



PRESHIPMENT INSPECTION INDEPENDENT REVIEW PROCEDURES

**In accordance with Article 4 of the WTO
Agreement on Preshipment Inspection**

GUIDELINES FOR EXPORTERS

THE INDEPENDENT ENTITY

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INTRODUCTION

The World Trade Organisation (WTO) Agreement on Preshipment Inspection (PSI) outlines the procedures to be followed by PSI companies when carrying out government mandated preshipment inspections. It is intended to provide exporters with transparency concerning the preshipment inspection requirements and enable exporters to speedily resolve disputes with PSIU companies.

Exporters who feel that the PSI company has not complied with the provisions of the Agreement on PSI should, in accordance with Article 2.21 thereof, appeal to the administrative office of the PSI company which carried out the inspection. If, after appealing to the PSI company, the exporter is still dissatisfied, he may refer the dispute to an Independent Entity which will form a panel to carry out an independent review in accordance with the provisions of Article 4 of the Agreement on PSI.

These guidelines provide further information to exporters who wish to refer a dispute to an independent review. They contain copies of the following documents approved by WTO: (1) The rules of Procedures for the Operation of Independent Reviews; (2) The Application Form for a Request for an Independent Review; (3) The Response Form to a Request for an Independent Review and (4) Notice of the Advance Deposit Tariff indicating the amount required to accompany an application for an independent review.

The Independent Entity (IE), which has been established as a subsidiary body of the WTO Council for Trade in Goods, is located at the WTO Secretariat in Geneva, Switzerland. The International Federation of Inspection Agencies (IFIA), representing preshipment inspection agencies, and the International Chamber of Commerce (ICC), representing exporters, have been jointly appointed to assist the IE with various tasks including the provision of information to exporters concerning the independent review procedures and the preparation/updating of the List of Experts from which the independent review panellists shall be selected.

Further information, including copies of the List of Experts and the WTO Agreement on Preshipment Inspection, is available from ICC National Committees in more than 60 countries, the preshipment inspection agencies in the countries of inspection or from:

The International Chamber of Commerce
38, Cours Albert 1^{er}
75008 Paris – France
Attn : Mr. R.Katz

The Independent Entity
WTO Secretariat
Centre William Rappard
Rue de Lausanne 154
CH – 1211 Geneva 21
Switzerland

ANNEX III

RULES OF PROCEDURE FOR THE OPERATION OF INDEPENDENT REVIEWS UNDER ARTICLE 4 OF THE WTO AGREEMENT ON PRESHIPMENT INSPECTION

1. *Purpose and Scope of Independent Review*

1.1. The purpose of an independent review is to resolve disputes between exporters and PSI entities in accordance with the provisions of the PSI Agreement.

1.2. The object of an independent review shall be limited, pursuant to Article 4(f) of the PSI Agreement, to establishing whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of the PSI Agreement.

1.3. When reviewing price verification by a PSI entity, independent review panels shall determine whether the PSI entity has carried out price verification in accordance with the provisions of the PSI Agreement. Aspects of preshipment inspection involving elements of customs valuation shall be subject to the appropriate provisions of the PSI Agreement, in particular footnote 4 to Article 2.20 thereof.

2. *Availability and Timing of Independent Review*

2.1. The entities entitled to request independent review or become parties to proceedings before independent review panels shall be exporters of goods subject to preshipment inspection activities and PSI entities, within the meaning of the PSI Agreement.

2.2. Independent review shall be available after the exporter has first submitted a complaint with the preshipment inspection entity under the appeals procedure provided for in Article 2.21 of the PSI Agreement.

2.3. Independent review shall not be requested earlier than two working days after the dispute was submitted to the internal appeals procedure of the PSI entity. During a period of six months immediately following the entry into force of the present Rules of Procedure, independent review shall not be requested later than 180 days after the issuance of a Clean Report of Findings or notification of non-issuance of a Clean Report of Findings. After the end of the six month period referred to above, independent review shall not be requested later than 90 days after the issuance of a Clean Report of Findings or notification of non-issuance of a Clean Report of Findings. The IE shall not accept a request for independent review unless it is lodged within the foregoing time period, except when both parties agree otherwise. If no Clean Report of Finding or notification of non-issuance of a Clean Report of Finding is issued within the time-frame provided for in Article 2.16 of the PSI Agreement, the party concerned shall be free to request an independent review at any time thereafter.

