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**TURKEY – CERTAIN MEASURES CONCERNING THE PRODUCTION,
IMPORTATION AND MARKETING OF PHARMACEUTICAL PRODUCTS**

ARBITRATION UNDER ARTICLE 25 OF THE DSU

AWARD OF THE ARBITRATORS

Addendum

This Addendum contains Annexes A to D to the Award of the Arbitrators to be found in document WT/DS583/ARB25.

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ANNEX A-1**AGREED PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU*****Notified by the parties to the Dispute Settlement Body on 22 March 2022**

1. Taking into account that the Appellate Body is not presently able to hear an appeal¹ in this dispute the European Union and Turkey (hereafter the "parties") mutually agree pursuant to Article 25.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to enter into arbitration under Article 25 of the DSU to decide any appeal from any final panel report² as issued to the parties in dispute DS583. Any party to the dispute may initiate arbitration in accordance with these agreed procedures.

2. The arbitration may only be initiated if the Appellate Body is not able to hear an appeal in this dispute under Article 16.4 and 17 of the DSU. For the purposes of these agreed procedures, such situation is deemed to arise where, on the date of issuance of the final panel report to the parties, there are fewer than three Appellate Body members.

For greater certainty, if the Appellate Body is able to hear appeals at the date on which the final panel report is issued to the parties, a party may not initiate an arbitration, and the parties shall be free to consider an appeal under Articles 16.4 and 17 of the DSU.

3. In order to facilitate the proper administration of arbitration under these agreed procedures, the parties hereby jointly request the panel to notify the parties of the anticipated date of circulation of the final panel report within the meaning of Article 16 of the DSU, no later than 45 days in advance of that date.

The parties note that, with regard to the present panel proceedings, the panel has already notified the parties of the anticipated date of circulation of the final report within the meaning of Article 16 of the DSU.

4. Following the issuance of the final panel report to the parties, but no later than 10 days prior to the anticipated date of circulation of the final panel report to the rest of the Membership, any party may request that the panel suspend the panel proceedings with a view to initiating the arbitration under these agreed procedures. Such request by any party is deemed to constitute a joint request by the parties for suspension of the panel proceedings for 12 months pursuant to Article 12.12 of the DSU.

The parties note that the present panel proceedings were already suspended on 20 December 2021 (until 21 January 2022), which suspension was extended on 20 January 2022 (until 11 February 2022), on 9 February 2022 (until 25 February 2022) and on 23 February 2022 (until 25 March 2022). The notification of the present agreement to the panel shall be deemed to constitute a joint request by the parties for further indefinite suspension pursuant to Article 12.12 of the DSU.

The parties hereby jointly request the panel to provide for the following, before the suspension takes effect:

- i. the immediate transmission of the final panel report, on a provisional basis, to the arbitrators and the lifting of confidentiality for that sole purpose;

* WT/DS583/10.

¹ The parties recall that, in concluding this agreement, they aim to maintain their rights and obligations under the WTO dispute settlement system, including its mandatory and binding character and two levels of adjudication through an independent and impartial review of panel reports, until such time as the Appellate Body may again be able to hear appeals pursuant to Articles 16.4 and 17 of the DSU.

² For greater certainty, this includes any final panel report issued in compliance proceedings pursuant to Article 21.5 of the DSU.

- ii. the transmission of the panel record to the arbitrators upon the filing of the Notice of Appeal : Rule 25 of the Working Procedures for Appellate Review shall apply *mutatis mutandis*;
- iii. the lifting of confidentiality with respect of the final panel report under the Working Procedures of the panel and the transmission of the final panel report, duly adjusted for translation, in the working languages of the WTO to the parties, to the third parties and to the arbitrators.³

The parties note that the present panel proceedings are already suspended but, by way of derogation therefrom, nevertheless affirm the limited joint requests in the preceding paragraph, to be executed, to the extent relevant, with effect from the date of the filing of a Notice of Appeal, and as soon as the arbitrators are appointed.

Except as provided in paragraphs 6 and 18, the parties shall not request the panel to resume the panel proceedings.

5. The arbitration shall be initiated by filing of a Notice of Appeal with the WTO Secretariat no later than 30 days after the suspension of the panel proceedings referred to in paragraph 4 has taken effect. The Notice of Appeal shall include the final panel report in the working languages of the WTO. The Notice of Appeal shall be simultaneously notified to the other party or parties and to the third parties in the panel proceedings. Rules 20-23 of the Working Procedures for Appellate Review shall apply *mutatis mutandis*.

The parties agree that, because the present panel proceedings have already been suspended, the time limit for the filing of a Notice of Appeal shall be no later than 30 days from the date on which this agreement is notified to the DSB.

6. Subject to paragraph 2, where the arbitration has not been initiated under these agreed procedures, the parties shall be deemed to have agreed not to appeal the panel report pursuant to Articles 16.4 and 17 of the DSU, with a view to its adoption by the DSB. If the panel proceedings have been suspended in accordance with paragraph 4, but no Notice of Appeal has been filed in accordance with paragraph 5, the parties hereby jointly request the panel to resume the panel proceedings.

