

**General Council**

**SPECIAL MEETING OF THE GENERAL COUNCIL**

WEDNESDAY, 14 FEBRUARY 2024

*Report by H.E. Mr. Petter ØLBERG, Chairman of the DSB\**

1.1. Thank you for giving me the floor Mme Chairperson. I believe we all agree that the dispute settlement system is a vitally important element of the WTO system, and its reform is a top priority for Members.

1.2. Let me start by saying that since MC12, both the DSB and the dispute settlement system have continued to function, with ten new disputes brought, including six new panels established by the DSB. Panel reports have been circulated to Members in 16 disputes, mutually agreed solutions have been formally notified in eight disputes, and in five other disputes panel proceedings have been suspended at the request of the complainants. Two Arbitration Awards have been circulated to the DSB under Article 25 of the DSU. Therefore, despite the current situation affecting dispute settlement, Members have continued using WTO dispute settlement proceedings through requests for consultations and panels, as well as alternative ways of dispute resolution, to resolve their trade disputes.

1.3. At the same time, WTO Members have emphasized the challenges and concerns that they see with respect to the dispute settlement system, including those related to appellate or second tier review as well as accessibility for developing Members and LDCs. In this regard, I note that 31 panel reports have been appealed into the void so far.

1.4. In recognizing the importance and urgency of addressing those challenges and concerns, Members have placed a high priority on dispute settlement reform.

1.5. In this regard, let me recall Ministers' commitment at MC12 to conduct discussions with the view to having a fully and well functioning dispute settlement system accessible to all Members by 2024.

1.6. As you all know, an informal process on dispute settlement reform was convened by Mr Marco Molina of Guatemala in February last year. For transparency purposes, starting in March 2023, Mr Molina has reported to the DSB on the ongoing work at every second regular DSB meeting. The most recent report was provided at the January DSB meeting this year. Following Mr Molina's reports in the DSB meetings, many delegations stated that they saw great value in this process and recognized that the informal process has achieved significant progress so far, emphasizing that this work should be preserved. Almost all delegations commended Mr Marco Molina for his outstanding leadership in this informal process.

1.7. At the same time, the issue of formalization of this informal DS process has been raised in the DSB as well as during my consultations in January this year with interested delegations. However, at this juncture, there is no consensus to formalize the informal process on DS discussions. During my consultations, I observed that formalization of the process means different things to different delegations in terms of process, timing, purpose, and the leadership. My detailed report on this issue

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\* The Chair's report contains the report by Mr. Marco Molina (convenor of the informal DS reform discussions). Annexed to the Chair's report is the consolidated text on dispute settlement reform referred to in Mr. Molina's report, which is being circulated under the responsibility of the Chair of the DSB.

at the January DSB meeting is reflected in the minutes of that meeting. I wish to recall that I reported at that meeting my conclusion that, because there has been no consensus on the formalization of the informal process, we should allow the informal process on DS reform to continue to do as much work as possible to achieve a successful outcome.

1.8. With these words of introduction, let me now invite Mr Marco Molina to make a report to the General Council on this matter.

**REPORT BY THE CONVENOR OF THE INFORMAL DS REFORM DISCUSSIONS – MR. MARCO MOLINA OF GUATEMALA**

1.9. In three days, on 17 February, we will mark the first anniversary of the informal Dispute Settlement Reform Process that I have been facilitating.

1.10. We are also only 10 days from the start of the Ministerial Conference in Abu Dhabi. This is a timely opportunity to brief Members and His Excellency, Minister Dr Thani bin Ahmed Al Zeyoudi, on the progress that we have achieved in the informal process on Dispute Settlement reform, including the presentation of the text that we have been working on, and to explore the necessary steps to successfully conclude the discussions.

1.11. I will start by providing an overview of the key aspects of the informal process. Specifically, I will outline our objectives and rationale for the actions taken so far and how these are reflected in the consolidated text. I will then address any remaining elements that require attention to fulfil our collective objective of having a well-functioning dispute settlement system accessible to all Members by 2024.

1.12. I would like to recall that the process that I am facilitating is not the traditional negotiations based on positions. The informal dispute settlement process follows a solution-oriented, interest-based, bottom-up approach.

1.13. The process is solution-oriented and builds up on the interests that Members identified in 2022, when the United States convened meetings to understand Members' expectations regarding the operation of the dispute settlement system. From April 2022 to January 2023, Members identified and discussed over 230 different interests. We took those 230 interests that had already been identified by Members and classified them into different groups.

1.14. The informal process on dispute settlement reform started on 17 February 2023, when we transitioned to more focused and solution-oriented discussions, based on identified interests. Subsequently, I invited Members to propose ideas and conceptual approaches that could potentially address the interests identified by Members.

1.15. The response and commitment by Members were unprecedented. Members presented more than 70 proposals. In doing so, Members themselves, collectively, defined the scope of the informal process on dispute settlement reform. Based on these proposals, we started interest-based conversations. Please allow me to use an example to illustrate the interest-based concept:

1.16. *Consider a scenario where two persons go to the market to buy a pumpkin, and there is only one left. In a position-based negotiation, they may pursue outcomes where one person wins and takes the pumpkin home, and the other person loses. Another outcome would require the two finding a "compromise" and split the pumpkin, leading to suboptimal results.*

1.17. *In contrast, an interest-based approach seeks to understand the underlying interests. For example, one person may be interested in using the pumpkin for decoration, while the other wants it for a soup. Through an interest-based approach, they can agree to purchase the pumpkin together, each can pay half of the price, and then divide the pumpkin according to their respective interests—one person could get the pulp for the soup and the other the shell for decoration. The result is that both parties are fully satisfied, and the pumpkin is optimally used. Interest-based negotiations are highly recommended by top think tanks and universities, as one of the ways to achieve the best possible results.*

1.18. This is precisely the approach we have adopted in the informal process on dispute settlement reform since February 2023. We started open discussions with Members to uncover their interests and concerns behind their proposals, akin to understanding what purpose each Member wanted to achieve with the pumpkin. Subsequently, we deliberated on the implementation of a potential agreement, delineating the terms and conditions of the transaction (in the example, that would be the cost allocation of the pumpkin, division arrangements, and timing). Following this, we documented our potential agreement in writing, embodied in a text that reflects the discussed terms and conditions. Finally, we have meticulously reviewed the text, refined its language, and ensured its understanding among all Members. On certain occasions, we have recalibrated the terms and conditions to optimize results, striving to achieve the most favourable outcome possible.

1.19. An interest-based approach offers the key advantage of reducing power imbalances and fostering inclusive dynamics, allowing every Member to contribute meaningfully. By centering discussions around interests and concerns rather than leverage, this approach ensures fairness and equality for all Members, regardless of their size or status. This commitment to valuing every perspective equally ensures that our collective pursuit of optimal solutions remains untainted by external factors.

1.20. The outcome of our interest-based negotiations is a text devoid of square brackets, colour coding, attributions, or other markers typical of position-based negotiations. Through a collective effort to maximize outcomes, the text transcends individual national stances, embodying a shared pursuit of common goals. While the solutions presented may deviate from initial positions, they adeptly tackle the core interests and concerns underpinning those positions. Coming back to my example of the pumpkin, a Member may not have secured the entire pumpkin, but it acquired the part that was essential or desired from the outcome to either prepare a soup or create a decoration.

1.21. During the informal process on dispute settlement reform, we have adhered to the principle that nothing is agreed until everything is agreed. Eventually, Members will have the opportunity to review the text as a comprehensive package to determine its overall acceptability. I am confident that the text will gather acceptance as it effectively reconciles interests and concerns and provides optimal outcomes. However, it is still early for Members to consider the text as a whole because some crucial elements are yet to be incorporated into the text. The text represents the most optimal calibration achievable until today in most of the areas under consideration, but not in all of them.

1.22. In our work in the informal process on dispute settlement reform, we have also adopted a bottom-up approach led by dispute settlement experts based here in Geneva. This complements the interest-based approach integral to this process. Success hinges on engaging in substantive and dynamic discussions to grasp the underlying interests and concerns, and to propose and deliberate on innovative ideas to reconcile them.

1.23. The text that I am presenting today is the seventh iteration. I would like to be clear; this is not a text that I have prepared by myself. This text and its previous versions are the result of Members' collective efforts. Delegates have actively contributed to drafting the text and all changes are discussed in plenary sessions.

1.24. As I reported to the Dispute Settlement Body, I personally invited all WTO Members to participate in the drafting exercise. Fifty-two delegates volunteered to work on the drafting exercise to prepare the draft chapters.

1.25. Each iteration of the text reflects feedback received from the plenary sessions, to which all Members are invited to participate. The changes introduced into each iteration resulted from conversations and understandings reached during those plenary sessions. Each new re-calibration of elements reflected in the text responds to ideas discussed in plenary sessions and seeks to balance different views expressed by Members.

1.26. Transparency has been a cornerstone of this process, with the plenary informed of every small-group meeting. No change has been introduced to the text without prior discussion in the plenary session. All Members are fully informed of each step taken and changes to the text are shown with tracked changes.

1.27. It is important to note that Members are not leaving anything to improvisation. What you see in the text is the result of discussions that have taken place since 2022. We have explored every possible angle of each question. Members have participated in frank and substantive discussions that have resulted in practical and innovative solutions to reconcile interests and concerns.

1.28. More importantly, we are not rushing any decisions. If delegates are unsure about certain aspects of the text or they need to consult with their Capitals, we leave the discussion and revisit issues at the following plenary session. When recalibration of interests and concerns is needed, this is reflected in the next iteration of the text.

1.29. Furthermore, this process has provided all Members with ample opportunities to participate and express their views. Since 17 February 2023, I have convened more than 350 meetings, including 110 plenary sessions open to all WTO Members, as well as numerous small-group and bilateral meetings. Members have had ample opportunities to share their views. Further, I have responded positively to each request for bilateral meetings, resulting in more than 45 in-person and virtual meetings with Capital- and Geneva-based Officials. And this does not include the spontaneous conversations in WTO corridors or receptions. Additionally, numerous meetings have taken place among delegations to discuss specific topics. Dispute settlement delegates should be commended for the admirable amount of energy, creativity and time invested into this process, which proves the unwavering commitment of Members to achieve a fully functional dispute settlement system.

1.30. During the last year, over 145 Members, representing all regions, legal systems and stages of development, have participated in the meetings. The active participation, including long nights and weekends shows the importance that Members attribute to the dispute settlement system.

1.31. In terms of substance, significant progress has been achieved. The seventh revision of the text, spanning more than 50 pages, reflects Members' collective understandings and expectations regarding the system's operation. The text is organized into eleven Titles, each addressing different aspects of the dispute settlement mechanism. While currently proposed as a Ministerial Decision, the final form will be decided by Members based on the document's substantive content.

1.32. The text is self-explanatory, and I would like to note that Members focused on providing incentives and disincentives to influence behaviours and foster efficiency of the dispute settlement process.

1.33. Members also developed alternative dispute resolution mechanisms to broaden the range of tools available for resolving disputes without the need for litigation.

1.34. Moreover, there is a concerted effort to enhance the efficiency and effectiveness of litigation, offering incentives for disputing parties and adjudicators to focus on what is necessary to resolve the disputes, promptly and effectively. The text further includes clear statements by Members outlining their expectations for the system's operation and provides guidance for adjudicators and the Secretariat in fulfilling their respective roles. The text also will mark a significant development as it will represent, for the first time, Members' expression of their preferences for how the system should operate.

1.35. Furthermore, we are exploring mechanisms to guarantee the system functions as envisioned and to streamline corrective measures when required. The text consistently emphasizes addressing the capacity constraints faced by developing and least developed Members, with accessibility being a core focus in each chapter. Several flexibilities have been integrated to ensure that developing and least-developed Members can meaningfully participate, encompassing aspects such as mediation, conciliation, good offices, arbitration, and panel proceedings. Flexibilities extend to word and time limits, as well as the process for updating the indicative list of panelists, among other considerations.

1.36. Members are also exploring avenues to enhance accessibility through tailor-made technical assistance, capacity building, and specific legal advice, by seeking synergies with other organizations, such as the Advisory Centre on WTO Law, and exploring viable and sustainable financing mechanisms for these activities.

1.37. I would like to note that one key aspect that is not yet addressed in the text is the appeal or review mechanism, for which there is a placeholder in the text. Members have approached this issue

with the same interest-driven methodology that has been used for the rest of the text. Ongoing discussions are aimed at identifying viable solutions, and significant progress has been made. We all recognize that there are conceptual differences among Members regarding the operation of the system, and, therefore, we prioritized concluding other elements of the text to measure how effectively interests and concerns of Members would be addressed through other reforms.

1.38. The discussions on appeal or review mechanism are not intended to single-handedly resolve all the interests and concerns identified by Members. Many of these interests and concerns may already be addressed in the existing text.

1.39. We continue to work intensively to find a practical and viable solution on appeal or review mechanism that responds to Members concerns. This solution will be an integral part of a comprehensive dispute settlement reform package, where each reform contributes to addressing the interests and concerns that were identified by Members.

1.40. Let me be clear: Our commitment to deliver a solution on appeal or review mechanism as part of the reform package is strong. We will continue to work intensively to conclude these discussions as soon as possible, so that it can be incorporated into the consolidated text, and we can start its review in plenary sessions.

1.41. In conclusion, Madame Chair, I would like to outline the steps necessary to finalize the consolidated text:

1.42. First, Members need to conclude discussions on the appeal or review mechanism and incorporate the solution into the consolidated text;

1.43. Second, Members should continue reviewing each chapter, ensuring that all their interests and concerns are addressed. Any reservations expressed by Members should be clearly articulated as interests or concerns to facilitate appropriate recalibration of the respective provisions. The goal remains to reconcile the interests and concerns of all Members and achieve the most optimal calibration possible; and

1.44. Finally, Members need to undertake an editorial review of the text, determine its final form, and finalize the preamble and transitional provisions.

