dates for the submission of documents and a timetable for the PGE's work including, where possible, the date when the oral hearing would be held, should one of the parties to the dispute request one or should the PGE or the group of three Experts, as the case may be, decide to have one.
- (3) The Secretariat shall promptly provide a copy of the working schedule to the panel, the parties to the dispute and any third parties.

### *Documents*

15. (1) The PGE or the group of three Experts, as the case may be, may disregard any submission not received by the Secretariat within the time period as set out in these Rules or in the working schedule referred to in Rule 14, unless the PGE or the group of three Experts determines that there is good cause for accepting the submission after the expiration of the relevant time period.
- (2) Except as otherwise provided in these Rules, every document filed by a party to the dispute or a third party shall be served on each of the other parties to the dispute and on third parties.
- (3) A document shall be served by the most expeditious means of delivery or communication available, including by:
- (a) delivering a copy of the document to the service address of the party to the dispute or third party; or
  - (b) sending a copy of the document to the service address of the party to the dispute or third party by facsimile transmission, expedited delivery courier or expedited mail service.

### *Decision-Making*

16. (1) The PGE or the group of three Experts, as the case may be, shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote. Individual opinions shall not be disclosed.
- (2) Whenever a request for assistance to a panel has not been assigned by the Chairman of the PGE to a group of three Experts and it appears in the course of the proceeding that, for reasons foreseen under Rules 2 and 4, only four Experts can take part in the decision-making process, the Chairman of the PGE shall immediately select a group of three Experts to examine and respond to the request for assistance.



### *Confidentiality*

17. (1) PGE deliberations shall be confidential. The PGE report shall remain confidential until released by the panel.
- (2) The report of the PGE shall be drafted without the presence of the parties to the dispute in the light of the information provided and the ~~statements~~ presentations made.
- ~~(3) Except as otherwise provided in these Rules, no Expert may discuss the subject matter of a request for assistance to a panel with the representatives of any WTO Member.~~

### *Ex Parte Communications*

18. (1) Neither the PGE nor any of its Experts shall discuss any aspect of the subject matter of a request for assistance with any party to the dispute or third party in the absence of the other party(ies) to the dispute until the report of the panel is adopted or, in case of appeal, until the report of the Appellate Body is adopted.
- (2) No Expert may discuss any aspect of the subject matter of a request for assistance with any party to the dispute or third party in the absence of the other members of the PGE or of the other members of the group of three Experts, as the case may be, until the report of the panel is adopted or, in case of appeal, until the report of the Appellate Body is adopted.

### *Nationals of Parties to the Dispute*

19. (1) Unless a party to the dispute objects, Experts who are nationals of WTO Members<sup>2</sup> parties to the dispute may contribute to the decision-making process in accordance with Rule 16, may be selected as members of a group of three Experts ~~and may contribute to the decision-making process in accordance with Rule 16~~ or may make comments pursuant to Rule 7(5).
- (2) No objections under paragraph 1 shall be ~~considered made~~ where such objections would lead, by themselves or in addition to other factors ~~such as exclusion, excuse, incapacity or non-availability of one or more Experts~~, to a situation where ~~less fewer~~ than three Experts could contribute to the decision-making process.
- (3) Any objection under paragraph 1 shall be communicated to the Chairman of the PGE within two (2) days after the date of a request for assistance.

### *Transition*

20. (1) A person who ceases to be an Expert may, subject to the provisions of Rules 2(3) and 2(4), with the authorization of the Chairman of the PGE and upon notification to the SCM Committee, complete the disposition of any pending request for assistance from a panel, and that person shall, for that purpose only, be deemed to continue to be an Expert.

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<sup>2</sup>In the case where customs unions or common markets are parties to a dispute, this provision applies to nationals of all member countries of the customs unions or common markets.

- (2) Any newly elected Expert shall serve only in proceedings initiated after his/her election, unless decided otherwise by the Chairman of the PGE in agreement with the other Experts.

