
**Dispute Settlement Body
Special Session**

Original: English/
French

**CONTRIBUTION OF CANADA TO THE IMPROVEMENT OF THE
WTO DISPUTE SETTLEMENT UNDERSTANDING**

Communication from Canada

The following communication, dated 22 January 2003, has been received from the Permanent Mission of Canada.

Canada considers that, in general, the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) provides effective rules and procedures for the preservation of the rights and obligations of Members under the covered agreements. However, experience with the DSU has identified certain deficiencies in the rules and procedures that may impede this objective.

In addition to the sequencing proposals tabled by Canada and other Members for consideration by Ministers both in Seattle [WT/MIN(99)/8] and Doha [WT/MIN(01)/W/6] that have clearly contributed to subsequent proposals in respect of sequencing, and without prejudice to the positions that Canada may take on issues raised and proposals tabled in these negotiations, Canada proposes in this document certain improvements to the DSU to address the following concerns:

- the treatment of business confidential information;
- the panel selection process; and
- transparency.

1. Procedure to Protect Business Confidential Information (BCI)

Background

Effective dispute settlement pursuant to the DSU is premised on an objective assessment by a dispute settlement panel of the matters in dispute, including an objective assessment of the facts of the case. The receipt and provision of factual information is a central feature of the process. Members must be able to disclose and receive the evidence necessary to defend or challenge the measure at issue. This evidence may include proprietary or commercially sensitive information of private parties (known as "business confidential information" or "BCI"). Private parties will not consent to their BCI being disclosed by Members unless they have sufficient assurance that the confidentiality of the information will be maintained.

Current DSU rules acknowledge the need to provide protection for confidential information in the context of dispute settlement. Article 18.2 of the DSU provides, among other things, that Members “shall treat as confidential” information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. Similar provisions are found in the panel Working Procedures (Appendix 3, paragraph 3) and the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* (Article VII:1). However, these rules offer insufficient procedural guidance for the treatment of BCI.

This is not a theoretical problem. In *United States - Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities* [WT/DS166/AB/R], the Appellate Body noted its “strong agreement with the Panel that a 'serious systemic issue' is raised by the question of the procedures which should govern the protection of information requested by a panel under Article 13.1 of the DSU and which is alleged by a Member to be confidential.”¹ The absence of clear and predictable rules in the DSU to protect BCI can be detrimental to a Member's ability to advance or defend a challenge and thereby to the effectiveness of the dispute settlement system.

The *ad hoc* procedures adopted by panels, in the absence of specific procedures to protect BCI, have on occasion failed to satisfy disputing parties. In some cases, disputing parties (including Canada) have refused panel requests for BCI where they have considered the procedures adopted by the panel inadequate to ensure appropriate protection of the BCI. Moreover, in *Canada- Measures Affecting the Export of Civilian Aircraft* [WT/DS70/AB/R], the Appellate Body refused a joint request from the disputing parties to adopt additional procedures to protect BCI in the appellate proceedings.

Proposal: Procedures Governing Business Confidential Information

Canada therefore proposes an effective procedure to protect BCI, which would be included as a new Appendix to the DSU. The procedure would apply to all panel proceedings, and *mutatis mutandis*, to all arbitral proceedings, commenced under the DSU. With respect to appellate review, Canada proposes that pursuant to DSU Article 17.9, the Chairperson of the DSB and the Director-General refer this procedure to the Appellate Body with a recommendation that it be incorporated *mutatis mutandis* into the Working Procedures for Appellate Review.

In Canada's view, an effective procedure to protect BCI would build upon Article 18.2 of the DSU, the *Working Procedures* and the *Rules of Conduct*, and would include the following elements²:

Scope

The procedures will protect all BCI submitted in the course of the panel process but will not apply to a party's treatment of its own BCI.

Designation of Information as BCI

When a party introduces as evidence information that is proprietary or commercially sensitive and not in the public domain, it will be permitted to designate that information as BCI, provided that it acts in good faith and exercises restraint. If another party considers that a party has unreasonably designated information as BCI, the panel may ask the party to justify the designation. If the party fails to provide an adequate justification in accordance with the established criteria, the panel will be permitted to decline to consider the information unless the party agrees to remove the designation.