1.45. As always, I remain available to provide any further clarification or additional information.

1.46. Mr. Chair, Madame Chair, I will provide you with a copy of the consolidated text right after finalizing this meeting.

1.47. I thank you for the opportunity to present this report to the General Council.

#### **CONCLUDING REMARKS BY THE CHAIRMAN OF THE DSB**

1.48. Thank you for the comprehensive report. It is clear that considerable work has been done on many important issues. At the same time, issues relating to appellate/second tier review are still being worked on and are not yet complete.

1.49. With regard to the latest version of the consolidated text on dispute settlement reform that Mr. Molina has referred to and has included in his report, I wish to inform delegations that Mr. Molina's report, including the text he referred to, will be included as part of my report to the General Council, and will be circulated after the meeting under my own responsibility as Chair of the DSB. I will do so for transparency purposes, to ensure that all delegations, including capital colleagues, may have access.

1.50. Also, earlier this week, a group of five Members circulated the document JOB/DSB/8, containing their reflections on some substantive issues.

1.51. It is also my intention to reach out to delegations in the remaining time left before MC13 to see what political message can be transmitted by Ministers at MC13. In this regard, it is my view after some of my preliminary discussions with Members that such a message could recall Members'

commitment made at MC12 for dispute settlement reform. Ministers could also recognize the work already done as a valuable contribution to fulfilling this commitment and welcome all contributions that help advance our work. They could also instruct Members to continue building on the current progress and to work on pending issues to meet the commitment made at MC12.

1.52. As I stated earlier, I will be reaching out to delegations to further share these ideas and the means for expressing Ministers' views on this important topic. Thank you for your attention.

1.53. This concludes my report.

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**ANNEX 1**

**CONSOLIDATED TEXT REFERRED TO IN MR. MOLINA'S REPORT**

**MINISTERIAL DECISION ON DISPUTE SETTLEMENT<sup>1</sup>**

**ADOPTED ON [DATE]**

The Ministerial Conference,

*PP1 Having regard to paragraph 1 of Article IV and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization, as well as paragraph 4 of the Twelfth Ministerial Conference MC12 Outcome Document (WT/MIN(22)/24), whereby Members committed to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024,*

*PP2 Underscoring the objective of meaningful reform of the dispute settlement system so that it operates in a manner consistent with the interests of all Members,*

*PP3 Acknowledging the imperative and significance of promoting increased accessibility for developing country Members, including least-developed country Members, to the dispute settlement system, while recognizing the contribution of other organizations to this objective, including the Advisory Centre on WTO Law (ACWL),*

*PP4 Recalling that the aim of the dispute settlement mechanism is to secure a positive solution to a dispute and that a solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred,*

*PP5 Desiring to facilitate the settlement of disputes via the voluntary use of alternative methods of dispute resolution,*

*PP6 Considering that streamlining panel proceedings and strict adherence to timeframes and word limits contribute to the prompt settlement of disputes, which is essential to the effective functioning of the WTO,*

*PP7 Acknowledging the importance of selecting highly qualified adjudicators while fostering diversity in the composition of panels, with a specific emphasis on achieving gender balance, geographical representativeness, and a diverse range of legal backgrounds,*

[Appeal/review mechanism]

*PP8 Recognizing that prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members,*

*PP9 Determined to ensure that these reforms are fully implemented in practice and are long lasting,*

*PP10 Affirming Members' intention to regularly undertake a meaningful review of the operation of the dispute settlement system, with a focus on the implementation of the reforms to the dispute settlement system made in this Decision ("Reforms"), and to take any action considered necessary,*

*Decides as follows,*

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<sup>1</sup> Note: It is proposed that the document takes the form of a Ministerial Decision. However, the final form shall be decided by the plenary, in view of the substantive content of the document.

**TITLE I**

**ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND ARBITRATION**

**Chapter I**

*Good Offices, Conciliation and Mediation*

**I. Definitions**

1. For the purposes of this Chapter:

*parties* means the Members participating in good offices, conciliation or mediation procedures by mutual agreement;

*good offices* means the participation of an impartial and independent third person, known as a "good officer", who shall provide support, including logistical support, such as the provision of a venue for meetings, and administrative assistance, to facilitate dialogue between the parties with a view to reaching a mutually agreed solution;

*conciliation* means the participation of an impartial and independent third person, known as a "conciliator" to facilitate and assist dialogue between the parties with a view to reaching a mutually agreed solution;

*mediation* means the participation of an impartial and independent third person, known as a "mediator", to facilitate and assist dialogue between the parties with a view to reaching a mutually agreed solution, and who may offer advice or propose solutions for the parties to consider.

**II. General principles**

2. Members may, at any time, including before the initiation of consultations under Article 4 of the DSU<sup>2</sup>, agree to voluntarily undertake any procedure pursuant to Article 5 of the DSU regarding measures affecting the operation of the covered agreements referred to in Article 1.1 of the DSU.

3. Pursuant to Article 24.2 of the DSU, where a satisfactory solution has not been found in the course of consultations under Article 4 of the DSU, and upon request by a least-developed country Member, the Director-General or the Chairperson of the DSB shall offer their good offices, conciliation or mediation with a view to assisting the parties to settle their dispute, before a request for a panel is made. The Director-General or the DSB Chairperson, in providing the above assistance, may consult any source that either deems appropriate. The *Communication from the Director-General in WT/DSB/25* is applicable to such requests.

4. The participation of Members in any procedure pursuant to Article 5 of the DSU and this Chapter shall be without prejudice to their WTO rights and obligations, including under the DSU, or to their rights and obligations under any other international agreement. Unless the parties agree otherwise, the good officer, conciliator or mediator shall not advise or comment on the consistency of any measure at issue with the covered agreements.

5. Unless the parties agree otherwise, and except for the notifications provided pursuant to the provisions in Section V, the procedures undertaken pursuant to Article 5 of the DSU and this Chapter, including any advice or proposed solution, shall be confidential.

6. All mutually agreed solutions reached as an outcome of any procedure undertaken pursuant to Article 5 of the DSU and this Chapter, shall be consistent with the covered agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements. The good officer, conciliator or mediator, within

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<sup>2</sup> For greater clarity, a request for consultations pursuant to Article 4 of the DSU is not required as a precondition to voluntarily undertake any procedure pursuant to Article 5 of the DSU.



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their respective roles as defined in this Chapter, shall bear the foregoing in mind when providing support, offering advice or proposing solutions.

7. The parties may agree to convert any of the procedures undertaken pursuant to Article 5 of the DSU to another procedure under the same provision, at any time.

8. Parties shall undertake the procedures pursuant to Article 5 of the DSU and this Chapter in good faith.

### **III. Request for information**

9. Members should request non-confidential information in the relevant WTO bodies, when appropriate and to the extent possible, before making a request for information under this Section.

10. At any time before the initiation of a procedure pursuant to Article 5 of the DSU, a Member may request, in writing, information regarding any measure affecting the operation of a covered agreement, in respect of which the requesting Member is considering requesting good offices, conciliation or mediation. For the purpose of collecting statistical information for the Accountability Mechanism under Title X, the requesting Member shall copy the DSB Chairperson on this request. Unless the relevant Members agree otherwise, the DSB Chairperson shall keep confidential the request and the fact that such a request has been made.

11. The Member to which such request is made, is encouraged to provide a written response containing its comments on the requested information, within 30 days of the date of receipt of the request, or at a later date after notifying the requesting Member of the reasons for the delay. For the purpose of collecting statistical information for the Accountability Mechanism under Title X, the Member to which such a request pursuant to paragraph 10 is made shall notify the DSB Chairperson about its written response. Unless the relevant Members agree otherwise, the DSB Chairperson shall keep confidential whether a written response was provided. For the avoidance of doubt, the DSB Chairperson shall anonymize the identity of the relevant Members when collating the statistics under this Section.

12. All Members are encouraged to use this Section before the initiation of a procedure pursuant to Article 5 of the DSU.

### **IV. Initiation or termination of procedures**

13. Any Member may make a request to another Member to use any procedure pursuant to Article 5 of the DSU, with respect to any measure affecting the operation of any covered agreement taken within the territory of the latter. The request shall be submitted in writing and shall give reasons for the request, including identification of the measures at issue and an indication of the concerns of the requesting Member. The requesting Member shall copy the WTO Secretariat on this request, to enable the Secretariat to provide assistance, if and when required pursuant to paragraph 29. The Secretariat shall keep the request and the fact that the request has been made confidential, unless the parties agree to notify the DSB pursuant to Section V.

14. The Member to which the request is made shall give sympathetic consideration to the request. Unless agreed otherwise with the requesting Member, the Member to which the request is made shall reply in writing no later than 14 days after the date of receipt of the request. In the absence of a reply accepting the request in writing from the Member to which the request is made, within this deadline, the request shall be deemed as declined.

15. The date of initiation of a procedure pursuant to Article 5 of the DSU and this Chapter shall be the date of the reply accepting the request.

16. Any procedure undertaken pursuant to Article 5 of the DSU and this Chapter may be suspended or terminated at any time, by either of the parties, via notification in writing to the other party and the good officer, conciliator or mediator. In case of procedures involving more than two parties, the procedures shall continue for those who voluntarily wish to continue.

17. A good offices, conciliation or mediation procedure shall be terminated:

- a. if the parties are unable to agree on the conciliator or mediator, or on the procedure to select the mediator or conciliator, within the time-period set out in paragraph 24 or any other time-period agreed by the parties;
- b. by the conclusion of a mutually agreed solution by the parties, on the date of the conclusion thereof;
- c. by mutual agreement of the parties at any stage of the procedure, on the date of that agreement;
- d. by a written declaration of the good officer, conciliator or mediator, after consultation with the parties, that further efforts at the procedure would be to no avail, on the date of that declaration; or
- e. by notice in writing by either party to the other party and the good officer, conciliator or mediator, at any stage of the procedure, on the date of that notice.

#### **V. Notification to the DSB**

18. For the purpose of collecting statistical information for the Accountability Mechanism under Title X, the parties shall jointly notify the DSB Chairperson of their agreement to undertake a procedure pursuant to Article 5 of the DSU and this Chapter, in writing, no later than five days following the date of their agreement. In this notification, the parties shall specify the procedure undertaken and indicate whether the DSB Chairperson may circulate the notification to the DSB. Parties are encouraged to permit the notification to the DSB.

19. If the parties agree that the notification may be circulated to the DSB, the parties are encouraged to include a summary of the matters under consideration in the notification.

20. The parties shall notify any mutually agreed solution reached as an outcome of the procedure undertaken to the DSB and the relevant WTO bodies, where any Member may raise any point relating thereto.

21. For the purpose of collecting statistical information for the Accountability Mechanism under Title X, the parties shall jointly notify the DSB Chairperson of the termination of a procedure pursuant to Article 5 of the DSU and this Chapter, in writing, no later than five days after the termination. In this notification, the parties shall state the reason for the termination and indicate whether the DSB Chairperson may circulate the notification to the DSB. Parties are encouraged to permit the notification to the DSB.

22. The notifications referred to in this Section shall not contain any information that a party has designated as confidential.

#### **VI. Appointment of good officer, conciliator or mediator**

23. In good offices procedures, the parties may agree to submit a request to the Director-General of the WTO or the DSB Chairperson to provide good offices. The Director-General may appoint a representative to provide good offices, subject to the agreement of the parties. The parties may apply the *Communication from the Director-General* in WT/DSB/25 to the extent practicable, for any such request to the Director-General.

24. The parties shall, within 10 days after initiation of conciliation or mediation under Article 5 of the DSU or any other period agreed by the parties, endeavour to agree on a conciliator or mediator or on a procedure to select the conciliator or mediator. To that end, the parties may have recourse to:

- a. pre-established list of conciliators and mediators, which the DSB may adopt at any time;
- b. the indicative list maintained under Article 8.4 of the DSU;

- c. persons from relevant international organizations with subject-specific expertise, including scientific expertise;
- d. the list of serving Chairpersons of relevant WTO bodies under the covered agreements;
- e. consultations with the Director-General who may propose names to the parties;
- f. the assistance of an external authority; or
- g. any other means that may facilitate the selection of a conciliator or mediator.

25. Unless the parties agree otherwise, a conciliator or mediator shall not be a citizen of, or affiliated with, either party.

26. A good officer, conciliator or mediator shall comply with the Rules of Conduct for the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (as set out in WT/DSB/RC/1 and any subsequent amendments), *mutatis mutandis*.

27. The expenses of good officers, conciliators or mediators, 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.

#### **VII. Rules of procedure in the Appendices**

28. The procedures in Appendix 1 (*Rules of Procedure for Mediation*), Appendix 2 (*Rules of Procedure for Conciliation*), Appendix 3 (*Supplementary Rules of Procedure for Conciliator or Mediator Assistance During Consultations under Article 4 of the DSU*) and Appendix 4 (*Supplementary Rules for Procedures Undertaken Pursuant to Title IV (Compliance)*) to this Chapter apply to the corresponding procedure undertaken by the parties. Parties may agree in writing to modify or depart from any of the rules of procedure in Appendices 1 to 3.

#### **VIII. Secretariat support**

29. Parties, or the conciliator or mediator with the parties' consent, may request the WTO Secretariat to provide secretarial and technical support at any time during the use of any of the procedures pursuant to Article 5 of the DSU and this Chapter.

30. Unless the parties agree otherwise, Secretariat staff that have assisted a particular conciliation or mediation shall not assist a panel or an arbitrator in other dispute settlement procedures under the DSU involving the same measures subject to the conciliation or mediation.

