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Negotiating Group on Trade Facilitation

ARTICLE X OF GATT 1994 – SCOPE AND APPLICATION

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO

I. INTRODUCTION

1. As the last part of a series of updates of Secretariat papers on the three GATT provisions under discussion in the ongoing negotiations on trade facilitation, the present document revises a previous note on Article X.[1] Apart from some changes of an organizational nature, the paper also modifies the jurisprudence section, bringing it up to date with the latest developments in this field.

II. STRUCTURE OF THE PAPER

2. The first section of the document takes a look at the Article's current text, followed by a brief review of its negotiating history. It then draws attention to Article X's coverage, before turning to an analysis of the resulting obligations. A final section introduces the guidance obtained by dispute settlement rulings on the Article's interpretation under both the GATT and the WTO.

III. TEXT OF THE PROVISION

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party[2], pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

[1] G/C/W/374, 14 May 2002.
[2] See also the Explanatory Notes 2 (a) and (b) of GATT 1994.

2 No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

IV. NEGOTIATING HISTORY

3. Article X was partly based on Articles 4 and 6 of the 1923 *International Convention Relating to the Simplification of Customs Formalities*.[3] Most of its provisions can already be found in the Geneva Draft of the Havana Charter, whose Article 37 concurs with Article X, except for the requirement for governments to supply the organization with copies of their laws and regulations.[4] The Geneva text was altered at the Havana Conference. It was decided to change the provision prohibiting the enforcement of certain measures of general application prior to their official publication, by replacing the words *"made public"* with the term *"published"*. The Havana Reports note that Members agreed that the provision *"did not require the prior public issue of an official document, but that the effect could also be accomplished by an official announcement made in the legislature of the country concerned"*.[5] Furthermore, the Havana Conference added the obligation that *"suitable facilities shall be afforded for traders directly affected by any of those matters* [the respective laws and regulations] *to consult with the appropriate governmental authorities"*.[6]

4. None of these alterations were carried into the GATT, whose Article X remained unchanged.

[3] E/PC/T/C.II/W.41, E/PC/T/C.II/54/Rev.1, p. 29.
[4] This obligation, contained in paragraph 1 of the Geneva Draft Charter, was not carried into the GATT.
[5] Havana Reports, U.N. Doc. ICITO/1/8, p. 79, para. 52.
[6] Havana Reports, U.N. Doc. ICITO/1/8, p. 79 para. 52.

V. COVERAGE

A. GENERAL

5. Article X's paramount objective is to allow for a certain transparency in the publication and administration of trade regulations. A report of the Technical Sub-Committee to the Drafting Committee drawing up the Havana Charter notes: *"It was agreed that, as far as possible, prompt and adequate publicity should be given to change in laws and regulations affecting foreign trade"*.[7]

B. PARAGRAPH 1

6. Paragraph 1 requires each contracting party to promptly publish its laws, regulations, judicial decisions and administrative rulings of general application that affect imports and exports. Agreements affecting international trade policy shall be published as well. The publication must be of such form "*as to enable governments and traders to become acquainted with them"*. To address concerns about possible negative side-effects arising from this notification requirement, it is stated that paragraph 1 *"shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."*

7. While the Geneva Draft provision requiring governments to communicate copies of their respective laws to the ITO was not carried into the GATT, Members agreed in 1964 to recommend such conduct.[8] The notification requirements were reaffirmed and strengthened in the Tokyo Round. A 1979 Understanding stated that parties *"… undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement…"*.[9] The Understanding calls for an endeavour to notify measures prior to their implementation, but provides for the opportunity to notify *ex post facto*, where advance notification has not been possible. The following years saw a further strengthening as well as an expansion of notification and publication requirements, both in terms of general decisions[10] and specific provisions contained in the GATT. The 1994 Ministerial Decision on Notification Procedures incorporated the 1979 Understanding and further provided for a central Secretariat registry of notifications and review of procedures by the Council for Trade in Goods.

C. PARAGRAPH 2

8. According to this paragraph, no party is allowed to enforce certain measures prior to their official publication. The measures covered by this obligation include those:

(i) effecting an advance in a duty rate or other charge on imports under an established and uniform practice, or
(ii) imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore.

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[7] U.N. Doc. E/PC/T/C.II/54/Rev.1 p. 28.

[8] Recommendation on Cooperation in the Field of Trade Information and Trade Promotion: *"Contracting parties should forward promptly to the secretariat copies of the laws, regulations, decisions, rulings and agreements of the kind described in paragraph 1 of Article X if the General Agreement, together with such other information they consider relevant to the objectives of this Recommendation;"* The recommendation even went beyond the Geneva proposal in noting that *"should use their best endeavors to assist in the identification of market opportunities, including the exchange of market research studies ... and to provide any other assistance deemed appropriate which would further the objectives of the services"*. BISD 125/50, 1964.