7. The arbitrators shall be three persons randomly selected, in the physical presence of representatives of the parties, from a combined list of former Appellate Body Members and appeal arbitrators.⁴ The random selection will be conducted at the same time as the random selection in DS595 *European Union – Safeguard Measures on Certain Steel Products*, so as to ensure that one randomly selected appeal is heard by two former Appellate Body Members and one MPIA appeal arbitrator whilst the appeal in the other dispute is heard by one former Appellate Body Member and two MPIA appeal arbitrators. If there is only one appeal it will be heard by one former Appellate Body Member, one MPIA appeal arbitrator, and the third person shall be drawn at random from the remaining persons on the combined list. The random selection shall be made immediately after the filing of any notice of appeal and the arbitrators informed immediately. The parties and third parties will be informed of the results of the selection immediately, once any notice of cross-appeal has been filed. The arbitrators shall elect a Chairperson. Rule 3(2) of the Working Procedure for Appellate Review shall apply, *mutatis mutandis*, to the decision-making by the arbitrators. In the event of compliance appeal arbitration proceedings the arbitrators shall be the same persons that adjudicated the previous appeal arbitration proceedings, if available. If a person is not available or becomes unavailable in the original or any compliance proceedings, a replacement shall be drawn at random from the combined list of persons who are available. If no persons are available on the combined list, the parties shall agree on a reasonable method for appointing a replacement, taking into account the approach used in the original proceedings. If no agreement can be reached within one month, either party may request the Director-General to appoint a replacement, taking into account the approach used in the original proceedings.

³ The parties confirm that it is not their intention that the panel report be circulated within the meaning of Article 16 of the DSU.

⁴ JOB/DSB/1/Add.12/Suppl.5, 3 August 2020.

8. In order to promote consistency and coherence in decision making in this dispute and in dispute DS595 *European Union – Safeguard Measures on Certain Steel Products*, the arbitrators may, upon consultation of the parties, inform the arbitrators in the other dispute of the issues susceptible to be adjudicated, who may comment thereon, without prejudice to the exclusive responsibility and freedom of the arbitrators in this dispute with respect to such decisions and their quality, and without prejudice to their independence and impartiality. Where necessary, the arbitrators in both appeals may receive any document relating to the other appeal.

9. An appeal shall be limited to issues of law covered by the panel report and legal interpretations developed by the panel. The arbitrators may uphold, modify or reverse the legal findings and conclusions of the panel. Where applicable, the arbitration award shall include recommendations, as envisaged in Article 19 of the DSU. The findings of the panel which have not been appealed shall be deemed to form an integral part of the arbitration award together with the arbitrators' own findings.

10. The arbitrators shall only address those issues that are necessary for the resolution of the dispute. They shall address only those issues that have been raised by the parties, without prejudice to their obligation to rule on jurisdictional issues.

11. Unless otherwise provided for in these agreed procedures, the arbitration shall be governed, mutatis mutandis, by the provisions of the DSU and other rules and procedures applicable to Appellate Review. This includes in particular the Working Procedures for Appellate Review and the timetable for appeals provided for therein as well as the Rules of Conduct. The arbitrators may adapt the Working Procedures for Appellate Review and the timetable for appeals provided for therein, where justified under Rule 16 of the Working Procedures for Appellate Review, after consulting the parties.

12. The parties request the arbitrators to issue the award within 90 days following the filing of the Notice of Appeal. To that end, the arbitrators may take appropriate organizational measures to streamline the proceedings, without prejudice to the procedural rights and obligations of the parties and due process. Such measures may include decisions on page limits, time limits and deadlines as well as on the length and number of hearings required.

13. If necessary in order to issue the award within the 90 day time-period, the arbitrators may also propose substantive measures to the parties, such as an exclusion of claims based on the alleged lack of an objective assessment of the facts pursuant to Article 11 of the DSU.⁵

14. On a proposal from the arbitrators, the parties may agree to extend the 90 day time-period for the issuance of the award.

15. The parties agree to abide by the arbitration award, which shall be final. Pursuant to Article 25.3 of the DSU, the award shall be notified to, but not adopted by, the DSB and to the Council or Committee of any relevant agreement.

16. Only parties to the dispute, not third parties, may initiate the arbitration. Third parties which have notified the DSB of a substantial interest in the matter before the panel pursuant to Article 10.2 of the DSU may make written submissions to, and shall be given an opportunity to be heard by, the arbitrators. Rule 24 of the Working Procedures for Appellate Review shall apply mutatis mutandis.

17. Pursuant to Article 25.4 of the DSU, Articles 21 and 22 of the DSU shall apply mutatis mutandis to the arbitration award issued in this dispute.

18. At any time during the arbitration, the appellant, or other appellant, may withdraw its appeal, or other appeal, by notifying the arbitrators. This notification shall also be notified to the panel and third parties, at the same time as the notification to the arbitrators. If no other appeal or appeal remains, the notification shall be deemed to constitute a joint request by the parties to resume panel

⁵ For greater certainty, the proposal of the arbitrators is not legally binding and it will be up to the party concerned to agree with the proposed substantive measures. The fact that the party concerned does not agree with the proposed substantive measures shall not prejudice the consideration of the case or the rights of the parties.

proceedings under Article 12.12 of the DSU.⁶ If an other appeal or appeal remains at the time an appeal or other appeal is withdrawn, the arbitration shall continue.