## PART IV

### ADVISORY OPINIONS TO WTO MEMBERS

#### *Request for Advisory Opinion*

21. (1) Pursuant to Article 24.4 of the SCM Agreement, a WTO Member may request an advisory opinion from the PGE on the nature of any subsidy proposed to be introduced or currently maintained by that WTO Member.
- (2) A request for an advisory opinion shall be made in writing. The request shall contain the following:
- (a) A clear statement of the issue matter the WTO Member requests the PGE to address;
  - (b) A detailed description of the programme or measure, addressing any points relevant to the nature of the subsidy;
  - (c) A copy of any legislation, regulations or other relevant documents establishing the programme or measure and/or governing its operation;
  - (d) Any other relevant information.
- (3) The request shall be submitted to the Chairman of the PGE through the Secretariat. The Chairman of the PGE shall review the request to determine whether it contains the information identified in paragraph 2. If the Chairman of the PGE considers that the request is not complete, he/she shall so indicate to the WTO Member and shall identify the additional information required.

#### *Preparation of the Advisory Opinion*

22. (1) The PGE or the group of three Experts selected pursuant to Rule 23(2) may, as necessary, in writing or at an oral hearing if any, request further information from, or may pose questions to, the WTO Member requesting an advisory opinion.
- (2) The PGE shall make its best efforts to provide its opinion at the earliest date possible.
- (23) Unless otherwise requested by the WTO Member seeking an advisory opinion, an advisory opinion shall be provided in writing. The advisory opinion shall include the relevant facts on which the PGE based its opinion, the applicability of relevant provisions and the basic rationale behind its conclusions.
- (34) When applicable, the PGE's advisory opinion shall also specify whether one or more Experts were excused or excluded for the proceeding pursuant to Rules 2(3) or 2(4).

*Collegiality*

23. (1) All advisory opinions shall be rendered on behalf of the PGE. Except where an Expert is excluded or excused pursuant to Rules 2(3) or 2(4), advisory opinions of the PGE shall be deemed to be prepared and rendered collegially by the five Experts.
- (2) Except where an Expert is excluded or excused pursuant to Rules 2(3) or 2(4), all five Experts shall contribute to the advisory opinion of the PGE on each request for such an opinion. However, where appropriate necessary, the Chairman of the PGE may, in consultation agreement with the other Experts, select three Experts to examine and respond to a request for an advisory opinion from a WTO Member.
- (3) The three Experts shall be selected on a basis which shall ensure, to the maximum extent possible, that the composition of each group of three Experts will not be predictable. The Chairman of the PGE may serve as one of the three Experts.
- (4) An Expert selected pursuant to paragraph 2 above shall make best endeavours to be available for that service. In the event an Expert is prevented from serving due to incapacity or resignation under Rules 4 and 5, or is otherwise unavailable to serve, the Chairman of the PGE will assign the next Expert on the basis set forth in paragraph 3.
- (5) Where three Experts have been appointed by the Chairman of the PGE pursuant to paragraph 2, they shall, in the interests of consistency and coherence, consult with the other Experts regarding the matter under review and shall circulate the advisory opinion to the other Experts for comments before presenting it to the WTO Member who requested the advisory opinion. Experts excused or excluded pursuant to Rules 2(3) or 2(4) shall not be consulted.

*Presiding Member*

24. (1) For each proceeding, the PGE or eEach group of three Experts appointed pursuant to Rule 23(2) above shall have a Presiding Member, who shall be elected by the members of the PGE or the members of the group of three Experts as the case may be ~~three Experts~~.
- (2) The responsibilities of the Presiding Member shall include:
- (a) coordinating the overall conduct of the work of the group of three Experts;
  - (b) chairing all meetings related to that work; and
  - (c) coordinating the drafting of the advisory opinion.
- (3) ~~When a matter is referred to a group of three Experts, in the event that a Presiding Member becomes incapable of performing his/her duties, the other members of the group of three Experts and the member selected as a replacement pursuant to Rule 23(4) shall elect one of their number as Presiding Member.~~

### *Decision-Making*

25. (1) The PGE or the group of three Experts, as the case may be, shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote. Individual opinions shall not be disclosed.
- (2) Whenever a request for an advisory opinion has not been assigned by the Chairman of the PGE to a group of three Experts and it appears in the course of the proceeding that, for reasons foreseen under Rules 2 and 4, only four Experts can take part in the decision-making process, the Chairman of the PGE shall immediately select a group of three Experts to examine and respond to the request for an advisory opinion.

