



**COMMUNICATION FROM THE EUROPEAN UNION, CHINA AND INDIA
TO THE GENERAL COUNCIL**

The following communication, dated 23 November 2018, is being circulated at the request of the delegations of the European Union, China, India.

INTRODUCTION

We are mindful of the shared responsibility of all Members for the proper functioning of the WTO dispute settlement system that is essential to a multilateral trading system based on rules.

We acknowledge that concerns have been raised about the functioning of the dispute settlement system and are ready to work on solutions on the basis of the proposal to amend certain provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") attached to document WT/GC/W/752.

At the same time, in order to achieve balance and taking into account the experience with the application of the DSU to date, we consider that these amendments should be accompanied by the amendments set out in the Annex. These additional amendments aim at strengthening the independence and impartiality of the Appellate Body, improving efficiency so as to enable it to meet the required timeframes, and ensuring an orderly transition as well as an orderly launch of selection procedures.

PROPOSED ADDITIONAL AMENDMENTS

Independence of Appellate Body members

It is proposed to provide for one single but longer (6-8 years) term for Appellate Body members. The objective is to enhance the independence of the Appellate Body and its members, which is needed in view of the experience of recent years and also in view of the other amendments proposed in document WT/GC/W/752.

Efficiency and capacity to deliver

In addition to the amendment proposed on the issue of 90 days, and in order to improve the efficiency of the Appellate Body and enable it to meet the required timeframes, we propose the following:

- Increasing the number of Appellate Body members from 7 to 9. This would improve the efficiency and internal organization of the Appellate Body while also improving the geographical balance on the Appellate Body after numerous accessions to the WTO since 1995.
- Providing that the membership of the Appellate Body is the exclusive occupation of Appellate Body members (currently, pursuant to the DSB decision WT/DSB/1, it is a part time job). This would be accompanied by appropriate changes in the employment conditions. This would not preclude Appellate Body members from academic or scientific activities, consistent with the nature of their functions.

As an accompanying measure – not requiring an amendment of the DSU (cf. Article 17.7 of the DSU) – an expansion of the resources of the Appellate Body Secretariat, providing the administrative and legal support to the Appellate Body, would also be considered in order to facilitate the prompt circulation of Appellate Body reports while safeguarding the quality of the reports. In line with the general recruitment policy of the WTO, the objective should be to attract and retain staff members offering the highest standards of efficiency, competence and integrity while ensuring the broadest possible diversification, reflecting that of the membership in the WTO.

Transitional rules for outgoing Appellate Body members

In order to ensure an orderly transition between the outgoing and new Appellate Body members, the outgoing Appellate Body members should continue discharging their duties until their places have been filled but not longer than for a period of two years following the expiry of the term of office.

The launch of the Appellate Body selection process

It is clarified that the selection process to replace outgoing Appellate Body members shall be automatically launched no later than X [e.g. 6] months before the expiry of their term of office.

These proposed amendments are contained in the Annex. We are hereby proposing that, in addition to the amendments attached to document WT/GC/W/752, these amendments be adopted by the General Council on the same occasion, pursuant to Articles IV:2 and X:8 of the Marrakesh Agreement Establishing the World Trade Organization.

ANNEX

**AMENDMENT OF CERTAIN PROVISIONS OF
THE UNDERSTANDING ON RULES AND PROCEDURES
GOVERNING THE SETTLEMENT OF DISPUTES**

Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") shall be amended as follows:

1. Paragraph 1 shall be amended to read as follows:

"A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of ~~seven~~ nine persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body."

2. Paragraph 2 shall be amended to read as follows:

"The DSB shall appoint persons to serve on the Appellate Body for a ~~[six-year/eight-year]~~ four-year term which shall be non-renewable, ~~and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot.~~ Vacancies shall be filled as they arise. To that end, the Chairman of the DSB shall launch the selection process no later than X [e.g. 6] months before the expiry of the term of office. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person serving on the Appellate Body whose term of office has expired shall continue to discharge his or her duties until he or she has been replaced but not longer than for a period of two years following the expiry of the term of office. The outgoing person shall complete the disposition of an appeal in which the oral hearing has been held."

3. Paragraph 3 shall be amended to read as follows:

"The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. ~~They shall not engage in any other occupation of a professional nature.~~ The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest."

4. Paragraph 8 shall be amended to read as follows:

"The employment conditions of persons serving on the Appellate Body shall reflect their full-time employment as members of the Appellate Body. The expenses of persons serving on the Appellate Body, 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."