¹ United States v. Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, Appellate Body Report, WT/DS166/AB/R, adopted 19 January 2001, at para. 170.

² These elements are further addressed as draft legal text in Annex 1 of this proposal.

Effects of Designating Information as BCI

Access to BCI will be limited to persons who have signed a declaration of non-disclosure and who fall into the following categories: (i) representatives of the disputing parties, including employees, legal counsel or other advisors, but excluding employees, officers or agents of private entities that could reasonably be expected to benefit commercially from the receipt of the BCI; (ii) members of the panel; (iii) staff of the Secretariat; and (iv) experts appointed by the panel.

In the event that the party submitting BCI objects to any person being designated an approved person, the panel will decide on the objection as a preliminary matter.

An approved person will be permitted to communicate BCI only to other approved persons and to use the BCI only for the purposes of the dispute settlement proceedings.

A party referring to BCI in a document or other recording will be required to indicate that it contains BCI and to identify the BCI where it appears. In the case of text documents, the party submitting the BCI will be required within two business days, to submit a version of the document with the BCI redacted. Documents or other recordings containing BCI will have to be securely stored.

A party intending to refer to BCI at an oral hearing will be required to inform the panel prior to the hearing. Only approved persons will be permitted to be present when the BCI is discussed before the panel.

The panel will not be permitted to disclose BCI in its report, but will be permitted to make statements of conclusion drawn from the BCI.

Destruction or Return of BCI

Within a fixed period after the conclusion of the proceeding, including any appeal, the Secretariat and the parties will be required to destroy or return all documents or recordings in their possession that contain BCI.

Additional or Alternative Procedures

The panel will be permitted, at its own discretion, to impose additional procedures to protect BCI. It will also be permitted to modify or waive any of the procedures if the parties so request or agree.

2. Enhanced Panel Professionalism through the Creation of a Panel Roster

Background

Panelists play a key role in fulfilling the objectives of the DSU. They are charged to make an objective assessment of the matters raised in a dispute, including as finders of fact. They also must assess the applicability of and conformity with the agreements relevant to the dispute and make the findings that will enable the Members, acting as the Dispute Settlement Body, to make the appropriate recommendations or rulings.

Canada agrees with many of the observations made by the European Communities in its communication TN/DS/W/1 addressed to the shortcomings of the current *ad hoc* system of panel selection, including the quantitative discrepancy between supply and demand, insufficient number of qualified panelists and costs in the timeliness of panel composition. Like the EC, Canada considers that adjustments to the current panel selection system could be made to improve the timeliness of

panel proceedings, ensure availability of qualified panelists and encourage better and more consistent panel findings. However, in lieu of establishing a system of permanent panelists, Canada suggests that Members transform the current indicative list into a streamlined panel roster. In Canada's view, this roster would provide an effective alternative to the current *ad hoc* approach of panel selection and composition.

Article 8.4 of the *Dispute Settlement Understanding* provides that "to assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications of a panelist outlined in paragraph 1, from which panelists may be drawn as appropriate". Panelists are to be selected with a view to ensuring the independence of those serving on a panel, a sufficiently diverse background and wide spectrum of experience.

Canada believes that the selection criteria need greater rigour. The more demanding selection criteria for members of the Appellate Body stand in stark contrast to that for panelists. The Appellate Body selection criteria are appropriate to the trust discharged by Appellate Body members and are instructive as to criteria suited to panelist selection. In Canada's view, the qualifications for panelists should be no less stringent than those for Appellate Body Members.

The current indicative list is not performing its intended function as a source of potential panelists. Despite an extensive number of candidates, panelists are drawn infrequently from the list. The relative inutility of the current indicative list may be a reflection of the absence of appropriate criteria for candidates as well as a failure by Members to recognize its function in respect of panel selection. Transformation of the indicative list into a roster composed of individuals selected on the basis of strict criteria and agreement by Members as to the function of the roster would make panel selection more efficient and contribute to panels that are qualified and representative.

Proposal: A New Panel Roster

To replace the current indicative list, each WTO Member will be invited to nominate one individual, who may or may not be a national, for placement on a Panel Roster. In nominating an individual, each Member will be required to provide a statement of qualifications that identifies the nominee's capabilities and capacity to serve as a panelist in reference to a set of qualifications outlined in an amended DSU Article 8.1, closely tracking those currently applicable to Appellate Body members.