### *Confidentiality and Status of Advisory Opinions*

26. (4) An advisory opinion is for the exclusive use of the WTO Member requesting it. The existence and content of a request for an advisory opinion, and of any advisory opinion, will shall be confidential. ~~Except as provided in paragraph 2, neither the PGE nor the WTO Member seeking the advisory opinion shall reveal its existence or content.~~
- ~~(2) Advisory opinions may not be invoked in proceedings under the Article 7 of the SCM Agreement. However, where a specific programme or measure that has been the subject of an advisory opinion is at issue in a dispute under Article 4 of the SCM Agreement, the Chairman of the PGE shall promptly inform the panel and the parties to the dispute and shall provide a copy of the advisory opinion of the PGE to the panel and to the parties to the dispute.~~
- ~~(3) Except as otherwise provided in these Rules, no Expert may discuss the subject matter of an advisory opinion with the representative of any WTO Member.~~

### *Transition*

27. (1) A person who ceases to be an Expert may, subject to the provisions of Rules 2(3) and 2(4), with the authorization of the Chairman of the PGE and upon notification to the SCM Committee, complete the disposition of any pending request for an advisory opinion, and that person shall, for that purpose only, be deemed to continue to be an Expert.
- (2) Any newly elected Expert shall serve only in proceedings initiated after his/her election, unless decided otherwise by the Chairman of the PGE in agreement with the other Experts.

## **PART V**

### **ADVISORY OPINIONS TO THE SCM COMMITTEE**

#### *Request for an Advisory Opinion*

28. (1) Pursuant to Article 24.3 of the SCM Agreement, the SCM Committee may seek an advisory opinion on the existence and nature of any subsidy.

- (2) A request for an advisory opinion shall be made in writing. The request shall clearly state the ~~issue~~ ~~matter~~ the SCM Committee requests the PGE to address, and should include a copy of any legislation, regulations or ~~other relevant documents~~ ~~information~~ relating to the measure or programme.

### *Information*

29. (1) The PGE may, as it considers necessary, request information from, or address questions to any WTO Members regarding the measure(s) or programme(s) in question. WTO Members to whom such requests or questions are addressed shall make best endeavours to respond fully and completely to the PGE. Such requests or questions, and any answers thereto, shall be made in writing, and copies shall be provided to the SCM Committee.
- (2) Any WTO Member may present, in writing, any information regarding the measure or programme in question and/or its views regarding the issue the SCM Committee has requested the PGE to address. Any such information or views shall be made in writing, and copies shall be provided to the SCM Committee.
- (3) All WTO Members shall have an opportunity to comment upon any requests or questions and answers thereto pursuant to paragraph 1, and upon any information and views provided to the PGE pursuant to paragraph 2, above. Any such comment shall be made in writing, and copies shall be provided to the SCM Committee.

### *Collegiality*

30. (1) All advisory opinions shall be rendered on behalf of the PGE. Except where an Expert is excluded or excused pursuant to Rules 2(3) or 2(4), advisory opinions of the PGE shall be deemed to be prepared and rendered collegially by the five Experts.
- (2) Except where an Expert is excluded or excused pursuant to Rules 2(3) or 2(4), all five Experts shall contribute to the advisory opinion of the PGE on each request for such an opinion. However, where ~~appropriate~~ ~~necessary~~, the Chairman of the PGE may, in ~~consultation~~ ~~agreement~~ with the other Experts, select three Experts to examine and respond to a request for an advisory opinion from the SCM Committee.
- (3) The three Experts shall be selected on a basis which shall ensure, to the maximum extent possible, that the composition of each group of three Experts will not be predictable. The Chairman of the PGE may serve as one of the three Experts.
- (4) An Expert selected pursuant to paragraph 2 above shall make best endeavours to be available for that service. In the event an Expert is prevented from serving due to incapacity or resignation under Rules 4 and 5, or is otherwise unavailable to serve, the Chairman of the PGE will assign the next Expert on the basis set forth in paragraph 3.
- (5) Where three Experts have been appointed by the Chairman of the PGE pursuant to paragraph 2, they shall, in the interests of consistency and coherence, consult with the other Experts regarding the matter under review and shall circulate the advisory opinion to the other Experts for comments before presenting it to the SCM Committee. Experts excused or excluded pursuant to Rules 2(3) or 2(4) shall not be consulted.