#### **IX. Relationship between these procedures and other dispute settlement procedures**

31. A party in these procedures shall not rely on, or introduce as evidence, in other dispute settlement procedures under the DSU or any other international agreement, any advice or proposed solutions from a mediator, or positions taken by the other party or confidential information exclusively obtained from the other party during good offices, conciliation, or mediation procedures. This restriction does not apply if the information is obtained through other means unrelated to such procedures. In the absence of an agreement between the parties, a panel established under Article 6 or Article 21.5 of the DSU, or an arbitrator appointed under Article 21.3(c) or Article 22.6 or Article 25 of the DSU, or the [Appeal/Review mechanism], shall not consider the aforementioned advice, proposed solutions, positions or confidential information unless obtained in accordance with the preceding sentence.

32. Unless the parties agree otherwise, a conciliator or mediator shall not serve as a member of a panel or an arbitrator in other dispute settlement procedures under the DSU, or under any other international agreement, involving the same measures for which the person has been the conciliator or mediator.

## **Appendix 1<sup>3</sup>**

### *Rules of Procedure for Mediation*

1. Within 10 days after the appointment of the mediator, the party that requested the mediation procedure shall deliver to the mediator and the other party a detailed written description of the concerns and the specific measures at issue, identified in its request to initiate mediation submitted in accordance with paragraph 13, Section IV, Chapter I, Title I.
2. Within 30 days after the delivery of this description, the other party shall provide written comments to the invoking party and the mediator. Either party may include any information that it deems relevant in its description or comments.
3. The mediator shall assist the parties in an impartial and transparent manner in bringing clarity to the matters at issue and in reaching a mutually agreed solution. In particular, the mediator may organize meetings between the parties, consult the parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the parties. The mediator shall notify a party of the mediator's intention to consult with the other party individually. The mediator shall consult with, and obtain the consent of, both parties before seeking the assistance of, or consulting with, relevant experts and stakeholders. The mediator may raise questions of its own to clarify the facts but shall not make the case for either party.
4. The mediator may offer advice and propose a solution for the consideration of the parties. The parties may accept or reject the proposed solution, or agree on a different solution. Unless the parties agree otherwise, the mediator shall not advise or comment on the consistency of any measure at issue with the covered agreements.
5. The mediation procedure shall take place on the WTO premises, or by mutual agreement, in any other location or by any other means.
6. The parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Whenever possible, pending the conclusion of the procedures, the parties may agree on interim solutions, particularly in cases of urgency, including those concerning perishable goods.
7. Upon request of either party, the mediator shall issue to the parties a draft written factual report, providing:
  - a. a brief summary of the matters at issue in the mediation procedure;
  - b. the procedures followed;
  - c. any mutually agreed solution reached as the outcome of the mediation procedure, including any interim solutions; and
  - d. any other elements that the parties jointly request the mediator to include.
8. The mediator shall allow the parties 15 days to comment on the draft written factual report. After considering the comments received, the mediator shall, within 15 days after receipt of the parties' comments, deliver a final factual report to the parties. Unless the parties agree otherwise, the factual report shall not include any interpretation of the *WTO Agreement* or the covered agreements, or any advice or comment on the consistency of any measure at issue with the covered agreements. The factual report shall be confidential.

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<sup>3</sup> Note: There is a request to streamline Appendices 1 to 4. This will be considered once the plenary agrees on the substantive content of each.

**Appendix 2***Rules of Procedure for Conciliation*

1. Within 10 days after the appointment of the conciliator, the party which that requested the conciliation procedure shall deliver to the conciliator and the other party a detailed written description of the concerns and the specific measures at issue, identified in its request to initiate conciliation submitted in accordance with paragraph 13, Section IV, Chapter I, Title I.
2. Within 30 days after the delivery of this description, the other party shall provide written comments to the invoking party and the conciliator. Either party may include any information that it deems relevant in its description or comments.
3. The conciliator shall assist the parties in an impartial and transparent manner in bringing clarity to the matters at issue and in reaching a mutually agreed solution. In particular, the conciliator may organize meetings between the parties, consult the parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the parties. The conciliator shall notify a party of the conciliator's intention to consult with the other party individually. The conciliator shall consult with, and obtain the consent of, both parties before seeking the assistance of, or consulting with, relevant experts and stakeholders. The conciliator may raise questions of its own to clarify the facts but shall not make the case for either party.
4. The conciliation procedure shall take place on the WTO premises, or by mutual agreement in any other location or by any other means.
5. The parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the conciliator. Whenever possible, pending the conclusion of the procedures, the parties may agree on interim solutions, particularly in cases of urgency, including those concerning perishable goods.
6. Upon request of either party, the conciliator shall issue to the parties a draft written factual report, providing:
  - a. a brief summary of the matters at issue in the conciliation procedure;
  - b. the procedures followed;
  - c. any mutually agreed solution reached as the outcome of the conciliation procedure, including any interim solutions; and
  - d. any other elements that the parties jointly request the conciliator to include.
7. The conciliator shall allow the parties 15 days to comment on the draft written factual report. After considering the comments received, the conciliator shall, within 15 days after receipt of the parties' comments, deliver a final factual report to the parties. Unless the parties agree otherwise, the factual report shall not include any interpretation of the *WTO Agreement* or the covered agreements, or any advice or comment on the consistency of any measure at issue with the covered agreements. The factual report shall be confidential.

**Appendix 3***Supplementary Rules of Procedure for Conciliator or Mediator Assistance During Consultations under Article 4 of the DSU***I. Request for conciliator or mediator assistance during consultations under Article 4 of the DSU**

1. A Member (complaining party) may include in its request for consultations under Article 4 of the DSU, a request to engage a conciliator or mediator to assist in the consultations with the aim of facilitating a mutually agreed solution.

2. In its reply pursuant to Article 4.3 of the DSU, the Member to which the request for consultations is made (responding party) shall indicate whether it accepts or rejects the request to engage a conciliator or mediator. In the absence of a reply accepting the request in writing from the Member to which the request is made, the request shall be deemed as declined.

3. A responding party may include in its reply pursuant to Article 4.3 of the DSU accepting a request for consultations, a request to engage a conciliator or mediator to assist in the consultations with the aim of facilitating a mutually agreed solution. Unless mutually agreed otherwise, the complaining party shall reply in writing no later than 10 days after the date of receipt of such a request. In the absence of reply accepting the request in writing from the complaining party, within this deadline, the request shall be deemed as declined. The responding party shall copy the WTO Secretariat on its request, to enable the Secretariat to provide the assistance described in paragraph 29 of Section VIII, Chapter I, Title I.

4. The parties shall undertake the conciliator or mediator-assisted consultations in good faith. The parties' participation in the conciliator or mediator-assisted consultations shall be without prejudice to their WTO rights and obligations, including under any other dispute settlement proceedings pursuant to the DSU.

## **II. Selection of conciliator or mediator**

5. Immediately after the Member to which the request under paragraph 1 or 3 is made, replies with its acceptance, the parties shall jointly notify the DSB of their agreement. The date of initiation of conciliator or mediator-assisted consultations shall be the date of the reply accepting the request to engage a conciliator or mediator.

6. Within 10 days after initiation of conciliator or mediator-assisted consultations, or any other period agreed by the parties, they shall endeavour to agree on a conciliator or mediator or on a procedure to select the conciliator or mediator pursuant to paragraph 24 of Section VI, Chapter I, Title I. If the parties are unable to agree on the conciliator or mediator, or on the procedure to select the mediator or conciliator, within the 10-day time-period or any other time-period agreed by the parties, the conciliator or mediator-assisted consultations shall be considered terminated.

7. The conciliator or mediator shall serve in his or her individual capacity. Unless the parties agree otherwise, a conciliator or mediator shall not be a citizen of, or affiliated with, either party.

## **III. Procedure for the conciliator or mediator-assisted consultation**

8. The conciliator or mediator shall discuss and confirm with the parties the general parameters of the conciliator's or mediator's role before the first consultation meeting and confirm that the conciliator or mediator will receive any relevant communications between the parties, for example, the list of questions to be discussed at a consultation meeting.

9. The conciliator or mediator shall assist the parties in an impartial and transparent manner in bringing clarity to the measures under consultation, the facts to be discussed or agreed upon and the issues in dispute with a view to assisting the parties to reach a mutually agreed solution.

10. At the parties' request, the conciliator or mediator may attend the consultation meeting(s) between the parties. Within the scope of their respective roles, the conciliator or mediator may consult the parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the parties. The conciliator or mediator shall notify a party of its intention to consult the other party individually. The conciliator or mediator shall consult with, and obtain the consent of, both parties before seeking the assistance of, or consulting with, relevant experts and stakeholders. The conciliator or mediator may raise questions of its own to clarify the facts but shall not make the case for either party.

11. The conciliator or mediator shall assist the parties in identifying agreed facts or the scope of the dispute to be consulted or both. The mediator may also offer advice and propose a solution for the parties' consideration. The parties may accept or reject the proposed solution, or agree on a different solution. Unless the parties agree otherwise, the conciliator or mediator shall not advise or comment on the consistency of any measure at issue with the covered agreements.

12. The conciliator or mediator may suggest an alternative method of dispute resolution for the parties' consideration.

13. Within 60 days from the date of receipt of the request for consultations (the "60-day period"), the assistance of the conciliator or mediator may be terminated:

- a. by the conclusion of a mutually agreed solution by the parties, on the date of the conclusion thereof;
- b. by mutual agreement of the parties at any stage of the procedure, on the date of that agreement;
- c. by a written declaration of the conciliator or mediator, after consultation with the parties, that further efforts to assist would be to no avail, on the date of that declaration; or
- d. by notice in writing by either party to the other party and the conciliator or mediator, at any stage of the procedure, on the date of that notice.

14. After the termination of the procedures pursuant to subparagraphs (b), (c) or (d), the complaining party may only request the establishment of a panel 60 days after the date of receipt of the request for consultations, unless the parties jointly consider before the expiration of that deadline that consultations have failed to settle the dispute.

15. If the conciliator or mediator-assisted consultations have not terminated within the 60-day period pursuant to paragraph 13, and unless otherwise agreed, the conciliator or mediator-assisted consultations shall terminate automatically on the 60th day after the date of receipt of the request for consultations.

16. At the parties' request, at the first DSB meeting following the termination of the conciliator or mediator-assisted consultation, the conciliator or mediator may report to the DSB on the process and outcome, if any, including any steps the parties have agreed upon to progress or to resolve their dispute.

17. To the extent that there is a difference between the rules of procedure in Appendix 1 (*Rules of Procedure for Mediation*) with the special or additional rules of procedure in this Appendix, or between the rules of procedure in Appendix 2 (*Rules of Procedure for Conciliation*) with the special or additional rules of procedure in this Appendix, the special or additional rules of procedure in this Appendix shall prevail.

#### **Appendix 4**

##### *Supplementary Rules for Procedures Undertaken Pursuant to Title IV (Compliance)*

1. This Appendix develops the procedures referred to in paragraph 2 of Title IV (Compliance).

#### **I. Initiation of good offices, conciliation or mediation**

2. The complaining party<sup>4</sup> may invite the Member concerned to engage in good offices, conciliation or mediation, indicating the proposed method within 10 days after the circulation of an adjudicative report.

3. When the request is made by a developing or least-developed country Member, the party to which the request is made shall give sympathetic consideration to the request.

4. The Member concerned is expected to respond to the complaining party's invitation within 10 days, indicating whether it agrees to engage in good offices, conciliation or mediation and with the

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<sup>4</sup> For greater clarity, the Member concerned is not precluded from inviting the complaining party to engage in good offices, conciliation or mediation. In such case, the deadlines provided for in paragraphs 2 and 4 shall apply.

proposed method. If the parties cannot agree on the proposed method within 5 days after the deadline for the response of the Member concerned, the parties shall engage in good offices.<sup>5</sup>

5. The parties shall notify to the DSB the request, the response and the method selected within 7 days of acceptance by the Member concerned of the invitation to engage in good offices, conciliation or mediation. If the parties cannot reach an agreement or any party withdraws its agreement to engage in good offices, conciliation or mediation, they are also required to notify the DSB.

## **II. Selection of conciliator or mediator**

6. The parties shall endeavor to agree<sup>6</sup> on the conciliator or mediator within 10 days from the date of the agreement to engage in the proceedings.

7. If the parties are unable to agree on the conciliator or mediator, they may agree to request the assistance of the Director-General in the selection process. To this end, both parties shall send the request in writing within 5 days after the expiration of the deadline provided for in paragraph 6, indicating the qualifications that each party seeks in the conciliator or mediator.

8. The Director-General shall select the conciliator or mediator within 10 days after receiving the request from the parties.

9. If the parties cannot agree to request the appointment of a conciliator or mediator pursuant to paragraph 7, then the parties shall engage in good offices.<sup>7</sup>

## **III. Intervention of a good officer**

10. The parties may agree to engage in good offices. Good offices shall be the default method if the parties are unable to agree in the selection of another method under paragraph 4 or are unable to select the conciliator or mediator under paragraph 7.

11. Unless otherwise agreed by the parties, the Director-General shall act as a good officer.

## **IV. Objective of good offices, conciliation or mediation at the compliance stage**

12. At the compliance stage of dispute settlement proceedings, with a view to securing a mutually agreed solution to a dispute in accordance with Article 3.7 of the DSU, a good officer, conciliator or mediator<sup>8</sup> may assist, within the scope of their respective functions, the parties in reaching a common understanding, including on: a) the measures that could be taken to implement the rulings and recommendations of the DSB or an arbitration award pursuant to Article 25 of the DSU; or b) the reasonable period of time for implementation; or c) both.

## **V. Timeframe**

13. Unless otherwise agreed by the parties, the procedures under this Appendix shall conclude within 45 days following the selection of the good officer, conciliator or mediator.

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<sup>5</sup> For greater clarity, notwithstanding this provision, each party retains the possibility to withdraw its agreement to engage in good offices, conciliation and mediation. In that case, whenever the Member concerned decides to withdraw its agreement, paragraph 4 of Title IV (Compliance) shall apply. If it is complaining party who decides to withdraw its agreement, then paragraphs 5 and 6 of Title IV (Compliance) shall apply.