[9] L/4907, adopted on 28 November 1979, BISD 26S/210, para. 3.

[10] See for example the decisions of 12 April 1989 on the *"Functioning of the GATT System"* and on the creation of a Trade Policy Review Mechanism.

D. PARAGRAPH 3

9. Paragraph 3 calls on Members to administer all their laws, regulations, decisions as well as rulings of the kind listed in paragraph 1, in a *"uniform, impartial and reasonable manner"*. It further requires every Member to maintain or institute judicial, arbitral or administrative tribunals or procedures *"as soon as practicable"*, for the purpose of, *inter alia*, prompt review and correction of administrative action relating to customs matters. Certain guarantees are made with respect to their independence. The provision obliges those tribunals or procedures to be independent of the agencies in charge of the administrative enforcement. Furthermore, their decisions shall normally be implemented by those administrative enforcement agencies, except for the case of an appeal by an importer with a court or tribunal of superior jurisdiction.[11] This is important as it ensures that it is not the same entity that makes both the decision and takes care of its implementation.

10. An exception is made for procedures, which *"in fact"* provide for an objective and impartial review of administrative action, even though they are not fully independent of the administrative enforcement agencies, if they have already been in force *"on the date of the Agreement*".[12] Any party wishing to employ such procedures is, however, required to notify them to the other parties upon request.

VI. BASIC OBLIGATIONS

11. In essence, Article X requires a party to:

(i) publish its trade-related laws, regulations, rulings and agreements in a prompt and accessible manner (paragraph 1);

(ii) abstain from enforcing measures of general application prior to their publication (paragraph 2); and

(iii) administer the above-mentioned laws, regulations, rulings and agreements in a uniform, impartial and reasonable manner. In this context, parties are required to institute or maintain tribunals or procedures for the, *inter alia*, prompt review and correction of administrative action relating to customs matters (Paragraph 3).

VII. INTERPRETATION AND APPLICATION

12. Article X has been applied by GATT and WTO panels as well as by the Appellate Body on various occasions. The following section outlines their main findings on the interpretation of key provisions of this Article.[13]

A. GENERAL

13. The Appellate Body in *EC - Poultry* described the scope of Article X as follows:

[11] This exception requires *"that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts"*.

[12] According to Article XXVI:1, *"The date of the Agreement shall be 30 October 1947"*.

[13] The note limits itself to an outline of the panels' findings that are relevant for an interpretation of key provisions of GATT Articles V, VIII and X. It does not intend to be a comprehensive analysis of *all* findings related to those Articles that have been made by GATT/WTO dispute settlement panels.

> "Article X relates to the *publication* and *administration* of 'laws, regulations, judicial decisions and administrative rulings of general application', rather than to the *substantive content* of such measures".[14]

14. Consequently, the Appellate Body held that, to the extent that the complainant's appeal relates to the *substantive content* of the respondent's rules themselves, and not to their publication or administration, such an appeal would fall outside the scope of Article X.[15]

B. PARAGRAPH 1

15. Interpretative guidance has been given with respect to the following terms:

(i) "of general application"

16. In *US – Underwear*, the Appellate Body upheld the panel's interpretation

> "… that Article X:1 of GATT 1994, which … uses the language 'of general application', includes 'administrative rulings' in its scope. The mere fact that the restraint at issue was an administrative order does not prevent us from concluding that the restraint was a measure of general application. Nor does the fact that it was a country-specific measure exclude the possibility of it being a measure of general application. If, for instance, the restraint was addressed to a specific company or applied to a specific shipment, it would not have qualified as a measure of general application. However, to the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers, we find it to be a measure of general application".[16]

17. In *EC – Poultry*, the Appellate Body upheld the panel's finding that the withholding of information regarding a specific shipment was not inconsistent with Article X as being outside its scope. It noted that:

> "… Article X does not deal with specific transactions, but rather with 'rules of general application'. (…) Although it is true … that any measure of general application will always have to be applied in specific cases, nevertheless the specific treatment accorded to each individual shipment cannot be considered a 'measure of general application' within the meaning of Article X".[17]

18. The Appellate Body further agreed with the panel that:

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[14] Appellate Body Report, *European Communities – Measures Affecting the Importation of Certain Poultry Products, ("EC – Poultry")*, WT/DS69/AB/R, adopted 23 July 1998, para. 115.