3. *List of Experts for Independent Review Panels*

3.1. The IE shall establish and update annually a publicly available list of experts divided into three sections as follows:

3.1.1 a section of experts nominated by the International Chamber of Commerce (ICC);

3.1.2 a section of experts nominated by the International Federation of Inspection Agencies (IFIA);

3.1.3 a section of independent trade experts nominated by the IE.

4. Procedure for Initiating an Independent Review

4.1. The complainant, when seeking an independent review, shall submit to the IE a completed Standard Application Form (*see*: Appendix A hereto) and supporting documents.

4.2. The application form submitted by the complainant may be written in any of the official languages of the WTO and shall include the following :

4.2.1 identity of the complainant, address, telephone, fax, telex numbers and the name of the contact person in the complainant's office;

4.2.2 name and address of the importer;

4.2.3 name and address of the respondent, its telephone, fax, telex numbers and the name of the contact person in the respondent's office;

4.2.4 preshipment inspection entity reference numbers and exporters' contract, order, invoice numbers as appropriate;

4.2.5 brief description of the goods;

4.2.6 indication of the provisions of the PSI Agreement which have allegedly been infringed and description of the elements on the basis of which it is alleged that the infringement took place;

4.2.7 copies of all documents considered to be relevant by the complainant for review;

4.2.8 details of submission of dispute to the PSI entity's internal appeal procedure;

4.2.9 complainant's statement as to whether it prefers the dispute to be determined by a single independent trade expert or by a three-member panel. If the complainant wishes the review to be conducted by a single independent trade expert and the respondent agrees, the single independent trade expert will be selected by the IE from the independent trade experts' section of the list of experts held by the IE. If the complainant wishes the review to be conducted by a three-member panel, it shall propose in its application form three names from the relevant section of the list held by the IE. The respondent shall propose in its response form three names from the relevant section of the list held by the IE.

4.2.10 When the complainant's request for independent review includes a request to have the matter decided by a single independent trade expert, the respondent shall state in its reply whether it concurs. Where the respondent does not concur, the names of three experts taken from the relevant section of the list maintained by the IE shall be included in the respondent's reply.

4.3. A copy of the request for independent review and all accompanying papers shall be notified by the IE to the respondent.

4.4. The respondent may submit a reply on the Standard Response Form (*see*: Appendix B hereto). The reply shall be delivered to the IE. The IE shall notify it to the complainant. In an effort to enable the panel to make a reasoned evaluation of the matter presented based upon the request for independent review and the response without any need to seek any further information, any response should include a statement of the respondent's position and any other relevant evidence or explanatory material that the respondent wishes to submit.

4.5. Further documentation may be submitted by either party only upon request by the independent review panel.

5. *Appointment of Panel Members*

5.1. Upon receipt of the application form for the request for independent review from the complainant, the response form from the respondent, if any, and receipt of an amount covering the initial costs of the independent review, the IE will, whether the parties have agreed to the dispute being decided by a single independent trade expert or a three-member panel, appoint the single independent trade expert or the chairperson of the panel, as the case may be, from the independent trade experts section of the list maintained by the IE.¹

5.2. Where there is to be a three-member panel, the IE will in addition select one expert to represent the exporter from the three names submitted by the exporter and one expert to represent the PSI entity from the three names submitted by the PSI entity.

5.3. In selecting the single independent trade expert or the panelists of a three-member panel, the location of the experts, the location of the parties and the location of the site of inspection of the goods shall all be taken into account by the IE.

5.4. No person shall be nominated by either party as a panelist if that person has any affiliation to the nominating party. A person shall be deemed to have an affiliation to a nominating party if that person is a director, employee, adviser, consultant or agent of that party or that person has a financial interest in that party or is in any way related by birth or marriage to that party or to any director, employee or partner of the nominating party.

5.5. If either party has any objection to the proposal of any panelist by the other party based on an alleged affiliation to the other party, such objection shall be notified to the IE within one working day after the objecting party has received the other party's form.

5.6. The IE will ask experts who are under consideration for appointment as panelists or as single independent trade experts to confirm that:

5.6.1 the expert has no affiliation, as defined in paragraph 5.4 above, to the party that has put his/her name forward or, in the case of an independent trade expert, that he/she has no affiliation to either party;

5.6.2 the expert will treat in confidence all confidential information made available during the course of any review.

5.7. In the event that the respondent fails to respond to an application within two working days of the initiation of a request for an independent review, the IE will appoint a single independent trade expert and the review shall proceed despite the lack of response. However, if the complainant insists upon a three-member panel, the IE will, in addition to selecting the chairperson, appoint a third panel member on behalf of the non-participating party so that the review can proceed.