<sup>6</sup> The parties may have recourse to the options provided for in paragraph 25, Section VI, Title I.

<sup>7</sup> For greater clarity, notwithstanding this provision, each party retains the possibility to withdraw its agreement to engage in good offices. In that case, whenever the Member concerned decides to withdraw its agreement, paragraph 3 of Title IV (Compliance) shall apply. If it is the complaining party who decides to withdraw its agreement, then paragraph 3 of Title IV (Compliance) shall not apply.

<sup>8</sup> As defined in paragraph 1, Section I, Title I.



## **VI. Implementation of mutually agreed solution**

14. Any mutually agreed solution reached between the parties pursuant to this Appendix shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

15. The implementation of a mutually agreed solution may be raised at the DSB by any Member at any time.

16. To the extent that there is a difference between the rules of procedure in Appendix 1 (*Rules of Procedure for Mediation*) with the special or additional rules of procedures in this Appendix, or between the rules of procedures in Appendix 2 (*Rules of Procedure for Conciliation*) with the special or additional rules of procedures in this Appendix, the special or additional rules of procedures in this Appendix shall prevail.

## **Chapter II**

### *Simplified Arbitration Proceedings Pursuant to Article 25 of the DSU*

1. Whenever Members agree<sup>9</sup> to resort to arbitration pursuant to Article 25 of the DSU for the resolution of certain disputes, the Model Rules of Procedure for Simplified Arbitration Proceedings, outlined in the Appendix of this Chapter, may be applied and adapted<sup>10</sup> if Members so mutually agree.

2. In accordance with paragraph 7 of Title IV (Compliance), when entering into an arbitration agreement pursuant to Article 25 of the DSU, the Parties may agree to apply to the arbitration awards the provisions of Title IV, subject to any adaptations they deem appropriate.

### **Appendix 1**

#### *Model Rules of Procedure for Simplified Arbitration Proceedings Pursuant to Article 25 of the DSU*

1. [The parties to the dispute] (the parties) agree, in accordance with Article 25.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), to resort to arbitration under Article 25 of the DSU. This agreement extends to following the rules of procedure outlined below and abiding by the arbitration award.

#### **I. Terms of reference**

2. The arbitrator shall have the following terms of reference:

To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter (clearly defined by the parties) and to make such findings and recommendations that will assist the parties to resolve their dispute.

3. The arbitrator shall only address those issues that are necessary for the resolution of the dispute.

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<sup>9</sup> Members have the discretion to enter into arbitration at any time and choose their preferred method to initiate arbitration, consistent with Article 25 of the DSU. By way of illustration, Members may agree to resort to arbitration if the consultations pursuant to Article 4 of the DSU fail to settle the dispute. Another possible approach, among others, entails a Member submitting a written request to another Member, clearly identifying the proposed subject matter of arbitration. If applicable, the request should also provide a brief summary of the legal basis to present the problem clearly. The Member receiving the request is encouraged to give sympathetic consideration to a request from a developing or least-developed country Member. If the Member to whom the request is made does not intend to enter into arbitration, it should provide reasons for this decision to the requesting party. Unless the parties agree otherwise, the request and the reply shall be confidential.

<sup>10</sup> Members' agreed arbitration procedures may be used as notification to the DSB pursuant to Article 25.2 of the DSU.

4. The arbitration shall be governed by these rules of procedure. For procedural matters not expressly regulated by these rules, the arbitrator, in consultation with the parties, may supplement these rules of procedure with the provisions of the DSU and of [this Decision] applicable to panel proceedings.

## **II. Composition of the arbitrator**

5. The arbitrator shall be composed of three individuals.

6. Where a party to an arbitration is a developing country Member, the arbitrator shall, if the developing country Member so requests, include at least one individual from a developing country Member.

7. The parties shall endeavour to agree on the appointment of the arbitrator or the method<sup>11</sup> for the selection of the individuals within 15 days from the date of the notification of agreement to resort to arbitration. If the parties fail to agree on the appointment of the arbitrator or the method for the selection of the individuals within the deadline, any of them may request the Director-General of the WTO to appoint the arbitrator. In this case, the Director-General shall appoint the arbitrator, after consulting the parties, within 15 days after receiving a request.

8. The parties shall jointly notify to the DSB the composition of the arbitrator within 10 days after finalizing the appointments.

9. There shall be no *ex parte* communications with the arbitrator concerning matters under consideration by the arbitrator.

## **III. Third parties**

10. The participation of third parties [shall/shall not] be accepted in these procedures.<sup>12</sup>

[If parties agree to accept third parties:

11. Members shall notify, to the DSB and the parties, their interest to participate as third parties in the arbitration procedure within seven days after the parties' notification to resort to arbitration pursuant to Article 25.2 of the DSU.]

## **IV. Timeline**

12. The arbitrator shall issue the award within 90 days following the notification of the composition of the arbitrator to the DSB under paragraph 8.

13. To that end, the arbitrator may implement effective organizational measures to streamline the proceedings, giving due consideration to the views of the parties [and third parties]. These measures may include decisions on word limits, time-limits, strict adherence to deadlines, and the duration and number of hearings required.

## **V. Suspension**

14. The arbitrator may suspend its work at any time at the request of the complaining party<sup>13</sup> for a period not exceeding 12 months. Any suspension extending beyond the 12-month period shall be agreed by the parties.

15. In the event of a suspension, the time-frames of the arbitration proceeding shall be extended by the amount of time that the work was suspended.

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<sup>11</sup> The parties may consider the methods for selection provided for in Chapter II, Title II.

<sup>12</sup> When agreeing the rules of procedure applicable to a dispute, the parties shall decide whether to accept the participation of third parties. The rules shall be adapted accordingly.

<sup>13</sup> If the nature of the arbitration prevents the identification of the complaining party or the responding party, the arbitrator may suspend its work at any time upon the request of both parties.

16. The arbitrator shall resume the proceedings after the expiration of the suspension, unless that the parties agree to extend the suspension or terminate the proceedings.

#### **VI. Submissions and hearings**

17. The arbitration proceedings shall be conducted based on written submissions and exhibits.<sup>14</sup> Parties [and third parties] shall have the right to submit at least one written submission. The arbitrator will determine whether further written submissions are necessary and, after consulting with the parties, establish a timeline for such submissions.

18. The arbitrator may also conduct meetings with the parties [and third parties], after consulting the parties. [Third parties shall have the right to participate in [the meeting between the arbitrator and the parties/a session dedicated to third parties]]. A copy of the oral statements made by parties [and third parties] shall be submitted to the arbitrator as delivered.

19. Unless otherwise agreed by the arbitrator in consultation with the parties and the WTO Secretariat, the meetings with the parties [and third parties] shall take place on the WTO premises.<sup>15</sup>

20. Prior to issuing the final award, the arbitrator shall issue an interim award to the parties, including both the descriptive sections and the arbitrator's findings and conclusions. The arbitrator shall afford the parties an opportunity to provide comments.

#### **VII. Information before the arbitrator**

21. The arbitrator shall have the right to seek information and technical advice from any individual or body that it deems appropriate. However, before the arbitrator seeks such information or technical advice from any individual or body within the jurisdiction of a Member, it shall inform the authorities of that Member. Article 13.2 and Appendix 4 of the DSU shall apply *mutatis mutandis*.

#### **VIII. Confidentiality**

22. Title VIII of this [Decision]<sup>16</sup> and Articles 14 and 18 of the DSU shall be applicable to arbitration proceedings.

#### **IX. Mutually agreed solution**

23. A solution mutually acceptable to the parties and consistent with the covered agreements is clearly to be preferred. The arbitrator should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

24. Mutually agreed solutions to matters formally raised under the arbitration shall be jointly notified to the arbitrator, the DSB and the relevant WTO bodies, where any Member may raise any point relating thereto.

#### **X. Secretariat support**

25. The arbitrator will be provided with appropriate administrative and legal support by the WTO Secretariat. Title VII of this [Decision]<sup>17</sup> shall be observed.

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<sup>14</sup> Unless decided otherwise by the arbitrator in consultation with the parties, the parties shall make written submissions not exceeding 20,000 words; and third parties shall make written submissions not exceeding 4,000 words. For the purposes of word limits, written submissions do not include the table of contents, annexes and supporting documentation, but shall include footnotes. The facts of the dispute and arguments shall be presented in the written submissions. Exhibits shall be referred to in the text of the submission and their function is to serve as evidence to prove or illustrate a particular aspect of a party's submission on which it is seeking to rely. Therefore, exhibits, annexes and supporting documentation shall not be used to circumvent the word limits.

<sup>15</sup> Due consideration shall be given to the special situation of developing and least-developed countries with a view to facilitating their participation at the meetings.

<sup>16</sup> Note: the final version of this Appendix shall make reference to the complete name of the Decision.

<sup>17</sup> Note: the final version of this Appendix shall make reference to the complete name of the Decision.

## **XI. Arbitration award**

26. The arbitrator's final award shall be notified to the DSB and the council or committee of any relevant agreement pursuant to Article 25.3 of the DSU at the time of issuance to the parties.

### **TITLE II**

#### **PANEL PROCEEDINGS**

##### **Chapter I**

###### *Establishment of Panels*

Each Member agrees not to exercise its right to object to the establishment of a panel at the DSB meeting at which the request first appears as an item on the DSB's agenda.<sup>18</sup>

##### **Chapter II**

###### *Panel Composition*

### **I. Citizens of third parties**

1. In reference to Article 8.3 of the DSU, Members agree, with respect to any dispute, that a citizen of a Member whose government is a third party to the dispute and who is not employed by, or affiliated with, the government of any party or third party in that dispute<sup>19</sup>, may be nominated and considered to serve on a panel concerned with that dispute.<sup>20</sup>

2. Notwithstanding paragraph 1, Members may object to appointments of citizens of Members whose governments are third parties to the dispute when the Director-General is requested to determine the composition of a panel pursuant to Article 8.7 of the DSU. If either party objects to such appointments in a dispute, citizens of Members whose governments are third parties to that dispute shall not be appointed.

### **II. Indicative list**

#### *Meaningful indicative list*

1. Further to Article 8.4 of the DSU, in order to support the maintenance of a meaningful indicative list established in line with paragraph 7 of this Section, each Member is encouraged to nominate up to three citizens for inclusion on the indicative list. Each Member may also nominate one person who is not a citizen of that Member for inclusion on the indicative list.<sup>21,22</sup>

2. In order to support the maintenance of an indicative list that supports panel members being selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience, as provided for in Article 8.2 of the DSU, Members should promote gender balance and geographic representation in making nominations to the indicative list.

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<sup>18</sup> Note: If Members wish this Decision to be made via an amendment to the DSU, the text of Article 6.1 of the DSU could be amended as follows: "*If the complaining party so requests, a panel shall be established at the DSB meeting at which the request latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.*"

<sup>19</sup> This concerns persons currently employed by, or affiliated with, a government of any party or third party in the dispute, and persons who have been employed by, or affiliated with, such government within a period of two years preceding the panel composition.

<sup>20</sup> For greater clarity, a party may nevertheless oppose such nominations pursuant to Article 8.6 of the DSU.

<sup>21</sup> For greater clarity, a Member may nominate: (a) one, two or three citizens and one non-citizen; (b) one, two or three citizens and no non-citizen; (c) one non-citizen only; or (d) make no nomination.

<sup>22</sup> With respect to nominations to be made by the European Union and by its Member States pursuant to this sentence, Members take note of their intention to nominate persons who are not citizens of a Member State of the European Union.

*Qualifications of individuals nominated to the indicative list*

3. Members affirm their interest in panels being composed of well-qualified individuals, as provided for in Article 8.1 of the DSU. To that end, nominations to the indicative list made under paragraph 1 of this Section shall comprise of individuals possessing significant relevant experience.<sup>23</sup>
4. For purposes of paragraph 3 of this Section, relevant experience shall consist of:<sup>24</sup>
- a. experience as a legal practitioner principally dealing with international economic and trade law matters;<sup>25</sup> or
  - b. experience relating to the subject matter of the covered agreements.<sup>26</sup>
5. Academic experience in teaching or publishing on international economic and trade law and policy, including on the subject matter of the covered agreements may also be taken into account for purposes of reaching the significant relevant experience provided for in paragraph 3 of this Section, provided that the nominated person also possesses the experience set out in paragraph 4 of this Section.<sup>27</sup>
6. Individuals nominated to the indicative list under paragraph 1 of this Section shall also possess:
- a. high ethical standards; and
  - b. the ability to effectively communicate orally and in writing in one or more of the official working languages of the WTO.

*Establishment and maintenance of the indicative list*

7. A new indicative list shall be adopted by the DSB within six months of the adoption of this Decision by Members, on the basis of nominations to be submitted by Members within four months of the adoption of this Decision. The new indicative list shall be composed in line with this Section, and with the assistance of the Chairperson of the DSB following the procedures set out in Appendix I.<sup>28</sup>
8. Members are encouraged to make nominations when the indicative list is being composed pursuant to paragraph 7 of this Section. Members shall submit nominations to the Chairperson of the DSB, and nominations shall be confidential until the Chairperson of the DSB transmits the list to the DSB for adoption. If a Member does not make a nomination at the time the indicative list is being composed pursuant to paragraph 7, it may do so following the same process at any time for the remainder of the time period before the next re-composition as referred to in paragraph 9 of this Section.

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<sup>23</sup> Members understand that significant experience means at least 10 years of experience. For greater clarity, the duration of relevant experience need not be continuous and may be cumulative.

<sup>24</sup> For greater clarity, relevant experience may be a combination of experience set out in subparagraphs (a) and (b) of paragraph 4.