[15] *Ibid*.

[16] Panel Report, *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear, ("US – Underwear")*, WT/DS24/R, adopted 25 February 1997, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 21.

[17] Appellate Body Report, *EC – Poultry*, WT/DS69/AB/R, paras. 111 and 113. See also Panel Report, *US – Underwear*, WT/DS24/R, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 7.65. Confirmed in *United States, Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, Report of the Panel, WT/DS244/R para. 7.309.

> "conversely, licenses issued to a specific company or applied to a specific shipment cannot be considered to be a measure of 'general application' within the meaning of Article X".[18]

19. In the *Japan – Film* case, the panel referred to the panel Report on *US – Underwear* when interpreting the term "of general application" as follows:

> "…inasmuch as the Article X:1 requirement applies to all administrative rulings of general application, it should also extend to administrative rulings in individual cases where such rulings establish or revise principles or criteria applicable in future cases".[19]

(ii) "published promptly in such a manner as to enable governments and traders to become acquainted with them"

20. In *EEC – Dessert Apples* the (GATT) panel found that publication in the Official Journal of the European Communities did fulfill Article X:1's requirement to promptly publish a measure in a manner as to enable governments and traders to become acquainted with it. The panel noted that no time-limit or delay between publication and entry into force was specified by this provision. On the other hand, it held that Article X:1 would prohibit the use of backdated quotas.[20] Identical findings were made in the *EEC – Apples* case.[21]

21. In *Canada – Alcoholic Drinks*, the panel held that Article X:

> "… did not require contracting parties to make information affecting trade available to domestic and foreign suppliers at the same time, not did it require contracting parties to publish trade regulations in advance of their entry into force".[22]

22. The sharing of information relating to price policy of governmental authorities with domestic brewers before that information was available to foreign authorities, as well as the announcement of a new pricing policy in the legislature only five days before it entered into effect, were therefore not a violation of Article X.

23. However, referring to paragraph 1's requirement to promptly publish all laws and the relationship of that requirement to the provisions of Article X:3 (a), the panel in the *Argentina –Bovine Hides* case noted that:

> "While it is normal that the GATT 1994 should require this sort of transparency between Members, it is significant that Article X:1 goes further and specifically references the importance of transparency to individual traders. Thus, it can be seen that Article X:3(a) requires an examination of the real effect that a measure might have on traders operating in the commercial world. This, of course, does not require a showing of trade damage, as that is generally not a requirement with respect to

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[18] Appellate Body Report, *EC – Poultry*, WT/DS69/AB/R, para. 113.

[19] Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper, ("Japan – Film")*, WT/DS44/R, adopted 22 April 1998, para. 10.388.

[20] Panel Report, *EEC – Restrictions on Imports of Dessert Apples ("EEC – Dessert Apples)*, L/6304, adopted on 22 March 1988, BISD 35S/37, 88 –89, para. 4.20.

[21] Panel Report, *EEC – Restrictions on Imports of Apples ("EEC – Apples")*, L/6513, adopted on 22 June 1989, BISD 36S/135, 166-167, paras. 5.20 – 5.23.

[22] Panel Report, *Canada – Import, Distribution, and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies, ("Canada – Alcoholic Drinks")*, DS17/R, adopted on 18 February 1992, BISD 39S/27, 85-86, para. 5.34.

> violations of the GATT 1994. But it can involve an examination of whether there is a possible impact on the competitive situation due to alleged partiality, unreasonableness or lack of uniformity in the application of customs rules, regulations, decisions, etc".[23]

C. PARAGRAPH 2

24. According to the Appellate Body in *US – Underwear,*

> "Article X:2 …. may be seen to embody a principle of fundamental importance – that of promoting full disclosure of governmental acts affecting Members and private persons and enterprises, whether of domestic or foreign nationality. The relevant policy principle is widely known as the principle of transparency and has obviously due process dimensions. The essential implication is that Members and other persons affected, or likely to be affected, by governmental measures imposing restraints, requirements and other burdens, should have a reasonable opportunity to acquire authentic information about such measures and accordingly to protect and adjust their activities or alternatively to seek modification of such measures".[24]

25. The Appellate Body further addressed the issue of whether Article X:2 prohibits the retroactive application of transitional safeguard measures under the ATC Agreements, observing that:

> "Article X:2 … does not speak to, and hence not resolve, the issue of permissibility of giving retroactive effect to a safeguard restraint measure. (….) Where no authority exists to give retroactive effect to a restrictive governmental measure, that deficiency is not cured by publishing the measure sometime before its actual application".[25]

D. PARAGRAPH 3

1. General

26. In *EC – Bananas III,* the panel dismissed the argument that paragraph 3 applies only to internal measures. It held that :

> "internal laws regulating border measures constitute '…requirements … on imports….' in the meaning of Article X:1 [defining Article X:3(a)'s coverage] and cannot be excluded from its scope".[26]

27. According to the panel's ruling, Article X:3's scope would include licensing regulations for tariff quotas.[27]

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[23] Panel Report, *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather ("Argentina – Bovine Hides"),* WT/DS155/R, adopted 16 February 2001, paras. 11.76 and 11.77.