The nominations and accompanying qualification statements will be transmitted to a committee which will verify that the nominees meet the requisite level of expertise to serve as a panelist. The Committee will be the same as the selection committee for appointments to the Appellate Body – i.e. the Chairs of the five main Councils of the WTO: Goods, Services, TRIPS, the DSB and the General Council. Once confirmed by the Committee, this Panel Roster will be submitted to the General Council for approval. Approved individuals will remain on the Roster for a period of five years, with the possibility of one more five-year term on approval by the General Council. In the event of an individual's resignation or inability otherwise to serve, the nominating Member would be at liberty to submit a replacement nominee for consideration, through the same process. With assistance from the WTO Secretariat, the DSB will maintain the Roster and qualification statements and will ensure access to this information by the Membership.

A New Panel Roster – Function

Following the establishment of a panel by the DSB, the disputing parties will endeavour to agree on the composition of the panel. As under the current system, the Secretariat will propose potential panelists to the disputing parties. The Secretariat will draw its candidates from the Panel Roster. The disputing parties will be able to propose "off roster" candidates. Absent agreement on

the composition of the panel within 15 days after the date of the establishment of the panel, at the request of any of the disputing parties, the Director-General will compose the panel from the Panel Roster on the understanding that his/her selection will be made with due consideration to the issues in dispute. If, however, the Director-General determines that insufficient expertise is available from the roster for a particular dispute, the Director-General will be able to appoint an individual other than from the roster to serve as a panelist in that dispute. As under the current system, citizens of Members whose governments are parties or third parties to the dispute shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

A streamlined and effective Panel Roster would be advantageous to the WTO dispute settlement system for a number of reasons. In addition to ensuring that adequate information is available regarding the qualifications of potential panelists, the Roster would help to reduce the time and resources currently devoted to the process of panel composition by parties and the Secretariat, thereby allowing for a quicker resolution of disputes and better allocation of scarce Secretariat resources. Compared to a permanent panel arrangement, moreover, this system would allow for greater flexibility in terms of both resources and representation.

Remuneration of Panelists

In addition, providing an adequate level of compensation to panelists will help to ensure that sufficient numbers of qualified individuals are willing to advance their candidacy to the Panel Roster and that those selected to serve on a panel will not be penalized financially for the time they dedicate to this task.

Canada appreciates the resource constraints faced by the WTO. However, an adjustment to the *per diem* remuneration of panelists is warranted. Compared against other international tribunals, the *per diem* offered to WTO panelists is very low (see Annex 2). Remuneration accorded to WTO panelists must reflect more closely the value of panelist service not only to the individual parties to a dispute but also to ensuring the ongoing capacity of the DSU to provide security and predictability to the multilateral trading system to the benefit of all WTO Members.

3. Transparency

Background

Members recognize that the strength of the WTO owes much to the support of the constituency it serves. That constituency has greatly expanded. Panels and the Appellate Body frequently adjudicate disputes involving matters of broad public interest that can affect large sectors of civil society. The implementation of DSB recommendations and rulings normally requires adjustments to a Member's trade measures and may prompt the enactment of new laws by national legislatures. Denying public observation to a process that results in government measures being repealed or amended runs the risk of arousing suspicion and courting public resistance where none is warranted.

Making the dispute settlement process more transparent could have significant benefits for the institution and the Membership. Granting the public access to Members' written submissions and the opportunity to observe panel and Appellate Body proceedings would reinforce the legitimacy of WTO dispute settlement procedures. Representatives of WTO Members with less experience in dispute settlement also could benefit from the opportunity to observe panel and Appellate Body proceedings. At the same time, greater transparency will require suitable protection for confidential information, including business confidential information submitted by parties to disputes.

More transparency need have no adverse effect on Members' ability to reach negotiated solutions to disputes. Consultations (and good offices, conciliation and mediation) are appropriately confidential because they involve negotiations conducted on a "without prejudice" basis between the disputing parties. Opening consultations to public scrutiny could undermine Members' ability to reach negotiated solutions to disputes. However, the rationale for keeping consultations confidential does not apply to panel or Appellate Body proceedings. Members do not engage in negotiations at panel and Appellate Body meetings. Likewise, Members do not negotiate with one another through their written submissions to panels and the Appellate Body.