6. *Payment of Deposits to Cover Estimated Costs of an Independent Review*

6.1. Any party which has not secured an appropriate bank guarantee in favour of the IE shall deposit in the bank account of the IE cleared funds in Swiss Francs to cover the initial costs of the review in accordance with the Advance Deposit Tariff published by the IE. Such remittance shall be made by the

¹ For the purposes of this Annex, the term "panel" shall refer to both three-member panels and single independent trade experts referred to respectively in Article 4(c) and (e) of the PSI Agreement. The term "panelist" shall refer to both members of three-member panels and single independent trade experts.

complainant at the same time as the complainant submits the application for independent review to the IE.

6.2. If the respondent is not a PSI entity that has arranged a bank guarantee on terms acceptable by the Director of the IE, it shall make the deposit referred to above forthwith on receipt of a copy of the complainant's application for independent review.

6.3.1 One of the conditions for the commencement of the independent review process is that deposits or bank guarantees of an amount sufficient to cover the initial costs of an independent review must have been received from both parties by the IE. The decision of the IE as to whether a deposit is sufficient shall be final.

6.3.2 Notwithstanding paragraphs 6.1, 6.2 and 6.3.1 above and paragraph II.C.(2) of the "Structure and Functions of the Independent Entity Established by Article 4 of the WTO Agreement on Preshipment Inspection", a panel shall be established upon receipt of a deposit or bank guarantee by only one party, provided that the amount is sufficient, subject to the prior agreement of that party. It is understood that the costs will be borne by that party, in the event that the other party fails to make the deposit or secure the bank guarantee required under paragraph 6.3.1 above.

6.4. After the conditions for the commencement of the review have been met, the IE will, within one working day, send the documents of the case to the nominated panelists.

6.5. If upon its initial review, within one working day of receipt of the documents, the panel determines that (a) it is necessary to travel for the purpose of performing its duties, such as the inspection of the goods, or (b) additional expenditures are necessary, such as to procure the services of an independent consultant with specialist knowledge, the panel shall advise the IE accordingly. The IE shall estimate the additional deposits required and inform the parties.

6.6. If in exceptional circumstances, whilst the review is in process, the panel anticipates expenditure in excess of the advance deposits received in order to reach a decision, it shall advise the IE accordingly. The IE shall estimate the additional deposits required and inform the parties.

6.7. At the request of the panel, the IE shall also inform the parties that the time-frame set out in Article 4(g) of the PSI Agreement will be suspended until an amount sufficient to cover the additional expenditure has been received. The panel may decide at any time to terminate the suspension.

6.8. If neither party agrees to provide further funds, the panel shall proceed to a decision on the basis of the information before it. If only one party makes an additional deposit, the panel may proceed on the basis of the funds available, subject to the agreement of that party. In such a case, notwithstanding paragraph 6.9, only the amount of the deposit or of the bank guarantee not used to cover the costs incurred will be refunded or released.

6.9. Refunds of deposits or release of guarantees will be made in whole or in part, less bank charges, by the IE having regard to the total costs of the independent review as assessed by the IE and having regard to the allocation of costs between the parties made by the independent review panel.

7. Procedure before Independent Review Panels

7.1. Decisions will ordinarily be made on the basis of the initial written submissions and any subsequent oral representations. Either party shall be entitled to make oral representations to the panel subject to the provisions of paragraph 7.5. Parties shall not raise claims before the panel which were not previously raised in the appeals procedure before the preshipment inspection entity provided for in Article 2.21 of the PSI Agreement. The panel may determine whether a particular claim was effectively raised during the appeals procedure.

7.2. The chairperson of the panel or the single independent trade expert shall make all necessary decisions so as to ensure the fair and expeditious resolution of the dispute submitted to independent review but always having due regard to the sums available by way of deposit(s) or guarantee(s) to cover the cost of the review.

7.3. If any party fails to participate in the proceedings or to respond in a timely manner to requests from the panel, the panel shall nevertheless render a decision on the basis of the information before it.

7.4. Except as otherwise provided in paragraph 9.2, copies of all written communications and documents submitted to the panel by a party shall be forthwith notified by the IE to the other party. Any party receiving any new document from the other party shall have the right to comment thereon.

7.5. No *ex parte* communication shall be allowed.

7.6. Each panelist shall act as an independent adjudicator in respect of the dispute under review and shall in no way act as an advocate or agent for either party.