19. The parties shall jointly notify these agreed procedures to the panel in DS583 and ask the panel to grant, where applicable, the joint requests formulated in paragraphs 4, 6, and 18.⁷

⁶ If the authority of the panel has lapsed pursuant to Article 12.12 of the DSU, the arbitrators shall issue an award that incorporates the findings and conclusions of the panel in their entirety.

⁷ For greater certainty, should any of these requests not be granted by the panel, the parties will agree on alternative procedural modalities to preserve the effects of the relevant provisions of these agreed procedures.

ANNEX A-2**WORKING PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU****Adopted by the Arbitrators on 10 May 2022****1 GENERAL**

1. In these proceedings, the arbitrators are called upon to decide claims in the context of an arbitration under Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The arbitrators shall follow the relevant provisions of the DSU and the Agreed Procedures for Arbitration under Article 25 of the DSU (WT/DS583/10) agreed by the parties to this dispute (the Agreed Procedures).

2. These Working Procedures consolidate aspects of the DSU and the Agreed Procedures applicable to the present arbitration, and provide additional details to facilitate these arbitration proceedings.¹ The Working Procedures are in accordance, and should be read in conjunction, with the DSU and the Agreed Procedures.

3. The arbitrators may modify these Working Procedures as necessary, after consultation with the parties.

2 LANGUAGE OF THE ARBITRATION

4. The working language of the arbitration shall be English.

3 DECISION-MAKING

5. Decisions relating to the current proceedings shall be taken by the three arbitrators selected for this arbitration.

6. The arbitrators shall make every effort to take their decisions by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote, without prejudice to the possibility that a concurring or dissenting arbitrator may express the reasons leading to the sense of his vote on an anonymous basis.

4 CHAIRPERSON

7. The arbitrators shall elect a Chairperson among themselves.

8. The responsibilities of the Chairperson shall include: (a) coordinating the overall conduct of the proceedings; (b) chairing any hearings and meetings related to the proceedings; (c) receiving all requests for staff support from the arbitrators on the appeal and coordinating the provision of such support; and (d) coordinating the drafting of the award.

5 CONFIDENTIALITY

9. The deliberations of the arbitrators and the documents submitted to them shall be kept confidential.² Members shall treat as confidential any information that is submitted to the arbitrators which the submitting Member has designated as confidential.

¹ Paragraph 11 of the Agreed Procedures provides that "[t]he arbitrators may adapt the Working Procedures for Appellate Review and the timetable for appeals provided for therein, where justified under Rule 16 of the Working Procedures for Appellate Review, after consulting the parties". The present Working Procedures were adopted following consultations with the parties on 10 May 2022.

² The arbitrators are also bound by Article VII of the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.

10. Upon request, the arbitrators may adopt appropriate additional procedures for the treatment and handling of any confidential information after consultation with the parties.

6 WRITTEN SUBMISSIONS

11. Each party shall file written submissions in accordance with time-periods set out in the working schedule referred to in Section 12 below.

12. Third parties that choose to provide a written submission shall do so in accordance with the time-periods set out in the working schedule referred to in Section 12 below.

13. In order to enhance procedural efficiency and facilitate meeting the 90-day time-period, the arbitrators request parties and third parties to keep their submissions as concise as possible and to focus on the main claims and outstanding differences, bearing in mind that the arbitrators will have read the Panel Report and have access to the Panel Record. Therefore, there is no need to repeat facts, arguments, or findings set out in either the Panel Report or Panel Record (cross-references can be made and will suffice).

14. As an indicative guideline, the arbitrators suggest that the parties' submissions, excluding the executive summary referred to in paragraph 15 below, should normally be limited to a maximum of 40,000 words or 40% of the word count of the Panel Report, whichever is the highest.

15. A written submission filed by a party or a third party shall be accompanied by or include an executive summary of such written submission. The maximum length of each executive summary shall be limited to the longer of 250 words or 10% of the total word count of the written submission itself. Executive summaries will be annexed as addenda to the arbitration award, and the content of such executive summaries will not be revised or edited by the arbitrators.³ These executive summaries do not serve as a substitute for the submissions of the parties and third parties in the arbitrators' examination of the claims.

7 PROCESS

16. In the interests of fairness and orderly procedure in the conduct of these proceedings, where a procedural question arises that is not covered by the Agreed Procedures or these Working Procedures, the arbitrators may adopt an appropriate procedure for the purposes of that question. Where such a procedure is adopted, the arbitrators shall immediately notify the parties to the dispute and the third parties.

17. In exceptional circumstances, where strict adherence to a time-period set out in these Working Procedures would result in a manifest unfairness, a party to the dispute or a third party may request that the arbitrators modify a time-period set out in these Working Procedures for the filing of documents or for the hearing. Where such a request is granted by the arbitrators, any modification of time shall be notified to the parties to the dispute and the third parties in a revised working schedule.

8 EX PARTE COMMUNICATIONS

18. Arbitrators shall not meet with or contact one party in the absence of the other party to the dispute. Likewise, they shall not meet with or contact one or more third parties in the absence of the parties to the dispute and other third parties.

19. No arbitrator may discuss any aspect of the subject matter of this arbitration with any party to the dispute or third party in the absence of the other arbitrators.