Proposal: Public Access to Submissions and Meetings

Canada proposes that the DSU be amended to provide as follows³:

Written Submissions

The written submissions of parties and third parties to the panel and the Appellate Body would generally be made available to the public at the time of filing. The Secretariat would establish and administer a dispute settlement registry at the WTO to facilitate public access to these submissions. It is expected that the Secretariat would make the submissions available to the public on the WTO website.

If a party or third party has designated information contained in its written submissions as confidential, as soon as is reasonably possible, it would provide the Secretariat with a redacted version of its written submissions that could be made available to the public.

Panel and Appellate Body Meetings

Panel and Appellate Body meetings would be open to the public. In accordance with Canada's proposed *Procedures Governing Business Confidential Information*, the public would be excluded from portions of panel and Appellate Body meetings where confidential information is discussed.

To address resource limitations, the Secretariat could facilitate public access to panel and Appellate Body meetings by transmitting a live telecast of such meetings to a public viewing location designated by the Secretariat. Portions of meetings where confidential information is discussed would not be transmitted to the public viewing location.

³ Proposed textual amendments are included in Annex 4 of this proposal.

ANNEX 1
BUSINESS CONFIDENTIAL INFORMATION (BCI):
PROPOSED AMENDMENTS OF THE DSU

Please note that changes to the existing language of the DSU are marked with underline for added text and strike-out for deleted text.

1. Addition to Article 18.2, following the third sentence:

“Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. Where such information has been designated “business confidential” it shall be treated in accordance with the procedures in Appendix 5. Those procedures apply mutatis mutandis to business confidential information submitted to the arbitrator in arbitrations pursuant to paragraph 6 of Article 22. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.”

2. Addition to Appendix 3 (Working Procedures), paragraph 3, following the third sentence:

“The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Information designated by a Member as “business confidential” shall be treated in accordance with the procedures in Appendix 5. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.”

APPENDIX 5 [New]

PROCEDURES GOVERNING BUSINESS CONFIDENTIAL INFORMATION

I. SCOPE

1. These procedures apply to all business confidential information submitted during the Panel process, but do not apply to a party with respect to business confidential information first submitted by that party.

II. OBLIGATION ON PARTIES

1. Each party shall ensure that its representatives comply with these procedures.

2. The treatment of information as business confidential under these procedures imposes a substantial burden on the panel and the parties. The indiscriminate designation of information as business confidential could limit the ability of a party to fully include in its litigation team individuals who have particular knowledge and expertise relevant to presenting the party's case, impede the work of the panel and complicate the panel's task in formulating credible public findings and conclusions. Accordingly, each party shall act in good faith and exercise the utmost restraint in designating information as business confidential.

III. SUBMISSION BY A PARTY

1. When submitting information, a party may designate all or any part or parts of that information as business confidential information.

2. Where a submission by a party incorporates business confidential information first submitted by another party, the submission shall identify that information as business confidential.

3. A party submitting an exhibit containing business confidential information shall submit one copy of the exhibit to the Secretariat, and two copies of the exhibit to each other party.

4. If, taking into the account the obligation on parties, the panel considers that a party has designated as business confidential information that is not reasonably entitled to such treatment, the panel may ask the party to justify the designation. If, in the opinion of the panel, the party fails to justify the designation, the panel may decline to consider that information. In such a case, the party submitting the information may, at its discretion:

(i) withdraw the information, in which case the panel and the other parties shall promptly return any document or other recording containing the information to the party submitting it; or

(ii) withdraw the designation of the information as business confidential.

5. A party submitting a text document containing business confidential information shall also provide, within two business days of that submission:

(i) an edited version of the document, redacted in such a manner as to convey a reasonable understanding of the substance of the business confidential information; or

(ii) in exceptional circumstances, a written statement that:

- (a) an edited version cannot be made, or
- (b) an edited version would disclose facts that the party has a proper reason for wishing to keep confidential.