7.7. No party shall seek to influence any panelist concerning the matter in dispute in any way whatsoever except through the process of submissions and evidence in the course of an independent review.

8. *Evidence*

8.1. The panel may request documents and other relevant materials from the parties. The failure of a party to respond may be taken into account by the panel in rendering its decision but shall not, of itself, be a sufficient reason to render a decision against that party.

9. *Confidentiality*

9.1. Except as otherwise provided in paragraph 10.4, panelists and parties shall hold in strict confidence all submissions and other materials provided to the panel or otherwise received in the course of the proceedings.

9.2. A party may request that certain information submitted to the panel be treated as confidential, provided it submits a non-confidential summary of the information concerned. A party may submit confidential business information, which it is unable to disclose to third parties by reason of such information having been provided on a confidential basis from parties not involved in the dispute, to an independent lawyer nominated by both parties to enable that lawyer to provide to the panel a report on the information so submitted. The costs of the lawyer in providing such a report shall be borne by the party requesting the report.

10. *Decision of the Independent Review Panel*

10.1. The decision of a three-member panel shall be adopted by majority vote.

10.2. Each decision shall be rendered within eight working days after the request for independent review was received by the IE, unless both parties agree to extend this time limit. For the purposes of counting the eight working day period for completion of a review, a request shall be deemed to have been received only after:

10.2.1 the IE has received a properly completed Standard Application Form requesting a review; and

10.2.2 both parties to the review have lodged financial deposits or bank guarantees which cover the initial costs of the review or, in case only one party made a deposit or lodged a bank guarantee, this party agreed to bear the costs of the independent review in accordance with paragraph 6.3.2; and

10.2.3 the respondent has responded in writing to the application or two working days have elapsed without a response since that party was notified of the application.

10.3. The decision shall state whether, in the opinion of the panel, the parties to the dispute have, in the course of the inspection in dispute, complied with the provisions of the PSI Agreement.

10.4. Each decision shall include a brief statement giving reasons for the decision. Decisions shall be issued in all the official languages of the WTO.

10.5. The panel shall apportion the costs of the review based upon the merits of the review. Such costs shall be limited to the costs of the IE for which deposits or bank guarantees have been taken by the IE. Other expenses incurred by the parties to the review are not recoverable.

10.6. Panel decisions shall be issued in two versions: one confidential version for the IE confidential record and one non-confidential version for publication. Non-confidential versions of decisions shall be published by the IFIA and the ICC for the information of PSI entities and exporters and made available to WTO Members by the IE. The published decisions may contain non-confidential summaries of information for which a party requested confidential treatment and provided a non-confidential summary.

11. *Discontinuance of an Application for Independent Review*

11.1. If at any time, prior to the communication by the IE of the decision of a panel to the parties, the parties reach an amicable settlement, they may withdraw the review application by giving notice to the IE, including notice as to how review costs incurred to date are to be borne by the parties. In the absence of any agreement to the contrary, the costs will be divided equally between the parties.

11.2. If the complainant unilaterally gives notice to the IE that the application for independent review is discontinued, the IE will refund to the complainant its deposit or release its bank guarantee less independent review costs incurred to that date and bank charges. If however the complainant withdraws his application by reason of the fact that the respondent has remedied the grievance which was the subject of the original application, the respondent shall bear all the independent review costs incurred to that date in respect of that application.

11.3. The decision of the IE as to the amount of costs incurred in the independent review process up to the date of any discontinuance shall be final.

12. *Time*

12.1. Time limits for delivery of documents pursuant to these Rules of Procedure shall include only normal working days in the country where the office of the recipient of the communication is located.

12.2. Where documents are received by a recipient after normal working hours in the country of the recipient, they shall be deemed to be received on the next working day.

12.3. In calculating time limits, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of such time period shall be included.

12.4. Any time limit prescribed by these rules may be extended with the consent of both parties. Any request for extension of time shall be made to the panel before the expiration of the time period to be extended unless it is impractical to do so.

13. *Information*

13.1. The IE, the PSI entities and the National Chambers of Commerce shall upon request provide information to enquirers on the independent review procedure. A nominal charge may be made for providing copies of the IE Rules of Procedure and related documents.

APPENDIX A

APPLICATION FORM

**FOR A
REQUEST FOR AN INDEPENDENT REVIEW**
(in accordance with the WTO Agreement on Preshipment Inspection)

IMPORTANT

1. This form is for completion by the complainant or an authorized employee of the complainant requesting an independent review in accordance with the provisions of the WTO Agreement on Preshipment Inspection, Article 4.
2. Prior to completing this form, complainants are advised to refer to the Independent Entity publication "Preshipment Inspection Activities: Rules of Procedure for the operation of Independent Review Panels under Article 4 of the WTO Agreement on Preshipment Inspection".