***Presiding Member***

31. (1) For each proceeding, the PGE or ~~e~~Each group of three Experts appointed pursuant to Rule 30(2) above shall have a Presiding Member, who shall be elected by the members of the PGE or the members of the group of three Experts as the case may be ~~three Experts~~.
- (2) The responsibilities of the Presiding Member shall include:
- (a) coordinating the overall conduct of the work of the group of three Experts;
  - (b) chairing all meetings related to that work; and
  - (c) coordinating the drafting of the advisory opinion.
- (3) When a matter is referred to a group of three Experts, ~~i~~n the event that a Presiding Member becomes incapable of performing his/her duties, the other members ~~of the group of three Experts~~ and the member selected as a replacement pursuant to Rule 30(4) shall elect one of their number as Presiding Member.

***The Advisory Opinion***

32. (1) Unless otherwise requested by the SCM Committee, the PGE's advisory opinion shall be provided in the form of a written report.
- (2) The PGE's report shall also set out the findings of fact, the applicability of relevant provisions and the basic rationale behind its conclusions.
- (3) When applicable, the PGE's report shall also specify whether one or more Experts were excused or excluded for the proceeding pursuant to Rules 2(3) or 2(4).

***Decision-Making***

33. (1) The PGE or the group of three Experts, as the case may be, shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote. Individual opinions shall not be disclosed.
- (2) Whenever a request for an advisory opinion has not been assigned by the Chairman of the PGE to a group of three Experts and it appears in the course of the proceeding that, for reasons foreseen under Rules 2 and 4, only four Experts can take part in the decision-making process, the Chairman of the PGE shall immediately select a group of three Experts to examine and respond to the request for an advisory opinion.

***Confidentiality***

34. (1) PGE deliberations shall be confidential.
- ~~(2) Except as otherwise provided in these Rules, no Expert may discuss the subject matter of a request for an advisory opinion with the representatives of any WTO Member.~~

*Direction of the SCM Committee*

35. (1) The status of and use to be made of an advisory opinion is a matter to be determined by the SCM Committee.
- (2) Notwithstanding this Part, the SCM Committee may with respect to a given request for an advisory opinion specify, after consultation with the Chairman of the PGE, the procedures to be followed by the PGE.

*Transition*

36. (1) A person who ceases to be an Expert may, subject to the provisions of Rules 2(3) and 2(4), with the authorization of the Chairman of the PGE and upon notification to the SCM Committee, complete the disposition of any pending request for an advisory opinion, and that person shall, for that purpose only, be deemed to continue to be an Expert.
- (2) Any newly elected Expert shall serve only in proceedings initiated after his/her election, unless decided otherwise by the Chairman of the PGE in agreement with the other Experts.

**PART VI**

**OTHER**

*Secretariat*

37. The Secretariat shall provide such assistance to the PGE as is necessary and appropriate.

*Entry into Force and Amendment*

38. (1) These Rules shall enter into force upon their approval by the SCM Committee.
- (2) The PGE may propose amendments to these Rules in light of experience. Any such amendments shall enter into force upon their approval by the SCM Committee and, unless otherwise agreed by the WTO Member(s) concerned, shall apply only to requests made on or after such date.
- (3) Any WTO Member may suggest amendments to these Rules in the light of experience. Any suggested amendment shall be examined by the SCM Committee. After examination, the SCM Committee may forward the suggested amendment to the PGE. The PGE shall review the suggested amendment and may propose amendments to these Rules to the SCM Committee on that basis.