6. If the panel considers that an edited version does not fulfill the requirements of paragraph 5(i) or that exceptional circumstances do not exist to justify a statement pursuant to paragraph 5(ii), the panel may decline to consider the business confidential information in question. In such a case, the party submitting the information may, at its discretion:

- (i) withdraw the information, in which case the Secretariat and the other parties shall promptly return the document containing the information to the party submitting it; or
- (ii) comply with the provisions of paragraph 5 to the satisfaction of the panel.

IV. STORAGE

1. The Secretariat shall store all documents or other recordings containing business confidential information in a secure location when not in use by an approved person.
2. Each party shall store all documents or other recordings containing business confidential information submitted to it by another party in a locked storage receptacle, to which only approved persons have access, when not in use by an approved person.
3. An approved person shall take all necessary precautions to safeguard business confidential information when documents or other recordings containing the information are in use or being stored.

V. DISCLOSURE

1. Only approved persons may view or hear business confidential information that has been submitted pursuant to these procedures. No approved person who views or hears business confidential information shall disclose it, or allow it to be disclosed, to any person other than another approved person, except in accordance with these procedures.
2. Approved persons who view or hear business confidential information shall use that information only for the purposes of the panel proceedings and for no other purposes.
3. The panel shall not disclose business confidential information in its report, but may make statements of conclusion drawn from that information.
4. In the event that a party submitting business confidential information objects to any person being designated an approved person, the panel shall decide on the objection as a preliminary matter. If the panel allows the designation, the information may not be disclosed to the approved person until the party submitting the information has a reasonable opportunity to:
 - (i) withdraw the information, in which case the panel and the other parties shall promptly return any document or other recording containing the information to the party submitting it; or
 - (ii) withdraw the designation of the information as business confidential.

5. An approved person viewing or hearing business confidential information may take written summary notes of that information for the sole purpose of the panel process. Those notes are subject to the requirements of Articles IV and VII.

6. Documents or other recordings containing business confidential information shall not be copied, distributed or removed from a locked storage receptacle, except as specifically provided in these procedures.

7. A party may bring with it to a panel meeting, for the sole purpose of that meeting, the documents or other recordings containing business confidential information that it has received from another party under these procedures, and shall immediately thereafter return those documents or other recordings to their locked storage receptacle.

8. A panel member may make and remove from the secure location a copy of any document or other recording containing business confidential information. The copy shall be used exclusively by that panel member for the purpose of the dispute, and shall be returned to the Secretariat upon conclusion of the panel. The copy shall be stored in a locked receptacle and subject to the obligation to safeguard provided in Article IV.3.

VI. DISCLOSURE AT A PANEL MEETING

1. A party that wishes to submit business confidential information during a panel meeting shall so inform the panel prior to doing so. The panel shall exclude persons who are not approved persons from the meeting for the duration of the submission of that information.

VII. RETURN OR DESTRUCTION

1. After the conclusion of the panel process, within a period fixed by the panel, the Secretariat and the parties shall return any documents or other recordings containing business confidential information, or certify in writing to the parties that the documents or other recordings have been destroyed, unless the party that first submitted the business confidential information agrees otherwise.

2. If the report of the panel is appealed, the Secretariat shall transmit any documents or other recordings submitted to it by a party containing business confidential information, and any other recordings that contain business confidential information, to the Appellate Body as part of the record of the panel proceedings. The Secretariat shall transmit such documents or other recordings to the Appellate Body separately from the rest of the record.

X. ADDITIONAL OR ALTERNATIVE PROCEDURES

1. The panel may apply any additional procedures that it considers necessary to protect the confidentiality of business confidential information.

2. The panel may, at the request of or with the consent of the parties, modify or waive any part of these procedures.

XI. DEFINITIONS

“approved person” means:

- (i) a panel member;
- (ii) a representative of a party;

- (iii) a Secretariat employee, or
- (iv) an expert appointed by the panel

who has filed with the Secretariat a Declaration of Non-disclosure.

“conclusion of the panel process” means when:

- (i) pursuant to Article 16.4, the panel report is adopted by the DSB, or otherwise not adopted by consensus of the DSB;
- (ii) pursuant to Articles 16.4 and 17.14, the panel report is adopted (with modification, if any) with the report of the Appellate Body; or
- (iii) when the authority for establishment of the panel lapses pursuant to Article 12.12.

