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1 ARTICLE 8

1.1 Text of Article 8

Article 8

Composition of Panels

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

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

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

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

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-

General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

1.2 Article 8.4: Indicative list of panelists

1. In accordance with the proposals for the administration of the indicative list of panelists approved by the DSB on 31 May 1995, the list is completely updated every two years. At its meeting on 27 September 1995, the DSB approved the list of governmental and non-governmental panelists which contained names of individuals and an indication of their sectoral experience. The DSB also agreed that at each of its regular meetings new names may be proposed by delegations for inclusion in the indicative list.¹

2. The DSB approved the additional names contained in documents WT/DSB/W/473², 478³, 480⁴, 483⁵, 492⁶, 495⁷, 497⁸, 500⁹, 503¹⁰, 505¹¹, 512¹², 514¹³, 518¹⁴, 522¹⁵, 530¹⁶, 533¹⁷, 536¹⁸, 543¹⁹, 545²⁰, 562²¹, 564²², 566²³, 572²⁴, 575²⁵, 580²⁶, 583²⁷, 585²⁸, 587²⁹, 589³⁰, 599³¹, 606³²,

¹ WT/DSB/2.

² WT/DSB/M/311, paras. 95-96.

³ WT/DSB/M/315, paras. 81-82.

⁴ WT/DSB/M/316, paras. 87-88.

⁵ WT/DSB/M/318, paras. 96-97.

⁶ WT/DSB/M/325, paras. 6.1-6.2.

⁷ WT/DSB/M/327, paras. 10.1-10.2.

⁸ WT/DSB/M/328, paras. 8.1-8.2.

⁹ WT/DSB/M/330, paras. 5.1-5.2.

¹⁰ WT/DSB/M/332, paras. 10.1-10.2.

¹¹ WT/DSB/M/333, paras. 9.1-9.2.

¹² WT/DSB/M/337, paras. 7.1-7.2.

¹³ WT/DSB/M/338, paras. 7.1-7.2.

¹⁴ WT/DSB/M/341, paras. 7.1-7.2.

¹⁵ WT/DSB/M/344, paras. 9.1-9.2.

¹⁶ WT/DSB/M/351, paras. 6.1-6.2.

¹⁷ WT/DSB/M/352, paras. 8.1-8.2.

¹⁸ WT/DSB/M/353, paras. 7.1-7.2.

¹⁹ WT/DSB/M/359, paras 10.1-10.2.

²⁰ WT/DSB/M/360, paras. 9.1-9.2.

²¹ WT/DSB/M/375, paras. 5.1-5.2.

²² WT/DSB/M/376, paras. 8.1-8.2.

²³ WT/DSB/M/377, paras. 8.1-8.2.

²⁴ WT/DSB/M/383, paras. 10.1-10.2.

²⁵ WT/DSB/M/384, paras. 7.1-7.2.

²⁶ WT/DSB/M/387, paras. 10.1-10.2.

²⁷ WT/DSB/M/389, paras. 11.1-11.2

²⁸ WT/DSB/M/390, paras. 7.1-7.2.

²⁹ WT/DSB/M/391, paras. 7.1-7.2.

³⁰ WT/DSB/M/392, paras. 10.1-10.2.

and 608³³ proposed for inclusion on the indicative list of governmental and non-governmental panelists. On 2 February 2018, the most recent revised consolidated list of governmental and non-governmental panelists was circulated.³⁴

1.3 Article 8.4: Panel composed of five panelists

3. As of February 2018, no panel has been composed of five panelists.

1.4 Article 8.7: Panel composition by the Director-General

1.4.1 Deputy Director-General acting in place of the Director-General

4. In both *EC and certain member States – Large Civil Aircraft* and *US – Large Civil Aircraft (2nd complaint)*, the respective Panels were composed by a Deputy Director-General acting in place of the Director-General.³⁵

1.4.2 Appointment of replacement panelist in the course of a panel proceeding

5. Although Article 8.7 of the DSU does not expressly provide for the resignation of a panelist or the appointment of a replacement panelist in the course of a panel proceeding, the Director-General has appointed replacement panelists pursuant to Article 8.7 in several cases, including *EC – Countervailing Measures on DRAM Chips*³⁶, *US – Softwood Lumber V (Article 21.5 – Canada)*³⁷, and *EU – Biodiesel*³⁸. In *US – Tuna II (Mexico)*, the parties agreed on a new member of the Panel following the death of a panelist.³⁹

Current as of: February 2018

³¹ WT/DSB/M/398, paras. 7.1-7.2.

³² WT/DSB/M/403, paras. 7.1-7.2.

³³ WT/DSB/M/404, paras. 6.1-6.2.

³⁴ WT/DSB/44/Rev.42.

³⁵ Panel Reports, *EC and certain member States – Large Civil Aircraft*, para. 1.5, and *US – Large Civil Aircraft (2nd complaint)*, para. 1.5.

³⁶ Panel Report, *EC – Countervailing Measures on DRAM Chips*, para. 1.8.

³⁷ Panel Report, *US – Softwood Lumber V (Article 21.5 – Canada)*, para. 1.5.

³⁸ Panel Report, *EU – Biodiesel*, para. 1.6.

³⁹ Panel Report, *US – Tuna II (Mexico)*, para. 1.8.