[24] Appellate Body Report, *US – Underwear",* WT/DS24/R, para. 21.

[25] *Ibid.*, para. 22.

[26] Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas ("EC – Bananas III"),* WT/DS27/R/GTM, adopted 25 September 1997, as modified by the Appellate Body Report WT/DS27/AB/R, para. 7.206.

[27] *Ibid.*, paras. 7.206 and 7.225.

2. Subparagraph a

(a) Scope

28. In the *US – Stainless Steel* case, the panel rejected Korea's claim that the United States had violated paragraph 3(a) by departing from its own established policy regarding the determination of local sales prices. The panel reasoned that Article X:3(a)

> "was not in our view intended to function as a mechanism to test the consistency of a Member's particular decisions or rulings with the Member's own domestic law and practice; that is a function reserved for each Member's domestic judicial system, and a function WTO panels would be particularly ill-suited to perform. (…) In our view, the requirement of uniform administration of laws and regulations must be understood to mean uniformity of treatment in respect of persons similarly situated; it cannot be understood to require identical results where relevant factors differ. Nor do we consider that the requirement of reasonable administration of laws and regulations is violated merely because, in the administration of those laws and regulations, different conclusions were reached based upon differences in the relevant facts".[28]

29. Different form requirements among EU member States for import license applications, as well as differences with respect to the requirement of pro-forma invoices within these countries, were considered *minimal* and not in themselves a breach of Article X:3 by a GATT panel in the *EEC – Dessert Apples* case.[29]

30. Similarly, in *EC – Bananas III*, the Appellate Body stated that Article X:3(a) would not preclude the imposition of one system of import licensing procedures on a product originating in certain Members and a different system on the same product originating in other Members.[30] According to the Appellate Body,

> "The text of Article X:3(a) clearly indicates that the requirements of 'uniformity, impartiality and reasonableness' do not apply to the laws, regulations, decisions and rulings *themselves*, but rather to the *administration* of those laws, regulations, decisions and rulings. The context of Article X:3(a) within Article X, which is entitled 'Publication and Administration of Trade Regulations', and a reading of the other paragraphs of Article X, make it clear that Article X applies to the administration of laws, regulations, decisions and rulings. To the extent that the laws, regulations, decision and rulings themselves are discriminatory, they can be examined for their consistency with the relevant provisions of the GATT 1994".[31]

31. This was reaffirmed in a later panel ruling on the matter (*US – Corrosion-Resistant Steel Sunset Review)*, holding that:

> "It is well-established that only the administration of laws and regulations can be challenged under Article X:3(a), not the laws and regulations themselves. Substantive

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[28] Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea ("US – Stainless Steel"),* WT/DS179/R, adopted 1 February 2001, paras. 6.50 – 6.51.

[29] Panel Report, EEC – *Restrictions on Imports of Dessert Apples*, L/6491, paras. 6.3 – 6.6 and 12.30.

[30] Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, ("EC – Bananas"),* WT/DS27/AB/R, adopted 25 September 1997, paras. 200 – 201.

[31] *Ibid.*, para. 200.

> contents of laws and regulations can be challenged under relevant provisions of the covered agreements".[32]

32. In *Argentina – Bovine Hides*, the panel rejected the respondent's claim that Article X:3(a) would only apply to situations of discrimination between WTO *Members*.[33] The panel reasoned that Article X:3(a)

> "Nowhere …. refer(s) to Members or products originating in or destined for certain Members' territories (…)".[34]

33. Referring to paragraphs 1 and 3(b) of the same Article, and highlighting their focus on private traders as main beneficiaries of the obligations established in those provisions, the panel found that Article X could not be reduced to apply only to incidents of discrimination between *Members*.[35]

34. The panel further rejected Argentina's argument that a violation of paragraph 3(a) could only be found in the *administration* of a regulation, not in its *substance*. It held that:

> "If the substance of a rule could not be challenged, even if the rule was administrative in nature, it is unclear what could ever be challenged under Article X".[36]

35. According to the panel, resolutions of an administrative nature were "properly subject to review under Article X:3(a)". Read in conjunction with the Appellate Body's finding in the *EC – Poultry* case that "Article X relates to the *publication* and *administration* of 'laws, regulations, judicial decisions and administrative rulings of general application', rather than to the *substantive content* of such measures"[37], this suggests that, while Article X's focus is on the administration of the above-mentioned regulations, a Member can nevertheless challenge the substance of a rule, if that rule is administrative in nature.