“business confidential information” means any proprietary or commercially sensitive information that is designated as business confidential by the party submitting the information, and that is not otherwise available in the public domain.

“Declaration of Non-disclosure” means a copy of the declaration set out in this Annex, signed and dated by the person making the declaration.

“designated as business confidential” means:

- (i) for information recorded in printed documents, clearly marked where the information appears in the document with the notation ‘BUSINESS CONFIDENTIAL INFORMATION’ and with the name of the party that first submitted the information;
- (ii) for information recorded in binary-encoded files or in any other medium, clearly marked with the notation ‘BUSINESS CONFIDENTIAL INFORMATION’ on a label on the recording medium, and, in the case of information recorded in binary-encoded files, clearly annotated where the information appears in the files with the notation ‘BUSINESS CONFIDENTIAL INFORMATION’, and with the name of the party that first submitted the information; and
- (iii) for uttered information, declared by the speaker to be “Business Confidential Information” prior to the disclosure, and identified with the name of the party that first submitted the information.

“information” includes information recorded in any medium, including printed documents and binary-encoded files, and uttered information.

“other recordings” includes tapes and transcripts of panel meetings.

“panel meeting” means a substantive meeting of the panel with the parties or any interim review meeting of the panel with the parties, as described in the working procedures adopted by the panel.

“panel member” means a person serving on the panel.

“representative” means:

- (i) an employee of a party;
- (ii) a legal counsel or other advisor or consultant of a party,

who has been authorized by a party to act on its behalf in the course of the dispute and whose authorization has been notified to the Secretariat and to the other parties, but in no circumstances may a representative be a person or an employee, officer or agent of any entity that could reasonably be expected to benefit commercially from the receipt of the business confidential information.

“Secretariat employee” means a person employed or appointed by the Secretariat who has been authorized by the Secretariat to work on the dispute, and includes translators and interpreters and transcribers present at the panel hearings.

“secure location” means a locked storage receptacle chosen by the Secretariat to provide secure storage for business confidential information.

“text document” includes written submissions to the panel, whether in printed or binary-encoded form.

DECLARATION OF NON-DISCLOSURE FORM

1. I acknowledge having received a copy of the Procedures Governing Business Confidential Information (the "Procedures") annexed to the Understanding on the Rules and Procedures Governing the Settlement of Disputes.
2. I acknowledge having read and understood the Procedures.
3. I agree to be bound by, and to adhere to, the provisions of the Procedures and, accordingly, without limitation, to treat confidentially all business confidential information that I may view or hear from time to time in accordance with the Procedures.

Executed on this _____ day of _____, 200x.

BY: _____(signature)_____

Name:

Title:

(Representatives only) Affiliation or employment:

**ANNEX 2
REMUNERATION OF WTO PANELISTS COMPARED WITH
OTHER INTERNATIONAL TRIBUNALS**

ORGANIZATION	REMUNERATION	AVERAGE PER DAY* (CHF)
International Centre for Settlement of Investment Disputes (ICSID)	US\$2,000 per day	CHF 2,772
London Court of International Arbitration (LCIA)	£150 - £350 per hour.	CHF 2,503 – 5,842
American Arbitration Association (AAA) International Centre for Dispute Resolution	US\$250 – US\$450 per hour	CHF 2,599 – 4,678
British Columbia International Commercial Arbitration Centre (BCICAC)	CDN \$250 - US\$400 per hour for international arbitrations.	CHF 1,687 – 4,159
International Chamber of Commerce (ICC) International Court of Arbitration	Arbitrators' fees are based on the amount in dispute. (For example, if the amount in dispute is US\$5,000,000, the arbitrator would receive between US\$23,750 and US \$108,500.)	N/A
World Intellectual Property Organization (WIPO) arbitrators	The arbitrators' fees are based on the amount in dispute. (For example, if the amount in dispute is US\$5,000,000, a three-person tribunal would receive approximately US\$271,250.)	N/A
Court of Arbitration for Sport (CAS)	Approximately CHF 200 per hour	CHF 1,500
North American Free Trade Agreement (NAFTA) Chapter Eleven tribunal members	Approximately US\$350 – US\$450 per hour	CHF 3,639 – 4,678
NAFTA Chapter Nineteen and Twenty panelists	CDN \$800 per day	CHF 719
World Trade Organization panelists	CHF 600 per day	CHF 600

* Based on a working day of 7.5 hours. CHF 1 = 0.449627 GBP; 1.11150 CAD; and 0.721715 USD (exchange rates 14.01.2003).