IE REFERENCE NUMBER

To be allocated by the IE

INDEPENDENT ENTITY

WTO Secretariat
Centre William Rappard
Rue de Lausanne 154
CH - 1211 Geneva 21
Tel. No. (022) 739.51.11
Fax. No. (022) 731.42.06

<p>1. COMPLAINANT</p> <p>Company Name:</p> <p>Address:</p> <p>Telephone No.:</p> <p>Telefax No.:</p> <p>Telex No.:</p> <p>Contact person:</p>	<p>2. IMPORTER</p> <p>Company Name:</p> <p>Address:</p>																																																												
	<p>3. RESPONDENT</p> <p>Name</p> <p>Address:</p> <p>Telephone No.:</p> <p>Telefax No.:</p> <p>Telex No.:</p> <p>Contact Person:</p>																																																												
<p>4. WTO MEMBERS</p> <p>Member(s) in which preshipment inspection is performed</p> <p>Importing Member</p>	<p>6. DESCRIPTION OF GOODS</p>																																																												
<p>5. REFERENCE NUMBERS</p> <p>Inspection Order Reference No.:</p> <p>(as advised by the preshipment inspection entity)</p> <p>Contract/Order/Proforma Invoice/Final Invoice No.</p> <p>(delete as applicable)</p>																																																													
<p>7. NATURE OF THE DISPUTE</p> <p>The objective of the Independent Review is to determine whether the Preshipment Inspection Entity and the Exporter have complied with the WTO Agreement on Preshipment Inspection.</p> <p>7.A. Article(s) of the Agreement in dispute:</p> <p>Please indicate, by marking an "X" in the boxes below, which Articles of the WTO Agreement on Preshipment Inspection have, in your opinion, been infringed.</p> <p style="text-align: center;">WTO Agreement on Preshipment Inspection</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Section:</th> <th style="text-align: left; border-bottom: 1px solid black;">Article No.:</th> <th style="text-align: left; border-bottom: 1px solid black;">Section:</th> <th style="text-align: left; border-bottom: 1px solid black;">Article No.:</th> </tr> </thead> <tbody> <tr> <td>*Non-discrimination</td> <td>2.1 <input style="width: 50px; height: 15px;" type="text"/></td> <td>*Delays</td> <td>2.15 <input type="checkbox"/></td> </tr> <tr> <td>*Site of Inspection</td> <td>2.3 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.16 <input type="checkbox"/></td> </tr> <tr> <td>*Standards</td> <td>2.4 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.17 <input type="checkbox"/></td> </tr> <tr> <td>*Transparency</td> <td>2.5 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.18 <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.6 <input style="width: 50px; height: 15px;" type="text"/></td> <td>*Price verification</td> <td>2.19 <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.7 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.20 (a) <input type="checkbox"/></td> </tr> <tr> <td>*Protection of Confidential Business Information</td> <td>2.9 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.20 (b) <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.11 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.20 (c) <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.12 <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.20 (d) <input type="checkbox"/></td> </tr> <tr> <td>*Conflicts of Interest</td> <td>2.14 (a) <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.20 (e) <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.14 (b) <input style="width: 50px; height: 15px;" type="text"/></td> <td>*Appeals Procedures</td> <td>2.21 <input type="checkbox"/></td> </tr> <tr> <td></td> <td>2.14 (c) <input style="width: 50px; height: 15px;" type="text"/></td> <td></td> <td>2.21 (a) <input type="checkbox"/></td> </tr> <tr> <td></td> <td></td> <td></td> <td>2.21 (c) <input type="checkbox"/></td> </tr> <tr> <td></td> <td></td> <td>*Other provisions of the Agreement (please identify)</td> <td></td> </tr> </tbody> </table>		Section:	Article No.:	Section:	Article No.:	*Non-discrimination	2.1 <input style="width: 50px; height: 15px;" type="text"/>	*Delays	2.15 <input type="checkbox"/>	*Site of Inspection	2.3 <input style="width: 50px; height: 15px;" type="text"/>		2.16 <input type="checkbox"/>	*Standards	2.4 <input style="width: 50px; height: 15px;" type="text"/>		2.17 <input type="checkbox"/>	*Transparency	2.5 <input style="width: 50px; height: 15px;" type="text"/>		2.18 <input type="checkbox"/>		2.6 <input style="width: 50px; height: 15px;" type="text"/>	*Price verification	2.19 <input type="checkbox"/>		2.7 <input style="width: 50px; height: 15px;" type="text"/>		2.20 (a) <input type="checkbox"/>	*Protection of Confidential Business Information	2.9 <input style="width: 50px; height: 15px;" type="text"/>		2.20 (b) <input type="checkbox"/>		2.11 <input style="width: 50px; height: 15px;" type="text"/>		2.20 (c) <input type="checkbox"/>		2.12 <input style="width: 50px; height: 15px;" type="text"/>		2.20 (d) <input type="checkbox"/>	*Conflicts of Interest	2.14 (a) <input style="width: 50px; height: 15px;" type="text"/>		2.20 (e) <input type="checkbox"/>		2.14 (b) <input style="width: 50px; height: 15px;" type="text"/>	*Appeals Procedures	2.21 <input type="checkbox"/>		2.14 (c) <input style="width: 50px; height: 15px;" type="text"/>		2.21 (a) <input type="checkbox"/>				2.21 (c) <input type="checkbox"/>			*Other provisions of the Agreement (please identify)	
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7.B. Disputes regarding Article 2.20 'Price Verification'