<sup>25</sup> Relevant experience includes, for example, experience as a legal practitioner in international dispute settlement on international trade law matters, as a panelist, arbitrator, or counsel to the parties, or senior legal support to an arbitration tribunal or panel.

<sup>26</sup> Relevant experience includes, for example, experience as a government official, conciliator, mediator, negotiator or diplomat directly relating to the subject matter of the covered agreements; experience in the conduct of, or participation in, domestic trade remedies proceedings; or experience within domestic authorities or the private sector, the activity of which directly relates to the subject matter of the covered agreements (such as, for example, customs authorities).

<sup>27</sup> For the purposes of this paragraph, Members understand that the nominated person would need to possess at least four years of the experience set out in paragraph 4 of this Section.

<sup>28</sup> For greater clarity, if for any reason the new indicative list is not composed pursuant to paragraph 7 of this Section, or is not re-composed pursuant to paragraph 9 of this Section, the composition of panels shall proceed on the basis of the procedures set out in Article 8 of the DSU.

9. The indicative list shall be recomposed every four years in order to ensure it remains up-to-date. To this end:
- a. The Chairperson of the DSB shall invite Members to submit nominations in the period of between six and four months before the expiry of the four-year period since the adoption of the previous list.
  - b. Members may re-nominate the same individual nominated previously.
  - c. The previous indicative list remains valid until the re-composed list is adopted by the DSB, but for no longer than two years beyond the four-year period referred to in paragraph 9 in the event the indicative list is not re-composed pursuant to this paragraph.
10. The timeframes referred to in paragraph 9 of this Section may be modified by the DSB.
11. Members are encouraged to ensure their nominations to the indicative list remain available to serve as panelists during the period they are on the indicative list. If a person included on the indicative list is no longer available to remain on the indicative list, the nominating Member may make another nomination for the remaining time ahead of the next re-composition. In that case the same nomination process set out in this Section is to be followed by the nominating Member.
12. In order to assist Members making nominations to the indicative list, the Secretariat shall launch a call for expressions of interest by individuals one month after the adoption of this decision, and thereafter eight months ahead of each re-composition of the indicative list as provided for in paragraph 9 of this Section. This call for expressions of interest should aim to compile, in a database accessible by Members, a list of interested and eligible individuals seeking to be nominated by a Member to the indicative list. In seeking expressions of interest, the Secretariat should provide the opportunity for individuals, in a standard electronic form, to outline how those individuals meet the qualification requirements outlined in paragraphs 3 to 5 of this Section as well as languages spoken.
13. The indicative list, once adopted by the DSB, shall be made available online for Members to access. To assist in the selection of panelists, the indicative list shall include, for each nominated individual, relevant information relating to the qualification requirements set out in paragraphs 3, 4, 5 and 6 b) of this Section.
14. Members are encouraged to pay particular attention to the statistical information provided ahead of the indicative list being recomposed, as provided for in paragraph 9 of this Section, and factor this into their consideration of nominations to the indicative list.<sup>29</sup>

#### *Use of the indicative list*

15. The Secretariat is encouraged to use the indicative list in proposing nominations for the panel to the parties pursuant to Article 8.6 of the DSU.

### **III. Appointments made by the Director-General**

1. In the context of Article 8.7 of the DSU, where the parties so agree at the panel composition meeting with the Secretariat,<sup>30</sup> each party shall submit to the Director-General, in accordance with paragraph 2 (a) of this Section, a list comprising of at least 30 individuals that are on the indicative list. Parties may agree on a different number of individuals to submit to the Director-General. Such lists shall be treated as confidential.

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<sup>29</sup> Note: to introduce a cross-reference to the accountability mechanism with a view to make it clear the type of information needed.

<sup>30</sup> The Secretariat shall ascertain at the first panel composition meeting whether the parties agree to resort to the mechanism in this Section in the event a party makes a request pursuant to Article 8.7 of the DSU.

2. Where the parties so agree pursuant to paragraph 1, the Director-General is requested to follow the following process for determining the composition of the panel when requested by a party under Article 8.7 of the DSU:

- a. Consult with the parties to the dispute, including to obtain the panel composition criteria of the parties and the lists of individuals submitted pursuant to paragraph 1 of this Section.
- b. Consult the lists submitted by the parties pursuant to paragraph 1 of this Section with a view to establishing whether there is overlap in the individuals that have been included in each list.
- c. Determine the composition of the panel by appointing the panelists from the overlap, taking into account, to the extent possible, the parties' panel composition criteria.
- d. Should the overlap provide less than three individuals, the Director-General shall complete the panel composition. In completing the panel composition the Director-General is not excluded from considering names from the lists of individuals submitted pursuant to paragraph 1 of this Section.

3. The Director-General is requested to consider, in exercising the responsibility provided for in Article 8.7 of the DSU, Members' interest in panel members being selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience, as provided for in Article 8.2 of the DSU and elaborated in paragraph 2 of Section II.

### **Appendix I**

#### *Assistance from the Chairperson of the DSB in composing and recomposing the indicative list referred to in paragraph 7 and paragraph 9 of Section II*

Members request the following assistance from the Chairperson of the DSB in composing and recomposing the indicative list referred to in paragraph 7 and paragraph 9 of Section II:

1. The Chairperson of the DSB, with the support of the Secretariat as appropriate, shall prepare a standardized electronic form to facilitate the provision of information relevant to the nomination by Members, including information related to the qualification requirements set out in paragraphs 3 to 5 of Section II. Particular attention should be given to collating information related to qualification requirements and the length of relevant experience in an objectively verifiable manner.
2. The Chairperson of the DSB, with the support of the Secretariat as appropriate, shall check nominations made by Members with a view to ensuring nominated individuals meet the qualification requirements set out in paragraphs 3 to 5 of Section II.
3. Should the Chairperson of the DSB have insufficient information to assess whether the qualification requirements have been met or consider that any of the qualification requirements in paragraphs 3 to 5 of Section II have not been met, the Chairperson of the DSB shall consult with the nominating Member.
4. If, following consultations with the nominating Member, the Chairperson of the DSB continues to have insufficient information or hold the view that the nominated individual does not meet the qualification requirements in paragraphs 3 to 5 of Section II, the Chairperson may recommend to the nominating Member that it not nominate the relevant individual. The nominating Member may decide either to make an alternative nomination, or to nevertheless proceed with the nomination following consultations with the nominated individual.
5. The Chairperson of the DSB shall transmit the list to the DSB for adoption. The Chairperson of the DSB shall inform Members at that time, without identifying specific Members or individuals, whether any recommendations were made to a nominating Member who nevertheless decided to proceed with the relevant nomination, as contemplated in paragraph 4 of this Appendix. Any Member may subsequently request consultations with the Chairperson of the DSB to understand which nominating Member received such a recommendation and nevertheless proceeded with the relevant

nomination. The content of such consultations shall remain confidential between the requesting Member and the Chairperson of the DSB.

### **Chapter III**

#### *Streamlining the Panel Process*

1. The panel shall adopt, as part of the working procedures issued following the organizational meeting, procedures that are consistent with paragraphs 2 to 7.

#### **I. Submission of evidence**

2. The panel shall require the parties to submit all evidence, except evidence for the purposes of rebuttal, in their first written submissions. The panel may grant an exception if a party shows good cause.

#### **II. Timing of filing of submissions**

3. The parties' first written submissions and rebuttal submissions shall be sequential, with the complaining party submitting its submissions before the responding party's submissions.<sup>31</sup>

#### **III. Meetings with the panel**

4. Subject to paragraphs 5 and 6, a single substantive meeting with the parties shall be held after the filing of the responding party's rebuttal submission. A session of this substantive meeting shall be set aside for the third parties.

5. Upon a party's request at the organizational meeting, the panel will hold the third-party session after the filing of the parties' first written submissions and before the filing of the complaining party's rebuttal submission. The panel shall decide, following consultation with the parties and third parties, the format of the third-party session (either via a virtual platform or in a hybrid format to enable participation both in person and via a virtual platform) and the date of the session.

6. Upon a party's request and to ensure the effective conduct of the dispute, the panel will hold an additional substantive meeting with the parties focused on selected issues after the filing of the parties' first written submissions and before the filing of the complaining party's rebuttal submission. The requesting party should briefly explain the rationale behind its request and identify the selected issues on which the meeting should focus. Such a request should be made at the organizational meeting, and in no case be made later than one week after the filing of the first written submission of the responding party. Any such additional substantive meeting shall be held no later than three weeks<sup>32</sup> after the filing of the first written submission of the responding party.

7. If, in accordance with paragraph 6, an additional substantive meeting is held, the panel shall decide, following consultation with the parties, the issues on which the additional substantive meeting shall focus, the format of the meeting (in person, via a virtual platform or in a hybrid format (enabling participation both in person and via a virtual platform)) and the date(s) of the meeting.

#### *Advance Written Questions by Panels*

1. In order to improve the efficiency of the proceedings, each panel shall send written questions to the parties at least 10 days before each substantive meeting of the panel with the parties and, to the third parties, at least 10 days before the third party session.

2. This is without prejudice to the panel's decision to ask questions at any time. However, the panel is encouraged to pose all questions before the end of the substantive meeting of the panel with the parties.

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<sup>31</sup> For greater certainty, Members shall not object to sequential filing of rebuttal submissions on the grounds that Article 12.6 of the DSU provides for simultaneous submissions..

<sup>32</sup> Note: to review this timeframe after completing the table in Appendix 1, Chapter IV.



**Chapter IV***Conciseness and Time-Frame Adherence*

1. The panel shall adopt, as part of the working procedures issued following the organizational meeting, word limits for written submissions<sup>33</sup>, time limits for oral submissions, and a complete timetable, taking into account the complexity of the dispute. The panel is expected to enforce word and time limits and ensure strict adherence to timeframes.

*Word and Time-Limits*

2. In standard disputes, the following limits shall apply:

- a. The parties' first written submissions shall not exceed 30,000 words.<sup>34</sup> The parties' second written submissions shall not exceed 24,000 words.<sup>35</sup> The third parties' written submissions shall not exceed 6,000 words.<sup>36</sup>
- b. The parties' opening oral statements shall not exceed 60 minutes. The third parties' opening oral statements shall not exceed 15 minutes.

3. In exceptional situations,<sup>37</sup> the panel may determine that a dispute is complex or extraordinarily complex for the purpose of establishing appropriate word and time-limits. In determining or reconsidering the complexity of the dispute, the panel shall consult the parties and take into account the complexity of legal and factual issues, including but not limited to, the complexity of the analysis required to determine a breach or a defence, the amount of expert and other complex evidence and the complexity of the measures at issue.

4. The panel shall reconsider the level of complexity of the dispute at the request of a party. If the panel changes its determination as to the level of complexity of the dispute, the working procedures shall be amended as required taking into consideration procedural fairness between parties.

5. If a dispute is determined to be complex according to paragraph 3, the following word and time-limits shall apply:

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<sup>33</sup> For the purposes of word limits, written submissions do not include the table of contents, annexes and supporting documentation, but shall include footnotes. In that respect, Members recall that, consistent with para. 4 of Appendix 3 of the DSU, the facts of the dispute and arguments shall be presented in the written submissions. Exhibits shall be referred to in the text of the submission and their function is to serve as evidence to prove or illustrate a particular aspect of a party's submission on which it is seeking to rely. Therefore, exhibits, annexes and supporting documentation shall not be used to circumvent the word limits.

<sup>34</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 30,000 words is equivalent to 75 pages.

<sup>35</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 24,000 words is equivalent to 60 pages.

<sup>36</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 6,000 words is equivalent to 15 pages.

<sup>37</sup> The establishment of word and time limits reflects Members' understanding that submissions should focus on what is necessary to resolve the dispute and Members' expectation that the majority of disputes will normally fall into the standard category. A determination that a dispute is complex or extraordinarily complex requires the requesting Member to establish the complexity of the dispute and demonstrate the impossibility of adequately presenting the case within the limits for standard disputes, taking into consideration the provisions in paragraphs 3 and 4 of this Chapter. Extraordinarily complex disputes should be construed as arising from truly exceptional circumstances. Adjudicators are expected to exercise circumspection if categorizing disputes as complex or extraordinarily complex.

- a. The parties' first written submissions shall not exceed 48,000 words.<sup>38</sup> The parties' second written submissions shall not exceed 40,000 words.<sup>39</sup> The third parties' written submissions shall not exceed 8,000 words.<sup>40</sup>
  - b. The parties' opening oral statements shall not exceed 90 minutes. The third parties' oral statements shall not exceed 20 minutes.
6. Where a dispute is determined to be extraordinarily complex according to paragraph 3, the panel may set word and time-limits in excess of those set out above for complex disputes. In no case shall a written submission exceed 90,000 words<sup>41</sup> nor shall an oral statement exceed 120 minutes.
7. Where a single panel has been established under Article 9.1 of the DSU, and the complainants are not making joint submissions, the responding party may request additional flexibility for each limit in paragraphs 2, 5, 6, 8 and 9 of up to 100% for each additional complainant.
8. Any separate request for a preliminary ruling and response to such request shall not exceed 6,000 words.<sup>42</sup> Third parties' comments shall not exceed 2,000 words.<sup>43</sup>
9. Parties' comments on the panel's interim report shall not exceed 12,000 words.<sup>44</sup>
10. When establishing the limits set out in paragraph 2, the panel may apply flexibility by setting limits up to 35% higher than specified in paragraph 2. When establishing the limits set out in paragraphs 5, 8 and 9, the panel may apply flexibility by setting a limit of up to 25% higher than specified in the applicable paragraphs.
11. Where submissions are provided in French or Spanish, the above word limits shall be increased by 15%.