ANNEX 3
PERMANENT PANEL ROSTER: PROPOSED AMENDMENTS TO
ARTICLE 8 OF THE DSU

Please note that changes to the existing language of DSU Article 8 are marked with underline for added text and strike-out for deleted text.

1. Article 8 is amended to read as follows:

“1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

3. Citizens of Members whose governments⁶ are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain ~~an indicative list a~~ panel roster of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. ~~That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the Secretariat shall maintain list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements. Each Member may nominate one individual, who may or may not be a national, for placement on the roster. In nominating an individual, each Member shall provide a statement of qualifications that identifies the nominee’s capabilities and capacity to serve as a panelist in reference to the qualifications outlined in paragraph 1. A committee composed of the Chairs of the General Council, the DSB and the Goods, Services and TRIPS councils, will examine the nominations and accompanying qualification statements to verify that the nominees meet the requisite level of expertise to serve as a panelist. On completion of the selection process, the Committee will submit the roster to the General Council for approval. Approved individuals will remain on the roster for five years and may be reappointed for one more five-year term on approval by the General Council. In the event of an individual’s resignation or inability otherwise to serve, the nominating Member may submit a replacement nominee for consideration, through the above process. The WTO Secretariat shall maintain the qualification statements of individuals on the roster and ensure access to this information by the Membership.~~

⁶ In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.
6. The Secretariat shall propose nominations for the panel to the parties to the dispute drawn from the panel roster. The parties to the dispute shall not oppose nominations except for compelling reasons. Parties may also propose individuals for service on the panel.
7. If there is no agreement on the panelists within 15 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists drawn from the roster whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. Should the Director-General determine that insufficient expertise is available from the roster for a particular dispute, the Director-General may appoint an individual other than from the roster to serve as a panelist in that dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.
8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.
9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.
10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.
11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration."

ANNEX 4
TRANSPARENCY: PROPOSED AMENDMENTS OF THE DSU⁴

Please note that changes to the existing language of the DSU are marked with underline for added text and strike-out for deleted text.

1. Paragraph 2 of Article 18 of the DSU is amended to read as follows:

~~“Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public. The Secretariat shall make the written submissions of parties and third parties to the panel and the Appellate Body available to the public at the time of filing. However, if a party designates information contained in its written submissions as confidential, it shall as soon as is reasonably possible, provide the Secretariat with a redacted version of its written submission that can be made available to the public. The Secretariat shall establish and administer a dispute settlement registry at the WTO to facilitate public access to the written submissions of parties and third parties. The DSB shall establish rules and procedures governing the Secretariat’s administration of the registry.”~~

2. Paragraph 3 of Appendix 3 is amended to read as follows:

~~“The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.”~~

3. Paragraph 2 of Appendix 3 is amended to read as follows:

~~“The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it. Panel meetings with the parties and third parties shall be public. To facilitate public access to panel meetings with the parties or third parties, electronic recordings of such meetings may be transmitted simultaneously to a public viewing location designated by the Secretariat. A party or third party intending to refer to confidential information at a meeting shall inform the Secretariat, if possible prior to the meeting. Portions of meetings in which confidential information is discussed shall not be transmitted to the public viewing location.”~~

⁴ Canada has not attempted to merge the proposed amendments to the DSU included in Annexes 1 and 4 of this proposal.

4. Paragraph 10 of Article 17 is amended to read as follows:

~~“The proceedings of the Appellate Body shall be confidential.”~~ The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.”

5. In Article 17, the following paragraph shall be inserted following paragraph 13. Paragraph 14 shall be renumbered as 15.

“14. Appellate Body meetings with the parties and third parties shall be public. To facilitate public access to Appellate Body meetings with the parties or third parties, electronic recordings of such meetings may be transmitted simultaneously to a public viewing location designated by the Secretariat. A party or third party intending to refer to confidential information at a meeting shall inform the Secretariat, if possible prior to the meeting. Portions of meetings in which confidential information is discussed shall not be transmitted to the public viewing location.”