If the dispute relates to price verification, please indicate below whether the PSI Entity's price opinion is for:

(A) Foreign Exchange purposes

(B) Customs Valuation purposes

Important: If answer (B) applies, please refer to paragraph 1.3 of the Rules of Procedure for the Operation of the Independent Review Panels under Article 4 of the WTO Agreement on Preshipment Inspection.

7.C. Summary of dispute:

Please describe the elements on the basis of which the alleged infringement took place.

Please provide sufficient detail and/or accompanying documentation to enable the Independent Review Panel to reach a conclusion.

A separate attachment page may be used if necessary.

Are you submitting additional documents with this form?

YES/NO

If yes, please state number of pages of attachments

8. SUBMISSION OF THE DISPUTE TO THE PRESHIPMENT INSPECTION ENTITY'S INTERNAL APPEAL PROCEDURES:

The exporter is required to have submitted the grievance to the preshipment inspection entity's internal appeal procedures at least 2 working days before submission of the case to the Independent Entity.

1. Please provide the following information:

a. Date of despatch

b. Means of despatch

. Hand delivery

. Special courier service

. Fax

2. Has a response been given by the preshipment inspection entity?

YES/NO

3. Enclose copies of the appeal submission to the preshipment inspection entity and its reply, if any.

9. FORMATION OF THE INDEPENDENT REVIEW PANEL:

The Independent Review Panel normally consists of three members: one nominated by the exporter but not affiliated to the exporter, one nominated by the preshipment inspection entity but not affiliated to the preshipment inspection entity and one independent trade expert nominated by the Independent Entity who serves as Chairman of the Panel.

9.A. Complainant's choice of panel member:

Complainants may select a panellist from the relevant section of the "List of Experts for Independent Reviews", established by the Independent Entity, which is available from the IE, the PSI entity or the Chamber of Commerce in the complainant's country. Although only one expert will be appointed, please indicate, in the boxes below, three persons from the list taking into account their geographical location and language. Please also ensure that they are not affiliated to your company within the meaning of paragraph 5.4 of the Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on PSI.

The Independent Entity will choose one of these persons.

Name:

Country:

9.B. Single independent trade expert or three-member panel:

The complainant may opt, if also mutually agreed by the respondent, for a single independent trade expert nominated by the Independent Entity, instead of a three-member panel. If you prefer this option, please indicate (by marking an "X") in the box below.

Whatever your preference, you must complete Section 9.A above.

(I wish to have a single independent trade expert (if mutually agreed by the respondent)).

Note: The cost of the Independent Review will be significantly less if a single independent trade expert is appointed.

9.C. Personal representation:

Both the complainant and respondent may present their views, in person to the Independent Review Panel.

If you wish to use this facility please indicate (by marking an "X") in one of the boxes below.

In any event: Only if the respondent does so:

10. PAYMENT OF THE ADVANCE DEPOSIT:

In case a bank guarantee has not been secured in favour of the IE, payment of the advance deposit according to the current "Advance Deposit Tariff" (available from the IE, PSI entity or the Chamber of Commerce in the complainant's country), should be sent by bank transfer in Swiss Francs to:

Bank
IRE Account No.
IRE Swift No.
Beneficiary

Please indicate in the following boxes:

The date of submission of transfer instructions to your bank

The bank reference No.