*Adherence to Time-Frames*<sup>45</sup>

12. To ensure the prompt settlement of disputes, panel proceedings shall strictly adhere to the following time-frames. The parties shall cooperate with the panel to enable the panel to issue the report within the applicable time-frame.
13. In standard disputes, the period in which the panel shall conduct its examination, from the date of issuance of the working procedures<sup>46</sup> following the organizational meeting until the date of issuance of the final report to the parties shall not exceed nine months.<sup>47</sup> In cases of urgency,

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<sup>38</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 48,000 words is equivalent to 120 pages.

<sup>39</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 40,000 words is equivalent to 100 pages.

<sup>40</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 8,000 words is equivalent to 20 pages.

<sup>41</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 90,000 words is equivalent to 225 pages.

<sup>42</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 6,000 words is equivalent to 15 pages. If the preliminary ruling request is included in the first written submission, the word limit for the first written submission shall apply.

<sup>43</sup> Note: Based on an understanding of approximately 400 words per page, including footnotes, 2,000 words is equivalent to 5 pages.

<sup>44</sup> Note: To be reconsidered after reviewing the operation of the interim review.

<sup>45</sup> Note: To consider appropriate amendments to DSU.

<sup>46</sup> The working procedures shall be issued to the parties no later than three weeks after the date of panel composition.

<sup>47</sup> The Panel shall ensure that, following the issuance of the working procedures subsequent to the organizational meeting: a) the substantive meeting between the panel and the parties, as per paragraph (e), occurs no later than 19 weeks; and b) the issuance of the interim report, as per paragraph (h), occurs no later than 28 weeks.

including those relating to perishable goods, the panel shall aim to issue its report to the parties within three months.<sup>48</sup>

14. In the exceptional situation that a dispute is determined to be complex under paragraph 3, the period in which the panel shall conduct its examination, from the date of issuance of the working procedures<sup>49</sup> following the organizational meeting until the date of issuance of the final report to the parties, shall not exceed 12 months.<sup>50</sup>

15. In order to ensure compliance with applicable time-frames and enhance predictability, the panel and the parties shall follow the standardized timetable as set out in Appendix 1 for panel work for a standard dispute or a complex dispute under paragraph 13 and paragraph 14 respectively. Subject to strict adherence to the deadlines set forth in paragraphs 13 and 14, as well as those set out in footnotes [48 and 51], the panel, in consultation with the parties, may modify certain parts of the standardized timetable. When modifying the standardized timetable, the panel shall ensure fairness between the parties.

16. Where a dispute is determined to be extraordinarily complex under paragraph 3, the period in which the panel shall conduct its examination, from the date of issuance of the working procedures<sup>51</sup> following the organizational meeting until the date of issuance of the final report to the parties, shall not exceed 18 months. The panel may adapt the standardized timetable in Appendix 1 accordingly.<sup>52</sup>

17. In case of *force majeure*, i.e. an unforeseen event beyond the control of the panel and the parties that prevents the conduct of panel work, the panel may, following consultations with the parties, suspend the proceedings as long as the unforeseen event continues to prevent the conduct of panel work.

18. If the panel suspends the proceedings pursuant to paragraph 17, it shall inform the DSB in writing, within one week of the suspension decision, providing an estimate of the suspension period and the reasons that prevent the continuation of its work.

19. For the avoidance of doubt, the time-frames set out in paragraphs 13, 14 and 16 shall be extended by the duration of the suspension of the proceedings pursuant to a decision in accordance with Article 12.12 of the DSU or for the reasons set out in paragraph 17.

20. Where the suspension period set out in paragraph 18 exceeds two months, the panel shall inform the DSB in writing at least one week before expiry of the first two months, and thereafter every month, of the continuous suspension, and of any update, or not, on the information provided to the DSB in accordance with paragraph 18.

21. The panel shall ensure strict adherence to the time-frames provided for in paragraphs 13, 14 and 16. Failure to meet these time-frames will be subject to monitoring by Members as part of the Accountability Mechanism under Title X. Furthermore, the DSB Chair shall issue a public communication to the concerned panelists and Secretariat staff, reminding them about the critical importance of adhering strictly to time-frames. In the event of panelists participating in multiple

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<sup>48</sup> Note: Paragraph based on Article 12.8 of the DSU.

<sup>49</sup> The working procedures shall be issued to the parties no later than three weeks after the date of panel composition.

<sup>50</sup> The Panel shall ensure that, following the issuance of the working procedures subsequent to the organizational meeting: a) the substantive meeting between the panel and the parties, as per paragraph (e), occurs no later than 26 weeks; and b) the issuance of the interim report, as per paragraph (h), occurs no later than 39 weeks.

<sup>51</sup> The working procedures shall be issued to the parties no later than three weeks after the date of panel composition.

<sup>52</sup> The Panel shall ensure that, following the issuance of the working procedures subsequent to the organizational meeting: a) the substantive meeting between the panel and the parties, as per paragraph (e), occurs no later than 39 weeks; and b) the issuance of the interim report, as per paragraph (h), occurs no later than 58 weeks.

disputes showing a pattern of repeated delays, the Secretariat shall refrain from proposing those individuals to the parties pursuant to Article 8.6 of the DSU.<sup>53</sup>

### Appendix 1

Pursuant to paragraph 15, the standardized timetable for panel work is set out below for standard disputes under paragraph 13 and complex disputes under paragraph 14:

	<b>Procedures</b>	<b>Standard Disputes</b>	<b>Complex Disputes</b>
(a)	Receipt of parties' first written submissions (including evidence)		
	(1) Complaining party	2 weeks	2 weeks
	(2) Responding party	5 weeks	7 weeks
(b)	Additional substantive meeting with the parties in addition to (e) ( <i>Note: Subject to request of a party</i> )	3 weeks	4 weeks
	Third-party session ( <i>Note: Subject to request of a party</i> ), otherwise (e)		
(c)	Receipt of the parties' second written submissions		
	(1) Complaining party	4 weeks, after the responding party's FWS, if no meeting under (b) 3 weeks after the additional substantive meeting (6 weeks, after the responding party's FWS), if meeting requested under (b)	6 weeks after the responding party's FWS, if no meeting under (b) 4 weeks after the additional substantive meeting (8 weeks, after the responding party's FWS), if meeting requested under (b)
	(2) Responding party	4 weeks 3 weeks in case of the additional substantive meeting under (b).	6 weeks 4 weeks in case of the additional substantive meeting under (b).
(d)	Receipt by parties of advance written questions by panel	At least 10 days ahead of the substantive meeting under (e)	At least 10 days ahead of the substantive meeting under (e)
(e)	Substantive meeting with the parties	Up to 4 weeks (after the responding party's SWS) Up to 3 weeks in case of the additional substantive meeting under (b)	Up to 5 weeks (after the responding party's SWS) Up to 4 weeks in case of the additional substantive meeting under (b)
	Third-party session, if not already held under (b)		
(f)	Issuance of descriptive part of the report to the parties ( <i>Note: Receipt of response to panel's written questions and cross comments</i> )	1 week	1 week
(g)	Receipt of comments by the parties on the descriptive part of the report	2 weeks	2 weeks
(h)	Issuance of the interim report, including the findings and conclusions, to the parties	7 weeks	11 weeks

<sup>53</sup> If, following the review of the operation of the dispute settlement system pursuant to Title X (Accountability Mechanism), it is determined that the mandatory timeframes are exceeded, the DSB may consider measures relating to the remuneration of panelists in cases of delays attributable to them.

	<b>Procedures</b>	<b>Standard Disputes</b>	<b>Complex Disputes</b>
(i)	Deadline for party to request review of part(s) of report	3 weeks	4 weeks
(j)	Period of review by panel, including possible additional meeting with parties	3 weeks	4 weeks
(k)	Issuance of final report to parties to dispute	3 weeks	4 weeks
(l)	Circulation of the final report to the Members	3 weeks	4 weeks
Total number of weeks (excluding (l) circulation of the final report to Members)		37 weeks	51 weeks
<b>In any case, the total number of weeks from (a) to (k) shall not exceed</b>		<b>39 weeks or 9 months</b>	<b>52 weeks or 12 months</b>

### TITLE III

#### APPEAL/REVIEW MECHANISM

[Work in Progress]

**TITLE IV**

**COMPLIANCE<sup>54</sup>**

1. With respect to references to the "RPT" in this Title, Members recall that, pursuant to Article 21.3 of the DSU the Member concerned shall have a reasonable period of time to comply with the recommendations and rulings if it is impracticable to comply immediately.
2. With a view to securing a mutually agreed solution to a dispute in accordance with Article 3.7 of the DSU, the parties shall consult, upon request in writing,<sup>55</sup> at the level of ministers or designated senior officials within 30 days following adoption of an adjudicative report by the DSB.
3. Following the circulation of an adjudicative report,<sup>56</sup> the parties are encouraged to engage in the procedures provided for in Appendix 4, Chapter I, Title I of this Decision.<sup>57</sup>
4. If the Member concerned<sup>58</sup> declines<sup>59</sup> to engage in consultations pursuant to paragraph 2 or the procedures pursuant to paragraph 3, the RPT shall be six months from the date of adoption of an adjudicative report by the DSB.<sup>60</sup>
5. Except where paragraph 4 applies, if the Parties do not agree on an RPT within 45 days in accordance with Article 21.3 (b) of the DSU, including through the consultations pursuant to paragraph 2 or the procedures pursuant to paragraph 3, and if neither party requests binding arbitration in accordance with paragraph 6, the RPT shall be nine months from the date of adoption of an adjudicative report by the DSB.
6. If a party decides to request binding arbitration pursuant to Article 21.3(c) of the DSU,<sup>61</sup> the request shall be made no later than 10 days following the expiry of the 45 day period after the date of adoption of the adjudicative report by the DSB. The arbitrator shall determine the RPT within 90 days after the date of the request and, in determining the RPT, shall consider the following:
  - a. The RPT may be shorter or longer than nine months, depending upon the particular circumstances in the Member concerned, but shall not exceed 15 months from the date of adoption of an adjudicative report.

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<sup>54</sup> Note: Participants discussed the relationship between this Title and Article 4.7 of the SCM Agreement. It was understood that this Title would not apply if Article 4.7 of the SCM agreement applies. Discussion will continue on whether - depending on the form and legal nature of this Decision (see footnote 1 above)- there is a need to include a provision regulating the relationship between this Decision and Article 4 of the SCM Agreement (specific questions about Article 4.6 and Article 4.12 were also raised) or indeed a general provision about the relationship with any special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to the DSU (see Article 1.2 of the DSU).

<sup>55</sup> If the complaining party decides to request these consultations, it shall make the request no later than 10 days before the adoption of an adjudicative report. The Member concerned may also request these consultations no later than 10 days before the adoption of an adjudicative report.

<sup>56</sup> For greater clarity, this provision does not cover arbitration award notified pursuant to Article 25.3 of the DSU.

<sup>57</sup> Unless otherwise agreed by the parties, whenever a party appeals a panel report, any procedure initiated in accordance with Appendix 4, Chapter I, Title I of this Decision shall be suspended and resumed after circulation of the appeal report.

<sup>58</sup> For greater clarity, "Member concerned" in this Chapter has the same meaning as provided for in fn. 9 of the DSU.

<sup>59</sup> It is understood that the Member concerned has declined to engage in consultations under paragraph 2 or the procedures under paragraph 3, if: a) it does not respond or responds in writing that it declines a request by the complaining party within 10 days of receipt of such request; or b) if the Member concerned accepts the request but it does not attend the meeting at a date mutually agreed by the parties under paragraph 2; or c) if the Member concerned withdraws its agreement to engage in the procedures under paragraph 3 pursuant to footnotes [5 or 7] to paragraphs 4 or 9 of Appendix 4, Chapter I, Title I.

<sup>60</sup> This paragraph shall not apply if the complaining party does not invite the Member concerned to engage in good offices, conciliation or mediation within the deadline provided for in paragraph 2, Section I, Appendix 4, Chapter I, Title I.

<sup>61</sup> For greater clarity, the Member concerned agrees not to exercise its right to request arbitration pursuant to Article 21.3(c) in the circumstances set out in paragraph 4.

- b. The particular circumstances in the Member concerned, including the need for a legislative change and the special situation of developing or least developed country Members, as appropriate.
- c. The principle of prompt compliance as expressed in Article 21 of the DSU.<sup>62</sup>

7. This Title shall not apply to arbitration awards issued pursuant to Article 25 of the DSU<sup>63</sup>. However, when entering into an arbitration agreement pursuant to Article 25 of the DSU, the Parties may agree to apply to the arbitration awards the provisions of this Title, subject to any adaptations they deem appropriate.

## TITLE V

### GUIDELINES FOR ADJUDICATORS

#### Chapter I

##### *Treaty Interpretation*

1. As provided for in Article 3.2 of the DSU, an adjudicator shall interpret the covered agreements in accordance with customary rules of interpretation of public international law. Consequently, an adjudicator shall interpret the covered agreements in accordance with Articles 31, 32, and 33 of the *Vienna Convention on the Law of Treaties* (Vienna Convention) done at Vienna on 23 May 1969. Members recognize that application of the general rule of interpretation reflected in Article 31 of the Vienna Convention may leave the meaning of a provision ambiguous or obscure or lead to a result that is manifestly absurd or unreasonable. Members recognize that, consistent with Article 32 of the Vienna Convention, an adjudicator may have recourse to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of the general rule of interpretation reflected in Article 31 Vienna Convention, or to determine the meaning when the interpretation according to Article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.

2. A complaining party bears the burden of establishing a *prima facie* case that another party has acted inconsistently with an obligation under the covered agreements. In so doing, the complaining party must demonstrate the existence of an obligation in the covered agreements that governs the measure claimed to be inconsistent. Members recognize that a provision may not contain an obligation governing the allegedly inconsistent measure. If the adjudicator finds the complaining party has made out a *prima facie* case of the existence of an obligation, then in the absence of effective refutation by the other party, the adjudicator shall apply the obligation to the facts of the dispute. If the adjudicator finds that the complaining party has not made out a *prima facie* case of the existence of an obligation, or has not demonstrated that the obligation governs the allegedly inconsistent measure, then the adjudicator shall conclude that the complaining party has not made out a claim of inconsistency.