"In a uniform, impartial and reasonable manner"

36. In *US – Hot-Rolled Steel*, the panel held that, for a Member's measure to violate paragraph 3(a), it would have to have a significant impact on the overall administration of that Member's law as opposed to a mere impact on the outcome in the individual case in question. The panel was of the view that:

> "While it is not inconceivable that a Member's actions in a single instance might be evidence of lack of uniform, impartial, and reasonable administration of its laws, regulations, decisions and rulings, we consider that the actions in question would have to have a significant impact on the overall administration of the law, and not simply on the outcome in the single case in question. Moreover, we consider it unlikely that such a conclusion could be reached where actions in the single case in question were, themselves, consistent with more specific obligations under other WTO Agreements".[38]

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[32] Panel Report, *United States – Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/R, adopted 9 January 2004, para. 7.289.

[33] Argentina had argued that paragraph 3(a) was only applicable to cases of discriminatory treatment regarding, for example, exports to two or more Members. For details see Panel Report, *Argentina – Bovine Hides*, WT/DS155/R.

[34] *Ibid.*, para. 11.68.

[35] *Ibid*., paras. 11.67 – 11.68.

[36] *Ibid.*, para. 11.71.

[37] Appellate Body Report, *EC –Poultry*, WT/DS69/AB/R, para. 115.

[38] Panel Report, *US – Hot-Rolled Steel*, WT/DS184/R, adopted on 23 August 2001, para. 7.268. Affirming reference to this ruling was also made in *Unites States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, Panel Report, WT/DS244/R of 14 August 2003.

37. According to the panel in *Argentina – Bovine Hides*, the test of whether there has been a violation of a Member's obligation to administer its laws in a uniform, impartial and reasonable manner,

> "… generally will not be whether there has been discriminatory treatment in favor of exports to one Member relative to another. Indeed, the focus is on the treatment accorded by government authorities to the traders in question".[39]

38. With respect to the meaning of the term "*uniform"*, the panel noted that:

> "…this provision should not be read as a broad anti-discrimination provision. We do not think this provision should be interpreted to require all products being treated equal. That would be reading far too much into this paragraph which focussed on the day to day application of Customs laws, rules and regulations. There are many variations in products which might require differential treatment and we do not think this provision should be read as a general invitation for a panel to make such distinctions".[40]

39. On the interpretation of *"impartial"*, the panel observed that:

> "Whenever a party with a contrary commercial interest, but no relevant legal interest[41], is allowed to participate in an export transaction such as this, there is an inherent danger that the Customs laws, regulations and rules will be applied in a partial manner so as to permit persons with adverse commercial interests to obtain confidential information to which they have no right".

40. As regards *"reasonable"*, the panel held that:

> "… it is unreasonable to allow ADICMA [Association of Industrial Producers of Leather, Leather Manufactures and Related Products] representatives into the Customs clearance process in light of the access to information that it affords.(…) We do not see why ADICMA must have access to such information, which by its nature is confidential and which is made available to it as a participant in the Customs clearance process for the purposes of proper classification, in order to combat fraud and mistakes with respect to assessment of export duties and awarding of export 'refunds'".[42]

41. It reasoned that:

> "… a process aimed at assuring the proper classification of products, ... which inherently contains the possibility of revealing confidential business information, is an unreasonable manner of administering the laws, regulations and rules identified in Article X:1 and therefore inconsistent with Article X:3(a)".[43]

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[39] Panel Report, *Argentina – Bovine Hides*, WT/DS155/R, para. 11.76.

[40] *Ibid.*, paras. 11.81 – 11.84.

[41] In a footnote, the panel stated: "Again, we note that there is, arguably, a 'legal interest' created by RG 2235 [the Argentinian resolution allowing ADICMA representatives to be present when customs authorities inspect bovine hides and skins before export] itself. However, that is the measure in question and should not be seen to self-generate a legal relationship that would not otherwise exist".

[42] Panel Report, *Argentina – Bovine Hides*, WT/DS155/R, para. 11.91. The quotation does not include footnotes.

[43] *Ibid.*, para. 11.94.