



panelist expertise and consistency in interpretation and application of the rules under the covered agreements. Any changes will need to address attendant cost implications. The current seven member Appellate Body has provided effective, efficient and credible review of panel decisions. Increased WTO Membership and active recourse to dispute settlement may warrant additional membership in the Appellate Body.

Experience to date with the dispute settlement system has not caused either Canada or other Members to identify specific requirements for more elaborate rules of evidence or the need for the provision for dissenting opinions as priority issues for the negotiations. This said, experience has identified instances where the Appellate Body has been unable to make a ruling on an issue due to an absence of sufficient factual findings by the panel. Remand authority for the Appellate Body such that panels could be instructed to reconsider the matter at issue within guidelines established by the Appellate Body may be appropriate.

Recommendation 13

“That, in order to enhance the transparency of the WTO’s dispute settlement system, the federal government activate an aggressive campaign to achieve consensus among WTO Members to open WTO dispute settlement proceedings to the public and to require that all Members make their submissions to WTO dispute settlement panels public.”

The Government agrees to make concerted efforts to secure consensus among WTO Members on greater transparency in dispute settlement. In particular, Canada will seek consensus that dispute settlement proceedings be open to the public and that Members make publicly available their panel and Appellate Body submissions.

Securing consensus to open the dispute settlement process to public observers and the release by Members of panel and Appellate Body submissions will also need to address improved means to protect confidential business information throughout the dispute settlement process. This recommendation is consistent with the position Canada has taken in the Dispute Settlement Body (DSB) in support of more open proceedings and the publication of submissions by all other Members; Canada’s dispute settlement submissions are publicly available and Canada for some time has encouraged other Members to follow suit.

Recommendation 14

“That the Government of Canada push for a formal WTO procedure for the submission of amicus curiae briefs, but that their consideration and acceptance be at the sole discretion of the relevant panel or the Appellate Body.”