9 COMMENCEMENT OF THE ARBITRATION AND TURKEY'S WRITTEN SUBMISSION

20. These arbitration proceedings were initiated by Turkey on 25 April 2022 (WT/DS583/12). On the same day, Turkey filed a written submission, which includes an executive summary.

³ The text may need to be formatted prior to circulation in order to adhere to WTO document style.

10 EUROPEAN UNION'S WRITTEN SUBMISSION

21. Should the European Union wish to respond to the allegations raised by Turkey in its written submission, it may, in accordance with the time-periods set out in the working schedule referred to in Section 12 below, file with the Secretariat a written submission, accompanied by or including an executive summary, and serve a copy of the written submission on Turkey and on third parties.

22. The written submission referred to in paragraph 21 above shall: (a) be dated and signed by the European Union; and (b) set out: (i) a precise statement of the grounds for opposing the specific allegations of errors in the issues of law covered in the Panel Report and legal interpretations developed by the Panel raised in Turkey's written submission, and the legal arguments in support thereof; (ii) an acceptance of, or opposition to, each ground set out in Turkey's written submission; (iii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and (iv) the nature of the decision or ruling sought.

11 THIRD PARTIES

23. Any third party, which has notified the DSB of a substantial interest in the matter before the Panel pursuant to Article 10.2 of the DSU, may file a written submission containing the grounds and legal arguments in support of its position, accompanied by or including an executive summary. Such written submission shall be filed in accordance with the time-periods set out in the working schedule referred to in Section 12 below.

24. A third party not filing a written submission shall, within the same time-period, notify the Secretariat in writing if it intends to appear at the hearing, and, if so, whether it intends to make an oral statement.

25. Third parties are encouraged to file written submissions to facilitate their positions being taken fully into account by the arbitrators and in order that parties and other third parties have notice of positions to be taken at the hearing. The arbitrators suggest that third parties that wish to make a submission should normally limit it to a maximum of 9,000 words.

26. Any third party that has neither filed a written submission pursuant to paragraph 23 above, nor notified the Secretariat pursuant to paragraph 24, may notify the Secretariat that it intends to appear at the hearing, and may request to make an oral statement at the hearing. Such notifications and requests should be notified to the Secretariat in writing at the earliest opportunity.

12 WORKING SCHEDULE

27. The working schedule attached to these Working Procedures (Annex) sets forth dates for the filing of documents and a timetable for the arbitrators' work, including the date for a hearing. Each party shall file written submissions in accordance with the time-periods stipulated in the working schedule. Likewise, third parties that choose to provide a written submission shall do so in accordance with the time-periods stipulated in the working schedule.

28. The arbitrators shall issue the award within 90 days following the commencement of this arbitration. If necessary, in order to issue the award within the 90-day time-period, the arbitrators may propose substantive measures to the parties.⁴

29. On a proposal from the arbitrators, the parties may agree to extend the 90-day time-period for the issuance of the award.

13 HEARING

30. The arbitrators shall hold a hearing with the parties and third parties in accordance with the time-periods set out in the working schedule referred to in Section 12 above.

⁴ A proposal by the arbitrators shall not be legally binding and it will be up to the party concerned to agree with the proposed substantive measures. The fact that the party concerned does not agree with the proposed substantive measures shall not prejudice the consideration of the case or the rights of the parties.

31. Any third party that has filed a written submission pursuant to paragraph 23, or has notified the Secretariat pursuant to paragraph 24, that it intends to appear at the hearing, may appear at the hearing, make an oral statement at the hearing, and respond to questions posed by the arbitrators.

32. Any third party that has notified the Secretariat pursuant to paragraph 26 that it intends to appear at the hearing may appear at the hearing. Such third party may, at the discretion of the arbitrators, taking into account the requirements of due process, make an oral statement at the hearing, and respond to questions posed by the arbitrators.

33. The arbitrators suggest that opening statements by parties be limited to 35 minutes each; opening statements by third parties be limited to 7 minutes each; and that closing statements by parties be limited to 10 minutes each.

34. Each party and third party has the right to determine the composition of its own delegation at the hearing. Each party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU, the Agreed Procedures, and these Working Procedures, particularly with regard to the confidentiality of the proceeding and the submissions of the parties and third parties. Each party shall provide to the Secretariat the list of members of its delegation no later than 17:00 (Geneva time) three working days before the first day of the hearing.

35. A request by a party for interpretation from one WTO language to another should be made to the Secretariat as early as possible to allow sufficient time to ensure availability of interpreters.

14 WRITTEN RESPONSES

36. At any time during the proceedings, including, in particular, during the hearing, the arbitrators may address questions orally or in writing to, or request additional memoranda from, any party or third party, and specify the time-periods by which written responses or memoranda shall be received. The arbitrators will endeavour to address written questions to the parties, if any, in advance of the hearing.

37. Any such questions, responses, or memoranda shall be made available to the other parties and third parties, who shall be given an opportunity to respond.

15 SERVICE OF DOCUMENTS

38. No document shall be considered filed with the arbitrators unless the document is received by the Secretariat within the time-period set out for filing in accordance with these Working Procedures and the working schedule in the Annex.

