

1 GENERAL..... **1**
1.1 TFA negotiations as context to the interpretation of GATT 1994..... 1

1 GENERAL

1. The Agreement on Trade Facilitation (TFA) entered into force on 22 February 2017, and as of June 2022 there have been no clarifications of the terms of the TFA by panels or the Appellate Body.

1.1 TFA negotiations as context to the interpretation of GATT 1994

2. In *Colombia – Ports of Entry*, the Panel referred to a document generated in the TFA negotiations to support its interpretation of Article V:6 of the GATT 1994. The Panel observed that "[t]he 12 January 2005 WTO Secretariat Negotiating Group on Trade Facilitation acknowledged the earlier disagreement surrounding the various possibilities for interpretation of Article V:6 of the *GATT 1994*", and stated that "[a]lthough the Panel understands that commentary by the WTO Secretariat does not have an impact upon rights and obligations under the covered agreements¹, the quotation reflects the lack of consensus regarding the proper interpretation of Article V:6".²

3. In *China – Auto Parts*, the Panel concluded that the ordinary meaning and context of the term "motor vehicles" in China's schedule supports the interpretation that the term does not include parts and components imported in multiple shipments and assembled into a motor vehicle in the importing country. The Panel concluded that considerations relating to the object and purpose of the WTO Agreement and the GATT 1994 also supported this conclusion. In the course of its analysis, the Panel also considered "the object of Members' negotiations on trade facilitation":

"We also consider that the object of the Members' negotiations on trade facilitation³ shed further light on the interpretative issue before us. The object of the negotiations on trade facilitation is 'further expedition of the movement, release and clearance of goods'. In our view, this object can be read in consonance with the overall object and purpose of reducing barriers to trade under the WTO Agreement. Therefore, any discretion a Member may have on trade-related matters must be exercised in a manner not only consistent with its obligations under the WTO Agreement, but also supportive of the overall objects and purposes of the WTO Agreement, including the negotiations on trade facilitation."⁴

Current as of: December 2023

¹ (*footnote original*) The Panel notes that the 2005 Note by the Secretariat expressly provides that it is "without prejudice to the positions of Members and to their rights and obligations under the World Trade Organization". See TN/TF/W/2, "Article V of the GATT 1994 – Scope and Application, Note by the Secretariat", 12 January 2005, p. 1.

² Panel Report, *Colombia – Ports of Entry*, paras. 7.472-7.473.

³ (*footnote original*) The Panel notes that in November 2001, WTO Members agreed to launch negotiations on trade facilitation. The mandate of these negotiations provides that "[n]egotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 *with a view to further expediting the movement, release and clearance of goods, including goods in transit*". The Members further agreed, "the negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues" (Decision adopted by the General Council on 1 August 2004, Annex D, para. 1).

⁴ Panel Report, *China – Auto Parts*, para. 7.461.