#### Chapter II

##### *Focus on What is Necessary to Resolve the Dispute*

1. Adjudicators shall focus on what is necessary to resolve the dispute, including through the exercise of proper judicial economy.

2. In so doing, adjudicators shall only make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements, and shall limit their reasoning only to that which is necessary to support their findings and conclusions.

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<sup>62</sup> Members recall, in particular, that pursuant to Article 21.3 of the DSU the Member concerned shall have a reasonable period of time to comply with the recommendations and rulings if it is impracticable to comply immediately.

<sup>63</sup> For greater certainty, Members recall that, pursuant to Article 25.4 of the DSU, Article 21 of the DSU applies, *mutatis mutandis*, to arbitration awards.

3. In order to keep the focus on what is necessary to resolve the dispute, adjudicators may, at any stage of the proceedings before the issuance of the final panel report to the parties, invite the parties to the dispute to focus on certain claims. Adjudicators may also, within the same timeframe, invite parties to exclude certain claims.<sup>64</sup>

4. The invitation by adjudicators is not legally binding. The fact that a party to the dispute does not accept the invitation shall not prejudice the consideration of the case or the rights of the parties.

### **Chapter III**

#### *No Precedential Value of Past Reports*

1. Adjudicative reports shall have no precedential effect. This means that a previous report that interprets or applies a provision of the covered agreements does not have binding force in respect of a subsequent dispute. Each adjudicator bears the responsibility to develop its own interpretation of a provision of the covered agreements applying customary rules of interpretation of public international law as required by Article 3.2 of the DSU. Each adjudicator shall also apply relevant interpretations adopted by the Ministerial Conference or the General Council pursuant to Article IX:2 of the Marrakesh Agreement. An adjudicator may use a previous report in developing and explaining its own interpretation only to the extent the adjudicator determines the report to be relevant to a provision at issue in the dispute and to contain persuasive analysis of that provision under customary rules of interpretation of public international law, or to distinguish its interpretation from a previous report. Neither Members nor adjudicators may presume that an interpretation of the covered agreements contained in a WTO dispute settlement report is persuasive.

### **TITLE VI**

## **PROCEDURES TO DISCUSS LEGAL INTERPRETATIONS**

### **Chapter I**

#### *Discussion of Reports in Relevant WTO bodies*

1. The DSB Chairperson shall forward circulated adjudicative reports or notified arbitration awards to the Chairperson of relevant WTO bodies. The Chairpersons of relevant WTO bodies shall determine, in consultation with Members, if an adjudicative report or an arbitration award contains interpretations relevant to the work of those bodies. If in consultations with Members a Chairperson determines an adjudicative report or arbitration award to be relevant, or at the request of any Member, the Chairperson shall inscribe the adjudicative report or arbitration award on the agenda of the first formal meeting of the body scheduled to be held no more than [x<sup>65</sup>] months following the date of adoption of the adjudicative report or the notification of the arbitration award.<sup>66</sup>

2. The agenda item serves as an opportunity for Members at the expert level to discuss the technical and policy implications of the provisions interpreted in adopted DSB reports, and arbitration awards notified to the DSB, that are relevant to the work of a WTO body. In furtherance of this objective:

- a. No later than one month prior to the date of circulation of the relevant agenda, the Secretariat shall circulate a summary document of the adjudicator's interpretive findings that should not exceed one page.
- b. Under the agenda item during the formal meeting of the relevant WTO body, the Chairperson shall invite Members to discuss the technical and policy implication of

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<sup>64</sup> For greater certainty, if a complainant accepts the invitation to exclude a claim, it shall not be precluded from raising that claim in subsequent procedures, including pursuant to Article 21.5 of the DSU.

<sup>65</sup> Note: The timing will be linked to the discussion on Compliance.

<sup>66</sup> The adjudicative report or arbitration award may be included on the agenda of a subsequent meeting as needed. However, there is no expectation to retain the agenda item on a recurring basis unless otherwise agreed upon by the WTO body.



the provisions interpreted in adopted DSB reports or arbitration awards notified to the DSB that are relevant to the work of that WTO body.

- c. Members shall not discuss dispute-specific facts, implementation of the DSB's recommendations or implementation of the arbitration awards notified to the DSB, if any.

## **Chapter II**

### *Advisory Working Group*

1. WTO Members reaffirm that recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements as provided in Articles 3.2 and 19.2 of the DSU.
2. WTO Members hereby establish an *Advisory Working Group* composed of all WTO Members under the auspices of the DSB.
3. The *Advisory Working Group* is a mechanism for WTO Members to discuss, build consensus and provide guidance on legal interpretations developed by adjudicators.
4. The *Advisory Working Group* shall not relitigate disputes or function as an [appeal/review] mechanism. Accordingly, the mechanism under this Chapter is expected to be used rarely.
5. After consulting with WTO Members, the DSB Chairperson shall appoint the Chairperson of the *Advisory Working Group* and define the Chairperson's terms of office.
6. Any Member may request the discussion by the *Advisory Working Group* of a legal interpretation developed by adjudicators. Such discussion shall be initiated only if all of the following conditions are fulfilled:
  - a. the rulings and recommendations of the DSB containing the interpretation at issue have been adopted; or the arbitration award containing the interpretation at issue has been notified to the DSB;
  - b. the reasonable period of time for implementation in the dispute for which an interpretation is at issue has expired;
  - c. the discussion of the legal interpretation at issue has taken place in the relevant WTO bodies as provided for in Title VI, Chapter I.
7. The request for the discussion by the *Advisory Working Group* shall be made in writing to the Chairperson of the *Advisory Working Group*, certifying that the conditions in paragraph 6 have been met. The request shall identify the specific interpretation developed by adjudicators for which the Member is seeking the discussion and shall present the issue clearly.
8. In case where multiple requests are submitted to the *Advisory Working Group*, the discussions shall be conducted in the order in which the requests have been submitted.
9. Nothing in this Chapter precludes the DSB from referring a legal interpretation to the *Advisory Working Group*.
10. The *Advisory Working Group* shall be convened within three months after the date of the request made pursuant to paragraph 7 or after a referral by the DSB pursuant to paragraph 9.
11. Notwithstanding paragraph 6, within six months after the date of establishment of the *Advisory Working Group*, any Member may request a discussion of any legal interpretation developed in past disputes<sup>67</sup> in the *Advisory Working Group*. In this case, paragraphs 6(a), 6(b), 7 and 8 of

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<sup>67</sup> Past disputes in this Chapter mean adjudicative reports that were adopted at the DSB or notified to the DSB before the date of establishment of the *Advisory Working Group*.

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this Decision shall apply to such requests. If requested under this paragraph, the *Advisory Working Group* shall be convened within three months after the date of expiry of the six-month period.

12. The Chairperson of the *Advisory Working Group* shall report the outcome of the discussions to the DSB, including any recommendation in accordance with paragraph 13. The *Advisory Working Group* shall make any recommendation by consensus.

13. The outcomes of the discussions of the *Advisory Working Group* may take the form of, *inter alia*:

- a. a draft recommendation by the Council overseeing the functioning of the relevant agreement to the Ministerial Conference or the General Council for the adoption of an authoritative interpretation in accordance with Article IX:2 of the *Marrakesh Agreement*;
- b. a recommendation to the DSB to agree that the interpretation at issue shall not be considered as persuasive under paragraph 1, Chapter III, Title V; or
- c. a record of Members' diverging views about the interpretation. The record shall include (i) the number of the Members that expressed the views during the discussion, (ii) the Members that supported or did not support the interpretation discussed and (iii) their reasonings.

14. For greater clarity, the outcomes of the discussions in the *Advisory Working Group* shall not have any retroactive effect on the disputes for which the DSB's recommendations and rulings were adopted or on arbitration awards notified to the DSB, nor shall they affect the validity or implementation of the recommendations, rulings or awards.

15. The outcomes of the discussions of the *Advisory Working Group* shall be circulated as WTO unrestricted documents and shall be included in the *WTO Analytical Index*.

## **TITLE VII**

### **SECRETARIAT SUPPORT**

#### **Chapter I**

##### *Secretariat Staffing to Support Adjudicators' Work*

1. To ensure high-quality support by the Secretariat, as envisaged by the DSU, Members expect the Secretariat to ensure that legal support staff also possess the subject-matter expertise required by their role in assisting adjudicators.<sup>68</sup> To this end, Members expect:

- a. The Secretariat to develop the expertise of its legal support staff to ensure the relevant subject-matter expertise.
- b. The Legal Affairs Division and the Rules Division of the Secretariat to request staffing support from other relevant divisions to ensure appropriate subject-matter expertise, and such staffing support to be provided by relevant divisions.

2. For greater clarity, Members' expectations in paragraph 1 should not be interpreted as preventing trainees or young professionals from assisting adjudicators commensurate with their capacity, experience, and expertise, and with appropriate supervision by suitably experienced Secretariat staff.

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<sup>68</sup> Subject-matter expertise could be relevant committee experience, other experience drawn from the appropriate Secretariat Division, or other practical subject-matter expertise such as relevant government or private sector experience.

## **Chapter II**

### *Responsibilities of Adjudicators and Scope of Support Provided by Secretariat Staff*

1. In discharging their responsibilities under the DSU and the covered agreements:
  - a. Adjudicators shall have full responsibility for decision making.
  - b. Members expect adjudicators to draft their reports with the support of the Secretariat staff as appropriate.
  - c. Adjudicators shall draft the conclusions section of their report.
2. In providing support to adjudicators:
  - a. Secretariat support shall be responsive to (1) the parties' submissions and (2) specific requests of the adjudicators.
  - b. If Secretariat staff are requested to assist adjudicators in drafting any part of the report other than the conclusions section, they shall do so on the basis of written instructions provided by the adjudicators.
  - c. In all instances, including for the conclusions section of the report, Secretariat staff shall provide the necessary editorial support.
3. To ensure Secretariat support is responsive to the parties' submissions as provided for in paragraph 2(a), the Secretariat shall not provide issues papers before the first written submissions have been provided by the parties. With respect to preliminary ruling requests, the Secretariat shall not provide issues papers before written submissions relating to the preliminary ruling request have been provided by the parties.
4. To enhance the independence, impartiality and integrity of the dispute settlement mechanism, the parties, third parties, and members of the panel shall receive from the Secretariat the Rules of Conduct for the Understanding on the Rules and Procedures Governing the Settlement of Disputes (WT/DSB/RC/1) and the Staff Regulations (WT/L/282) after the panel composition. To ensure the compliance with such rules, the DSB Chairperson or the WTO Director-General shall take appropriate actions, within their competence, upon receipt of evidence of a material violation of a relevant obligation, in consultation with each other if necessary.

## **TITLE VIII**

### **TRANSPARENCY**

#### **Chapter I**

##### *Transparency Measures vis-à-vis WTO Members*

#### **I. Access to written submissions<sup>69</sup>**

1. The Secretariat shall make the parties' written submissions accessible to Members, via an electronic system, either:

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<sup>69</sup> For greater clarity, "written submissions" in this Title shall include the first written submissions, second written submissions, third party written submissions, written versions of the opening and closing statements made at the substantive meetings with the parties and third parties, written answers to questions posed by the panel, and preliminary ruling requests, but shall not include exhibits. At the request of the disputing parties, if they agree that additional documents may be considered as "written submissions", the adjudicator shall specify this in the working procedures.

- a. if the parties agree at the first organizational meeting, promptly<sup>70</sup> after their filing;
  - b. otherwise, no later than 7 days after the circulation, or adoption upon a party's request, of each adjudicative report.
2. The Secretariat shall make each third-party's written submissions accessible to Members, in the same manner as the parties' written submissions.
  3. In order to support Members' capacity-building efforts, the parties are encouraged to agree that the Secretariat provides access to their written submissions to all Members promptly after their filing.
  4. In all cases access shall be granted only to the non-confidential version of the submissions filed by the parties in accordance with any working procedures adopted by the adjudicator for the protection of confidential information.

## **II. Observation of hearings**

1. The Secretariat shall make the substantive meetings of the adjudicator with the parties accessible for observation by Members, either:
  - a. if the parties agree at the organizational meeting, through real-time onsite closed-circuit broadcasting or any other modality decided by the parties, such as in-person observation, live broadcasting or audio-visual recording to be made electronically available a few days after the substantive meeting of the panel with the parties;
  - b. otherwise, via on-site viewing of an audio-visual recording no later than 7 days after the date of circulation, or adoption upon a party's request, of each adjudicative report.
2. The Secretariat shall make the third-party session accessible for observation by Members in the same manner as the parties' choice pursuant to paragraph 1, Section II, Chapter I.
3. In order to support Members' capacity-building efforts, if the access granted pursuant to paragraph 1, Section II, Chapter I, is in real time, the parties are expected to agree that the Secretariat shall provide the parties' written submissions to all Members promptly after their filing, pursuant to paragraph 1 and 4, Section I, Chapter I, and the third parties are encouraged to follow the decision taken by the parties in each dispute.
4. In all cases access shall be granted consistently with any working procedures adopted by the adjudicator to provide for the protection of confidential information.

## **Chapter II**

### *Transparency Measures vis-à-vis the Public*

#### **I. Publication of submissions**

1. The Secretariat shall publish the non-confidential version of written submissions, in accordance with any working procedures adopted by the adjudicator, from all parties and third parties on the WTO website no later than 7 days after the circulation, or adoption upon a party's request, of each adjudicative report.
2. Nothing in this Decision shall preclude a party to the dispute from disclosing statements of its own positions to the public in accordance with Article 18.2 of the DSU.