39. Each party or third party shall file documents to the arbitrators by submitting them via the Disputes On-Line Registry Application (DORA) <https://dora.wto.org> by 17:00 (Geneva time) on the day that the document is due. Electronic copies of documents shall be preferably provided in both Microsoft Word and PDF format. The electronic version uploaded into DORA shall constitute the official version for the purposes of submission deadlines and the record of the dispute. Upload of a document into DORA shall constitute electronic service on the arbitrators, the other party, and the third parties.

40. If any party or third party has any questions or technical difficulties relating to DORA, they are invited to contact the DS Registry (DSRegistry@wto.org).

41. If any party or third party is unable to meet the 17:00 (Geneva time) deadline because of technical difficulties in uploading these documents into DORA, the party or third party concerned shall inform the DS Registry (DSRegistry@wto.org) without delay and provide an electronic version of all documents to be submitted to the arbitrators through the electronic mail address arbitration25@wto.org copied to DSRegistry@wto.org, parties, and third parties.

42. Upon authorization by the arbitrators, a party or third party may correct clerical errors in any of its documents (including typographical mistakes, errors of grammar, or words or numbers placed

in the wrong order). The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat promptly following the filing of the submission in question. A copy of the request shall be served upon the other parties and third parties, each of whom shall be given an opportunity to comment in writing on the request. The arbitrators shall notify the parties and third parties of their decision.

43. As a general rule, all communications from the arbitrators to the parties and third parties will be via electronic mail (arbitration25@wto.org) and uploaded in DORA. In addition to transmitting the award to the parties in electronic format, the arbitrators shall provide them with a paper copy.

Annex: Working Schedule

Process	Days	Date
Commencement of the arbitration process and Turkey's written submission	0	Monday, 25 April 2022
European Union's written submission	18	Friday, 13 May 2022
Third parties' written submission	21	Monday, 16 May 2022
Hearing		Tuesday 21 June and Wednesday 22 June 2022 (Thursday 23 June 2022 in reserve)
Issuance of the Award	91	Monday, 25 July 2022 (given that day 90 falls on a Sunday)

ANNEX B

NOTICE OF RECOURSE TO ARBITRATION UNDER ARTICLE 25 OF THE DSU

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ANNEX B-1**TÜRKIYE'S NOTICE OF RECOURSE TO ARBITRATION UNDER ARTICLE 25 OF THE DSU***

Notification of an Appeal by Turkey under Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), under Paragraph 5 of the Agreed Procedures for Arbitration under Article 25 of the DSU ("Arbitration Agreement"),¹ and under Rule 20 of the Working Procedures for Appellate Review²

Pursuant to paragraph 5 of the Arbitration Agreement, Turkey hereby notifies the Dispute Settlement Body of its decision to initiate an arbitration under Article 25 of the DSU to decide an appeal with regard to certain issues of law and legal interpretation covered in the Panel Report in the dispute *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*.

Pursuant to paragraph 5 of the Arbitration Agreement and Rule 20 of the Working Procedures for Appellate Review, Turkey simultaneously files this Notice of Appeal and its Appellant Submission with the European Union and the third parties in the panel proceedings and with the WTO Secretariat. The Notice of Appeal includes the final report of the Panel in the working languages of the WTO.

For the reasons further elaborated in its Appellant Submission to the Arbitrators, Turkey appeals and requests the Arbitrators to reverse the findings, conclusions and recommendations of the Panel, with respect to the following errors of law and legal interpretation contained in the Panel Report:³

1. The Panel erred in the interpretation and application of Article III:8(a) of the GATT 1994 when finding that the localisation measure does not involve a "purchase" within the meaning of Article III:8(a), is thus not covered by the government procurement derogation and is therefore subject to the national treatment obligation in Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement.⁴ In particular, the Panel erred in interpreting Article III:8(a) as requiring that the purchase of products procured for governmental purposes must be made by a governmental agency⁵ and in interpreting the term "purchased" as requiring the transfer of ownership from the seller to the entity purchasing the product concerned.⁶ Because of these interpretive errors, the Panel erred in its application of Article III:8(a) of the GATT 1994. First, the Panel erred in finding that Article III:8(a) does not apply because there is no purchase of medicines included in Annex 4/A by the Turkish Social Security Institution ("SSI"). Second, the Panel also erred in finding that there is no purchase by the SSI because the SSI does not acquire the ownership of medicines included in Annex 4/A. Furthermore, even if the Panel's interpretation of the term "products purchased" was found to be correct (*quod non*), the Panel erred in concluding that the SSI does not acquire the ownership of medicines included in Annex 4/A.⁷ The Panel also failed to consider that, alternatively, retail pharmacies that purchase medicines that are dispensed to patients covered by the public healthcare system act on behalf of the SSI and to that extent act as "governmental agencies", within the meaning of

* WT/DS583/12 and WT/DS583/12/Add.1. In accordance with paragraph 5 of the Agreed Procedures for Arbitration under Article 25 of the DSU, notified by the parties to the Dispute Settlement Body on 22 March 2022, Türkiye's notice of recourse to arbitration attached the Final Panel Report as issued to the parties in English, French, and Spanish. The Panel Report is not included in this Addendum.

¹ WT/DS582/10.

² Rule 20 of the Working Procedures for Appellate Review applies pursuant to paragraph 11 of the Arbitration Agreement.

³ Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review*, which apply *mutatis mutandis* pursuant to paragraph 11 of the *Arbitration Agreement*, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Turkey to refer to other paragraphs of the Panel Report in the context of the arbitration proceedings.

⁴ Panel Report, paras. 7.104, 7.107 and 8.1(b)(ii).

⁵ Panel Report, para. 7.65.

⁶ Panel Report, paras. 7.74 and 7.81.

⁷ Panel Report, paras. 7.85-7.88 and 7.90.

Article III:8(a).⁸ In light of the foregoing, Turkey requests the Arbitrators to reverse the relevant Panel's findings in paragraphs 7.61-7.107 and 8.1(b)(ii) of the Panel Report, including the Panel's conclusion that the localisation measure is not covered by the government procurement derogation in Article III:8(a) of the GATT 1994 and is therefore subject to the national treatment obligation in Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement.

Turkey requests that consequently the Arbitrators find the Panel's conclusion that the localisation requirement is inconsistent with the national treatment obligation in Article III:4 of the GATT 1994 to be moot and of no legal effect.⁹ If not, Turkey requests the Arbitrators to complete the analysis under Article III:8(a) of the GATT 1994 and find that the localisation measure falls within the scope of the government procurement derogation provided by that provision. In that case, Turkey further requests the Arbitrators to reverse the Panel's findings that the localisation measure is inconsistent with Article III:4 of the GATT 1994 in paragraphs 7.121-7.127 and 8.1(b)(iii) of the Panel Report.

2. The Panel erred in the interpretation and application of Article XX(b) of the GATT 1994 when finding that the localisation measure is not "designed to" protect human, animal, or plant life or health.¹⁰ The Panel erred in defining the legal standard applicable for determining the design of the measure by requiring that a measure must address a health risk that has "a substantial degree of probability" of materialising for the measure to be "designed to" protect human, animal, or plant life or health".¹¹ The Panel also erred by confusing the "design" and "necessity" steps of the legal test under subparagraph (b), and by relying on the legal tests under subparagraphs (a) and (j) of Article XX of the GATT 1994 and Article XIV(a) of the GATS, as interpreted by previous panels.¹² The Panel also erred in applying Article XX(b) of the GATT 1994 by concluding that the evidence submitted by Turkey does not indicate that the localisation measure is "designed to" protect human life or health.¹³ In addition, the Panel failed to make an objective assessment of the matter before it pursuant to Article 11 of the DSU when addressing Turkey's claim that the localisation measure is justified under Article XX(b) of the GATT 1994. The Panel wilfully disregarded part of the evidence and failed to make a holistic assessment of the evidence presented by Turkey.¹⁴ These errors were material and affected the Panel's finding that the localisation measure is not "designed to" protect human life or health and therefore not justified under Article XX(b) of the GATT 1994. Thus, Turkey requests the Arbitrators to reverse the Panel's findings in paragraphs 7.157-7.214, 7.219 and 8.1(b)(iv) of the Panel Report and requests the Arbitrators to complete the legal analysis and to find that the localisation measure is justified under Article XX(b) of the GATT 1994.
3. The Panel erred in the interpretation and application of Article XX(d) of the GATT 1994 when finding that the localisation measure is not taken to secure compliance with laws requiring Turkey to ensure accessible, effective and financially sustainable healthcare.¹⁵ By considering that its analysis of Turkey's defence under Article XX(b) of the GATT 1994 applies mutatis mutandis to the analysis of Turkey's defence under Article XX(d), the Panel applied the wrong legal standard and erroneously rejected Turkey's defence under Article XX(d) of the GATT 1994. Thus, Turkey requests the Arbitrators to reverse the Panel's findings under Article XX(d) of the GATT 1994 set out in paragraphs 7.217-7.219 and 8.1(b)(iv) of the Panel Report. If the Arbitrators reverse the Panel's findings under Article XX(d) of the GATT 1994, Turkey requests the Arbitrators to complete the analysis and find that the localisation measure is justified under that provision.

⁸ Panel Report, paras. 7.98 and 7.103.

⁹ Panel Report, paras. 7.121-7.127 and 8.1(b)(iii).

¹⁰ Panel Report, paras. 7.211, 7.219 and 8.1(b)(iv).

¹¹ Panel Report, para. 7.171.

¹² Panel Report, paras. 7.167-7.170.

¹³ See, for example, Panel Report, paras. 7.173, 7.180, 7.199, 7.207, 7.210.

¹⁴ See, for example, Panel Report, paras. 7.186-7.200 and 7.210.

¹⁵ Panel Report, para. 7.218.

ANNEX C

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ANNEX C-1**EXECUTIVE SUMMARY OF TÜRKIYE'S WRITTEN SUBMISSION**

1. The Report issued by the Panel in the case *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*, contains several legal errors and errors of legal interpretation of the provisions of the GATT 1994.¹ These errors have led to Panel to erroneous findings and conclusions with respect to the WTO-consistency of the localisation measure and in particular Turkey's claim under Article III:8(a) of the GATT 1994 and its defences under Articles XX(b) and XX(d) of the GATT 1994. Turkey requests the Arbitrators to reverse the Panel's findings and conclusions and to find that Turkey has not acted inconsistently with its WTO obligations.