11. Please indicate if you are prepared to bear the full costs of the independent review, in accordance with paragraph 6.3.2 of the Rules of Procedure, in the event the respondent fails to make the deposit required or in case a bank guarantee has not been secured by the respondent in favour of the IE.

Yes No

12. SUBMISSIONS REQUIRED FROM THE COMPLAINANT BY THE INDEPENDENT ENTITY PRIOR TO THE COMMENCEMENT OF A REVIEW:

Your request for Independent Review will not be processed until the listed documents, in addition to the advance deposit or bank guarantee, have been received by the Independent Entity.

- (I) This Application Form duly completed and signed.
- (II) A copy of the exporter's appeal to the preshipment inspection entity in accordance with its appeals procedures as per Article 2.21 of the WTO Agreement on PSI. (See Section 8 of this application form.)
- (III) A copy, if applicable, of any reply by the preshipment inspection entity to the exporter's appeal as per point (II) above.
- (IV) Copies of all other documents submitted to and received from the respondent in connection with the transaction in dispute.
- (V) Any additional supporting evidence you wish to submit.

These documents, together with this application form, may be submitted to the Independent Entity by fax.

13. NOTIFICATION OF A COPY OF THIS APPLICATION FORM AND ENCLOSURES TO THE RESPONDENT:

The Independent Entity will notify this application and all attached documents to the respondent. If any submitted information is confidential, please provide a non-confidential summary, or if applicable specify whether you agree to the application of the procedure provided for in paragraph 9.2 of the Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on PSI.

14. Please indicate below in which official language of the WTO (English/French/Spanish) you would like the decision communicated to you:

15. COMPLAINANT'S DECLARATION:

I hereby declare that:

- a. I am the complainant/an authorized employee/an authorized representative of the complainant.
- b. The information contained herein is, to the best of my knowledge, correct.
- c. The experts nominated by me, in Section 9.A of this form, to serve as panel members are not affiliated to me or my company.
- d. I or my company wish to submit this case for an Independent Review and recognize that the Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on PSI shall apply to this review.

FULL NAME: POSITION:

COMPANY NAME:

SIGNED:

AT:

ON:

EXPLANATORY NOTES

000000001. A request for an Independent Review requires that the Independent Entity ("IE") shall have received the following from the complainant:
- a. Completed Application Form.
 - b. The advance deposit (only in case a bank guarantee has not been secured in favour of the IE).
 - c. Evidence that the exporter submitted to the preshipment inspection ("PSI") entity, at least two working days earlier, an Appeal in writing in accordance with Article 2.21 of the WTO Agreement on Preshipment Inspection.
 - d. Copies of the other applicable documents as listed in Section 12 of this Application Form.
2. The IE will only process applications for Independent Review when (a) the preshipment inspection activity was carried out on the territory of a Member by a PSI entity contracted by another Member; and (b) the request is received not earlier than two working days after the dispute was submitted to the internal appeals procedure of the PSI entity and not later than the number of days foreseen in paragraph 2.3 of the Rules of Procedure for the Operation of Independent Reviews under Article 4 of the WTO Agreement on Preshipment Inspection after the issuance of the Clean Report of Findings or notification of non-issuance of the Clean Report of Findings unless both parties agree otherwise.
 3. Applications received by the IE after working hours will be deemed to have been submitted on the next working day.
 4. Any time period in "working days" will take into account, where applicable, the official working days in the Members where the exporter, preshipment inspection entity, IE and panel members of Independent Review are located.
 5. Within two working days of notification by the IE to the respondent of the complainant's request for an independent review, the respondent will forthwith lodge, in case a bank guarantee has not been secured in favour of the IE, an advance deposit in Swiss Francs in accordance with the current "Advance Deposit Tariff" acceptable to the IE. Within the same two working days the respondent is invited to respond to the request by completing and sending to the IE a response form. In the absence of a response:
 - a. The IE will, where applicable, select a third panel member, who is not affiliated to the respondent, from the respondent's section of the experts list.
 - b. The Independent Review will proceed on the basis of the information submitted by the complainant.
 6. By "exporter" is meant the party contracting to sell the goods directly to the importer in the importing Member.
 7. A proposed panel member shall be deemed to be affiliated to a party if the person is a director, employee, adviser, consultant or agent of a nominating party or if the person has a financial interest in the nominating party or is related by birth or marriage to a nominating party or to any director or employee or partner of a nominating party.
 8. The costs incurred directly by the parties, such as, legal costs, administrative expenses or sending a personal representative to a meeting with the Independent Review, will be for their own respective account.
 9. When reviewing price verification by a PSI entity, independent review panels shall determine whether the PSI entity has carried out price verification in accordance with the provisions of the PSI Agreement. Aspects of preshipment inspection involving elements of customs valuation shall be subject to the appropriate provisions of the PSI Agreement, in particular footnote 4 to Article 2.20 thereof.
 10. The decision of the Independent Review Panel is binding on the preshipment inspection entity and the exporter, which are parties to the dispute, and costs will be apportioned by the Panel on the merits of the case. The decision of the Panel and allocation of costs will be communicated to the parties by the IE.
 11. The above notes have exclusively explanatory purposes. The Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on Preshipment Inspection are available from the IE, the PSI entities or National Chambers of Commerce.