#### **II. Observation of hearings by the public**

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<sup>70</sup> For greater clarity, "promptly" in this Chapter means at the time or within a few days after the filing of the submissions.

1. The Secretariat shall make the substantive meetings of the adjudicator with the parties accessible for observation by the public, either:
  - a. if the parties agree at the organizational meeting, through live broadcasting, recording to be made available few days after the substantive meeting of the panel with the parties, or any other modality decided by the parties, such as onsite closed-circuit broadcasting or in-person observation;
  - b. otherwise, via on-site viewing of an audio-visual recording or viewing of an audio-visual recording made available to the general public via an electronic system<sup>71</sup> no later than 7 days after the date of circulation, or adoption upon a party's request, of each adjudicative report.
2. The Secretariat shall make the third-party session accessible for observation by the public in the same manner as the parties' choice pursuant to paragraph 1, Section II, Chapter II.
3. In all cases access shall be granted consistently with any working procedures adopted by the adjudicator for the protection of confidential information.

### **III. Publication of adjudicators' timetables**

1. The Secretariat shall make publicly available on the WTO website the timetables of the panel/appellate/review proceedings and any other adjudicative proceedings under the DSU, no later than seven days after the circulation of the timetable to the parties or modification thereof.

## **TITLE IX**

### **ACCESSIBILITY WITH RESPECT TO TECHNICAL ASSISTANCE, CAPACITY BUILDING AND LEGAL ADVICE**

1. Members recognize the special needs of developing and least-developed country Members for enhanced support for capacity building and technical assistance so as to help them build capacity in the area of dispute settlement, pursuant to Article 27.3 of the DSU, in the three working languages of the WTO.
2. To this end, Members instruct the Secretariat to undertake further or additional capacity-building work for developing and least-developed countries in areas including, but not limited to, regional training programmes, internship and targeted secondment programmes for dispute resolution officials, a more focused young professionals programme and a chairs programme.
3. Decisions on further or additional capacity-building work by the Secretariat should be based on [regular] discussions between the Secretariat and Members. Such discussions should identify the Members' requirements and whether those requirements are being met by the Secretariat. In order to fill gaps and increase complementarity, the Secretariat is encouraged to continue to cooperate with other relevant governmental, inter-governmental and non-governmental organizations to deliver technical assistance activities.
4. In keeping with the demand of developing and least-developed countries, the Secretariat is required to increase, as necessary, the number of experts providing legal advice and assistance services pursuant to Article 27.2 of the DSU, in the three working languages of the WTO, following discussions between Members and the Secretariat.
5. Members and the Secretariat should consider the budgetary requirements of performing the activities and providing the services provided for under paragraphs 1 to 4. Members shall endeavour to fund<sup>72</sup> these activities and services. In so doing, they will look at options including budget allocation within the regular WTO budget, and any separate funding mechanism for targeted secondment programmes under paragraph 2 to be administered by the Institute for Training and

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<sup>71</sup> Upon a party's request, audio-visual recordings can be posted during a limited period and be accessible through a single-use password after registration.

<sup>72</sup> Note: Proposed language to be considered by the plenary.

Technical Cooperation to which Members could contribute on a voluntary basis, including through earmarked funding.

6. Members and the Secretariat should review and report to the DSB on an annual basis on the Secretariat's capacity-building activities on dispute settlement and Members' capacity-building requirements, with the aim of improving the effectiveness of the activities in meeting Members' requirements, especially those of developing and least-developed countries.

7. Recognizing the special needs of developing and least-developed countries in securing funds for litigation, Members are committed to collaborating with relevant organizations, including the ACWL, to facilitate accessibility for these countries to the WTO dispute settlement system.<sup>73</sup>

8. Members welcome the Decision [2024/X] of the General Assembly of the ACWL regarding the accessibility of the ACWL's services.<sup>74</sup>

## TITLE X

### ACCOUNTABILITY MECHANISM

#### I. Establishment of the accountability mechanism

1. A meeting of the DSB shall be convened at the level of Head of Delegation to consider an item titled "*Review of the Operation of the Dispute Settlement System and the Implementation of the Reforms*" in:

- a. October 2026; and
- b. October of every second year thereafter,

("Accountability Mechanism Meeting").

2. At the *Accountability Mechanism Meeting*, Members will review the operation of the dispute settlement system, with a focus on the implementation of the elements of the *Reforms* listed in the Appendix to this Title, on the basis of the report by the DSB Chairperson referred to in paragraph 10.

3. To the extent possible, the review of the implementation of the *Reforms* shall be based on the factual and statistical information in the Appendix to this Title. This is without prejudice to the right of Members to express any views on the implementation of the *Reforms* or the operation of the dispute settlement system in general.

4. At the *Accountability Mechanism Meeting*, the Director-General shall give an oral report on the Secretariat's compilation of factual and statistical information on the implementation of the reforms contained in the report referred to in paragraph 10 and the DSB Chairperson shall give an oral report on the consultations conducted pursuant to paragraph 7.

5. Members may provide their views on any matters relevant to the operation of the dispute settlement system, including the implementation of the *Reforms* through:

- a. a written communication to the DSB;
- b. the consultations with the DSB Chairperson, as referred to in paragraph 7; and/or
- c. their statements at the *Accountability Mechanism Meeting*.

#### II. Inputs to the Accountability Mechanism

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<sup>73</sup> Note: Language based on an African Group proposal, to be discussed in plenary. To consider including a reference in the Accountability Mechanism requesting Members to report periodically their efforts to the DSB.

<sup>74</sup> Note: Proposed language to acknowledge the ACWL's accessibility efforts that would supplement the accessibility elements of this Decision.

6. Not later than six months before each *Accountability Mechanism Meeting*, the DSB Chairperson shall circulate a draft report prepared with the assistance of the Secretariat containing factual and statistical information on the implementation of the elements of the *Reforms*, as listed in the Appendix to this Title.

7. On the basis of the draft report referred to in paragraph 6, the DSB Chairperson shall conduct consultations with Members to obtain their views on the implementation of any of the elements of the *Reforms* listed in the Appendix to this Title.

8. The DSB Chairperson may request the assistance of a discussant at the level of Head of Delegation on a specific issue or issues if:

- a. the Chairperson considers it appropriate based on consultations with Members; or
- b. an element of the *Reforms* fails to meet an applicable performance target (if any).

9. Discussants appointed under paragraph 8, who act in their personal capacity, shall consult with Members on the issue(s) with respect to which they are appointed and guide the discussion on the issue(s) at the *Accountability Mechanism Meeting*.

10. No later than four weeks before each *Accountability Mechanism Meeting*, the DSB Chairperson shall circulate a final report setting out the factual and statistical information and any views expressed by Members on implementation of the elements of the *Reforms* listed in the Appendix to this Title.

11. The final report may contain recommendations on action to be decided by the DSB.

### **III. Action arising from the *Accountability Mechanism***

12. If, through the *Accountability Mechanism Meeting*, areas are identified where the implementation of the *Reforms* could be improved, the DSB may take such action as it sees necessary and appropriate.

13. For the avoidance of doubt, any action taken by the DSB pursuant to paragraph 12 shall not affect the rights or obligations of any Member with respect to previous recommendations or rulings of the DSB or previous arbitration awards notified to the DSB.

### **Appendix I**

#### *Elements of Reform*<sup>75</sup>

14. For those elements of *Reform* with performance targets, Members shall review the implementation of the *Reforms* by reference to the applicable targets and whether, based on the relevant factual or statistical information set out in the table below, they have been met.<sup>76</sup> For the elements of *Reform* without performance targets, the factual or statistical information will assist Members to review the implementation of those *Reforms*.

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<sup>75</sup> Note: The rationale for this table is to ensure that the review (i) is comprehensive and relates to all elements of reform and (ii) that it is first and foremost based on objective information (factual or statistical information) to be provided by the DSB Chairperson/Secretariat. The contents of the table will need to be finalized once the Reforms are agreed, including once discussions have progressed on outstanding reform elements.

<sup>76</sup> Members acknowledge that, based on the operation of the Reforms, it may be necessary or desirable to change the factual or statistical information required or the performance targets set out in Appendix I. Nothing in this Decision precludes Members from doing so. For example, this could be an action arising from the *Accountability Mechanism Meeting*.

No.	Element of reform	Factual or statistical information required	Performance target
<b>Title I – Alternative Dispute Resolution Procedures and Arbitration</b>			
1.	Alternative Dispute Resolution under WTO auspices.	Statistical information on the number of agreements to use ADR, including the procedure used, whether the ADR was terminated and, if so, the reason, and whether support was provided by the WTO Secretariat.	
<b>Title II – Panel Proceedings</b>			
2.	Establishment of panels at the first DSB meeting at which they are requested.	Statistical information on the timing of panel establishment.	100%
3.	Indicative list.	Statistical information on the number of Members nominating persons for the indicative list, and the number of citizens and non-citizens nominated.	
4.	Diversity in panels and panel selection.	Statistical information on geographical (including citizenship) and gender representation on: (i) panels; (ii) indicative list; and (iii) persons proposed to the parties by the Secretariat for appointment to panels from the indicative list and outside the indicative list. <sup>77</sup>	
5.	Panel composition.	Statistical information on: (i) proportion of candidates coming from the indicative list; (ii) proportion of panellists coming from the indicative list; (iii) number of disputes in which the Director-General received from the parties lists of names from the indicative list and whether the Director-General appointed panellists from the overlap in those names; and (iv) the proportion of panellists agreed by the parties and appointed by the Director-General	
6.	Meetings with the panel.	Statistical information on the number of substantive meetings between panels and parties, and the number and timing of the third-party sessions.	
7.	Requirement for panels to provide written questions in advance of any substantive meeting with the parties.	Statistical information on the observance of this requirement by the panels.	100%

<sup>77</sup> Should Members consider, based on the information provided pursuant to Section II of this Title, that their interests in diversity on the indicative list and in panels have not been met, they may request the DSB Chairperson to initiate a process, with the support of a facilitator as appropriate, to consider any further steps that may be taken by Members to improve the diversity of the indicative list.



No.	Element of reform	Factual or statistical information required	Performance target
8.	Word limits for written submissions.	Information relating to word limits set by panels, categorization of disputes (including any re-categorization), and the observance of word limits by the parties.	100%
9.	Time limits for oral submissions at meetings with the adjudicators.	Information relating to time limits set by panels for oral submissions and their observance by the parties.	100%
10.	Mandatory time-limits for proceedings.	Information relating to the observance of mandatory timeframes for proceedings, categorization of disputes (including any re-categorization), and causes of any delays or suspensions (with attribution of these to, for e.g., the parties, to panels or to force majeure).	100%
<b>Title III – Appeal/Review Mechanism</b>			
11.	[Appeal/Review Mechanism]	[Members to consider once text is developed for this topic.]	
<b>Title IV – Compliance</b>			
12.	Compliance	Statistical information on: (i) cases with immediate compliance; (ii) duration of RPTs; (iii) number of consultations requested under paragraph 1 of Title IV (including number accepted or declined and number resulting in an agreed RPT); (iv) number of procedures provided for in Appendix 4, Chapter I, Title I of this Decision requested (including number accepted or declined and number resulting in an agreed RPT); (v) number of disputes in which the parties agreed an RPT other than through consultations or ADR procedures; and (vi) the number of disputes in which arbitration occurred and the duration of the RPTs so determined.	
<b>Title V – Guidelines for Adjudicators</b>			
13.	Adjudicators' focus on what is necessary for the resolution of disputes and the exercise of judicial economy.	Statistical information on instances of the exercise of judicial economy (such as number of disputes concerned, number and type of claims etc).	
14.	Invitation to parties by adjudicators to focus on certain claims or to exclude certain claims.	Statistical information on the number of invitations by panels and any follow up by the parties.	
15.	Relevance of adopted reports.	Factual description of how previous reports have been addressed by adjudicators.	

No.	Element of reform	Factual or statistical information required	Performance target
<b>Title VI – Procedures to Discuss Legal Interpretations</b>			
16.	Referrals of interpretations in adopted reports to Chairpersons of other pertinent WTO bodies; and technical discussions requested by Members of those interpretations in those other WTO bodies.	Factual information relating to the number of adjudicative reports forwarded by the DSB Chairperson, the WTO bodies to which the reports were forwarded, the number of Member requests to include reports on the agenda of other WTO bodies, and any follow-up by the WTO bodies.	
17.	Advisory Working Group (mechanism to review legal interpretations)	Factual information on the operation of the Advisory Working Group (such as interpretations that have been discussed, any output etc).	
<b>Title VII – Secretariat Support</b>			
18.	Secretariat support to adjudicators.	Factual information regarding the staffing support provided to adjudicators, including incidents of known or suspected violations of the Rules of Conduct and the Staff Regulations.	
<b>Title VIII – Transparency</b>			
19.	Access to all submissions to all WTO Members.	Statistical information relating to real-time or delayed access to submissions by all WTO Members.	
20.	Observation of hearings by Members.	Statistical information relating to observance of hearings and third-party sessions by Members and the mode of that access (delayed or real-time).	
21.	Submissions in disputes made available to the public.	Statistical information on publication of submissions.	100%
22.	Observation of hearings by the general public	Statistical information relating to observance of hearings and third-party sessions by the general public and the mode of that access (delayed or real-time).	
23.	Publication of timetables and updates published on the WTO website.	Statistical information on publication of timetables and updates thereto.	100%
<b>Title IX – Accessibility with Respect to Technical Assistance, Capacity Building and Legal Advice</b>			
24.	Services pursuant to Article 27.2 of the DSU for developing and least-developed Members.	Information on services provided pursuant to Article 27.2 of the DSU for developing and least-developed Members, including on whether the demand is being met.	
25.	Capacity building for developing and least developed Members.	The relevant annual reports to the DSB regarding the Secretariat's capacity-building activities, including on whether the demand is being met.	

**TITLE XI**

**ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS**

**[Work in Progress]**

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