2. First, Turkey submits that the Panel erred in its interpretation of Article III:8(a) of the GATT 1994 when finding that the localisation measure is not covered by the government procurement derogation set out in that provision and is therefore subject to the national treatment obligation in Article III:4 of the GATT 1994. Article III:8(a) exempts from the national treatment obligation "laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale". The Panel made several legal errors when interpreting the terms "products purchased" in the context of Article III:8(a). First, the Panel erred by finding that Article III:8(a) requires that the purchase of products procured for governmental purposes must be made by a governmental agency. Second, the Panel erred by interpreting the term "purchased" as requiring the transfer of ownership from the seller to the entity purchasing the product concerned.

3. Turkey further submits that the Panel erred in its application of Article III:8(a) of the GATT 1994. First, the Panel erred in finding that Article III:8(a) does not apply because there is no purchase of medicines included in Annex 4/A by the Turkish Social Security Institution ("SSI"). Second, the Panel also erred in finding that there is no purchase by the SSI because the SSI does not acquire the ownership of medicines included in Annex 4/A. Furthermore, even if the Panel's interpretation of the terms "products purchased" was correct (*quod non*), the Panel erred in concluding that the SSI does not acquire the ownership of medicines included in Annex 4/A. The Panel also failed to consider that, alternatively, retail pharmacies that purchase medicines that are dispensed to patients covered by the public healthcare system act on behalf of the SSI and to that extent act as "governmental agencies", within the meaning of Article III:8(a).

4. Second, Turkey submits that the Panel erred by finding that the localisation measure violates Article III:4 of the GATT 1994, as a result of its erroneous finding that the government procurement derogation in Article III:8(a) does not apply to the localisation measure.

5. Third, Turkey submits that the Panel erred in its interpretation and application of Article XX(b) of the GATT 1994 when finding that the localisation measure is not "designed to" protect human, animal, or plant life or health. The Panel erred in defining the legal standard applicable for determining the design of the measure by requiring that a measure must address a health risk that has "a substantial degree of probability" of materialising for the measure to be "designed to" protect human, animal, or plant life or health. The Panel also erred by confusing the "design" and "necessity" steps of the legal test under Article XX(b), and by relying on the legal tests under subparagraphs (a) and (j) of Article XX of the GATT 1994 and Article XIV(a) of the GATS, as interpreted by previous panels.

6. Turkey further submits that the Panel erred in applying Article XX(b) of the GATT 1994 to the facts of this case by concluding that the evidence submitted by Turkey does not indicate that the localisation measure is "designed to" protect human life or health. In addition, the Panel failed to make an objective assessment of the matter before it pursuant to Article 11 of the DSU because it wilfully disregarded part of the evidence and failed to make a holistic assessment of the evidence presented by Turkey. These errors were material and affected the Panel's finding that the localisation

¹ WT/DS583/R.

measure is not "designed to" protect human life or health and therefore not justified under Article XX(b) of the GATT 1994.

7. Fourth, Turkey submits that the Panel erred in its interpretation and application of Article XX(d) of the GATT 1994 when finding that the localisation measure is not taken to secure compliance with laws requiring Turkey to ensure accessible, effective and financially sustainable healthcare. More specifically, by considering that its analysis of Turkey's defence under Article XX(b) of the GATT 1994 applies *mutatis mutandis* to the analysis of Turkey's defence under Article XX(d), the Panel applied the wrong legal standard under Article XX(d) and erroneously rejected Turkey's defence under that provision.

ANNEX C-2**EXECUTIVE SUMMARY OF THE EUROPEAN UNION'S WRITTEN SUBMISSION**

1. This submission sets out the response to the European Union to Turkey's Appellant submission of 25 April 2022.
2. For the reasons set out in this appellee submission, the European Union requests the Arbitrators to dismiss all the grounds of appeal submitted by Turkey and to uphold all the appealed findings and conclusions of the Panel.
3. Contrary to the Turkey's allegations, the Panel did not err in interpreting (sections 2.1 and 2.2) or applying (sections 2.3 and 2.4) Article III:8(a) of the GATT 1994. In this regard, Turkey takes issue with numerous factual findings of the Panel, which is outside the scope of appellate review in the absence of an appeal under Article 11 of the DSU. Furthermore, the Arbitrators cannot declare Panel findings under Article III:4 of the GATT 1994 moot and of no legal effect without a completion of the analysis in case of reversal of the findings under Article III:8(a). Nor can the findings under Article III:4 be reversed without a previous findings, based on a completion of the analysis, that Article III:8(a) applies. However, should the Arbitrators find it appropriate to complete the analysis, they should arrive at the same conclusion as the Panel: Article III:8(a) does not apply to the localisation requirement.
4. Contrary to the Turkey's allegations the Panel did not err in its interpretation of Article XX(b) of the GATT 1994 (section 4.1) or in the subsequent application of that provision (section 4.2). Nor did the Panel act inconsistently with Article 11 of the DSU (section 4.3).
5. In the alternative, the European Union submits that the Arbitrators cannot "complete the analysis" under Article XX(b) of the GATT 1994 (section 4.4). Should the Arbitrators proceed to "complete the analysis", the European Union submits in the further alternative that the localisation requirement is not justified under Article XX(b) of the GATT 1994 (section 4.5).
6. Contrary to the Turkey's allegations, the Panel did not err by relying on an incorrect legal standard under Article XX(d) of the GATT 1994 (section 5.1). In the alternative, the European Union submits that the Arbitrators cannot "complete the analysis" under Article XX(d) of the GATT 1994 (section 5.2). Should the Arbitrators proceed to "complete the analysis", the European Union submits that the localisation requirement is not justified under Article XX(d) of the GATT 1994 (section 5.3).
7. The present appeal arbitration is based on the substantive and procedural aspects of Appellate review pursuant to Article 17 of the DSU, in order to keep its core features, including independence and impartiality, while enhancing the procedural efficiency of appeal proceedings.
8. The European Union recalls that the Parties have agreed that the Arbitrators "only address those issues that are necessary for the resolution of the dispute" and that "have been raised by the parties, without prejudice to their obligation to rule on jurisdictional issues"¹.
9. The Parties have further agreed to request the Arbitrators to issue the award within 90 days following the filing of the Notice of Appeal². To that end, the Arbitrators may take appropriate organizational measures to streamline the proceedings³. If necessary in order to issue the award within the 90 day time-period, the arbitrators may also propose substantive measures to the parties, such as an exclusion of claims based pursuant to Article 11 of the DSU⁴.