APPENDIX B
RESPONSE FORM

TO A
REQUEST FOR AN INDEPENDENT REVIEW
(in accordance with the WTO Agreement on Preshipment Inspection)

IMPORTANT

1. This form is for completion by an authorized employee of a respondent wishing to respond to a complainant's request for an independent review in accordance with Article 4 of the WTO Agreement on Preshipment Inspection.
2. Pages 2 and 3 of this completed form should be received by the Independent Entity within two working days of the submission by the complainant of his/her Request for Independent Review to the Independent Entity.

Failure to do so may result in the Independent Review proceeding in the absence of any response from the respondent.

IE REFERENCE NUMBER

To be allocated by the IE

INDEPENDENT ENTITY

WTO Secretariat
Centre William Rappard
Rue de Lausanne 154
CH - 1211 Geneva 21
Tel. No. (022) 739.51.11
Fax No. (022) 731.42.06

7. PERSONAL REPRESENTATION

Both the complainant and respondent may present their views, in person to the Independent Review Panel.

If you wish to use this facility, please indicate (by marking an "X") in the box below:

8. PAYMENT OF THE ADVANCE DEPOSIT

In case a bank guarantee has not been secured in favour of the IE, payment of the advance deposit according to the current "Advance Deposit Tariff" should be sent by bank transfer in Swiss Francs to:

Bank
IRE Account No.
IRE Swift No.
Beneficiary

Please indicate in the following boxes:

The date of submission of transfer instructions to your bank.

The bank reference No.

9. NOTIFICATION OF A COPY OF THIS RESPONSE FORM AND ANY ENCLOSURES TO THE COMPLAINANT

The Independent Entity will notify a copy of this response form and any enclosures to the complainant. If any information submitted is confidential, please provide a non-confidential summary, or if applicable specify whether you agree to the application of the procedure provided for in paragraph 9.2 of the Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on PSI.

10. Please indicate below in which official language of the WTO (English/French/Spanish) you would like the decision communicated to you:

11. RESPONDENT'S DECLARATION

I hereby declare that:

- a. I am the respondent/an authorized employee/an authorized representative of the respondent.
- b. The information contained herein is, to the best of my knowledge, correct.
- c. The experts nominated by me, in Section 5 of this form, to serve as panel members are not affiliated to me or my company.
- d. I or my company recognize that the Rules of Procedure for the Operation of Independent Review Panels under Article 4 of the WTO Agreement on PSI shall apply to this review.

FULL NAME:..... POSITION:

COMPANY NAME:

SIGNED:.....

AT:.....

ON:

ADVANCE DEPOSIT TARIFF

Applications for an Independent Review, in accordance with Article 4 of the WTO Agreement on Preshipment Inspection, should be accompanied by an advance deposit (in case a bank guarantee has not been secured in favour of the IE), which is currently fixed at Sw F 17,500.

Notes:

- (1) The Independent Entity will also require the respondent to lodge an advance deposit, in case a bank guarantee has not been secured by the respondent in favour of the IE, at the same tariff.
- (2) The cost of the Independent Review will be apportioned by the Independent Review Panel between the parties, based on the merits of the case.
Part or all of the advance deposit or bank guarantee (less costs) will be refunded or released, if appropriate.
- (3) The advance deposit:
 - (a) covers the estimated costs of the Independent Review Panel (i.e. fees and expenses of the panel members, incidental expenses, etc.) and the attributable administrative costs of the Independent Entity;
 - (b) does not cover additional costs which may be incurred by the Independent Review Panel
- (4) The costs incurred directly by the parties (such as legal costs, administrative expenses or sending a personal representative to a meeting with the Independent Review Panel) will be for their own respective accounts.

INDEPENDENT ENTITY

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