¹ Agreed Arbitration Procedures, para. 10.

² Agreed Arbitration Procedures, para. 12.

³ Ibid.

⁴ Agreed Arbitration Procedures, para. 13.

10. The European Union would invite the Arbitrators to consider whether any such organizational or substantive measures are appropriate in view of the submissions of the parties, including with regard to the claims submitted by Turkey pursuant to Article 11 of the DSU.

ANNEX D

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ANNEX D-1**EXECUTIVE SUMMARY OF THE RUSSIAN FEDERATION'S THIRD PARTY'S WRITTEN SUBMISSION**

1. Russia concurs with Turkey that the Panel made certain errors in interpretation of Article III:8(a) of the GATT 1994. In particular Russia disagrees that "in the context of the phrase 'procurement by governmental agencies of products purchased for governmental purposes' in Article III:8(a), a product is 'purchased' by a government if the government acquires ownership of that product through some kind of payment."
2. The text does not use the noun "purchase", but participle "purchased". The phrase "products purchased" is not something that is derogated, but the "procurement by governmental agencies". The derogation is not limited to instances where products are "ultimately used or consumed" as such limitation does not exist. The context, including the wording of Articles XVII:2 and XVII:1 of the GATT 1994, supports such understanding. The suggested interpretation also diminishes the words "for the governmental purposes", meaning that Article III:8(a) of the GATT 1994 "refers to what is consumed by government or what is provided by government to recipients in the discharge of its public functions". In addition, the text of Article XIII of the GATS using similar derogation with respect to services brings doubt to the suggested interpretation.
3. Russia also suggests to take great caution in drawing any analogies to the analysis of panels and Appellate Body presented in disputes *India – Solar Cells* or to *Canada – Renewable energy*, as the main issue in those disputes was, whether the "product purchased" and the "product discriminated" were the same, but not what the meaning of "product purchased" is.

ANNEX D-2**EXECUTIVE SUMMARY OF SWITZERLAND'S THIRD PARTY'S WRITTEN SUBMISSION**

1. Switzerland welcomes the opportunity to present its views as a third participant in these appeal arbitration proceedings. Switzerland welcomes the fact that the parties to this dispute have agreed on appeal arbitration procedures under Article 25 of the DSU, thus preserving a two-step dispute settlement process in the present case, while the Appellate Body is unable to hear appeals.

2. As it is the first time that arbitration proceedings under Article 25 of the DSU take place to decide an appeal from a panel report, Switzerland would firstly like to offer some views on the conduct of such proceedings. Switzerland encourages the Arbitrators to consider appropriate organizational measures allowing them to issue their award within 90 days. Switzerland also notes that the Arbitrators could propose to the parties to exclude Turkey's claim that the Panel acted inconsistently with Article 11 of the DSU from their review, if Turkey agrees, as provided for in paragraph 13 of the Agreed Procedures. Switzerland further encourages the appeal Arbitrators to apply in their review an appropriate degree of deference to the Panel's findings, in particular when reviewing Turkey's claims that the Panel has erred in the application of certain legal requirements or provisions to the facts of the case. Second, Switzerland provides comments on the assessment of the design requirement under Article XX(b) of the GATT 1994 when a measure has multiple objectives. In this regard, Switzerland submits that, in case a measure pursues multiple objectives, and especially if one of the objectives concerned is an industrial policy objective, as it is in the present case, the design test may be a demanding task for a panel to perform. Where, as in the present case, there are indicia that the measure pursues an industrial policy objective, and where the responding party acknowledges that the measure may be seen as pursuing such objective, a panel may not admit lightly that the measure is designed to protect human life or health under Article XX(b) of the GATT 1994. Finally, Switzerland comments on Turkey's request for completion of the analysis by the Arbitrators, highlighting certain criteria that it considers appropriate for the arbitrators to examine in their decision whether or not to complete the analysis. In addition to factual findings and undisputed facts on the Panel record, other factors that may be considered by the Arbitrators in their decision whether or not to complete the analysis include the complexity of the issues at hand, whether there was a full exploration of the issues before the Panel, and considerations for parties' due process rights.
