



CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARBITRATION UNDER ARTICLE 25 OF THE DSU

AWARD OF THE ARBITRATORS

Addendum

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ANNEX A-1***AGREED PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU**

1. In order to give effect to communication JOB/DSB/1/Add.12 in this dispute the European Union and China (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 report¹ as issued to the parties in dispute DS 611. 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.

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 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 pool of arbitrators and the lifting of confidentiality for that sole purpose;
- 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 pool of arbitrators.²

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 20 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

* WT/DS611/7.

¹ For greater certainty, this includes any final panel report issued in compliance proceedings pursuant to Article 21.5 of the DSU.

² The parties confirm that it is not their intention that the panel report be circulated within the meaning of Article 16 of the DSU.

parties in the panel proceedings. Rules 20-23 of the Working Procedures for Appellate Review shall apply *mutatis mutandis*.

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 selected from the pool of 10 standing appeal arbitrators composed in accordance with paragraph 4 of communication JOB/DSB/1/Add.12 (hereafter the "pool of arbitrators").³ The selection from the pool of arbitrators will be done on the basis of the same principles and methods that apply to form a division of the Appellate Body under Article 17.1 of the DSU and Rule 6(2) of the Working Procedures for Appellate Review, including the principle of rotation.⁴ The WTO Director General will notify the parties and third parties of the results of the selection. 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.

8. In order to give effect to paragraph 5 of communication JOB/DSB/1/Add.12 in this dispute, the arbitrators may discuss their decisions relating to the appeal with all of the other members of the pool of arbitrators, without prejudice to the exclusive responsibility and freedom of the arbitrators with respect to such decisions and their quality. All members of the pool of arbitrators shall receive any document relating to the 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.⁵ 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.

³ If the pool of arbitrators has not been composed, footnote 1 to paragraph 4 of communication JOB/DSB/1/Add.12 shall apply.

⁴ However, at the request of a party to a dispute, any member of the pool of arbitrators who is not a national of a participating Member shall be excluded from the selection process. Two nationals of the same Member shall not serve on the same case.

⁵ For greater certainty, paragraphs 14 – 17 of the Rules of Conduct shall apply to arbitrators.

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.⁶

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 proceedings under Article 12.12 of the DSU.⁷ 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 DS 611 and ask the panel to grant, where applicable, the joint requests formulated in paragraphs 3, 4, 6, and 18.⁸

⁶ 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.

⁷ 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.

⁸ 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

ADDITIONAL PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU

Adopted by the Arbitrators on 7 May 2025

1 GENERAL

1. The arbitrators are called upon to decide claims in these arbitration proceedings pursuant to the Agreed Procedures for Arbitration under Article 25 of the DSU¹ (Agreed Procedures) between the parties to this dispute. The European Union initiated these proceedings on 22 April 2025.

2. Pursuant to paragraph 11 of the Agreed Procedures, these arbitration proceedings shall be governed, *mutatis mutandis*, by the provisions of the DSU and other rules and procedures applicable to appellate review, including the Working Procedures for Appellate Review, the timetable for appeals contained therein, and the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes (Rules of Conduct). Paragraph 11 further provides that the arbitrators may adapt the Working Procedures for Appellate Review and the timetable, where justified under Rule 16 of the Working Procedures for Appellate Review, after consulting the parties.

3. These Additional Procedures for Arbitration, adopted after consultations with the parties, set out additional rules and guidelines on certain practical aspects to facilitate these proceedings. They should be read in conjunction with the Agreed Procedures, together with the DSU and the other rules and procedures applicable to appellate review as specified in paragraph 11 of the Agreed Procedures.

4. The arbitrators may modify these Additional Procedures for Arbitration as necessary, after consultation with the parties.

2 ARBITRATORS

5. Decisions relating to the current proceedings shall be taken by the following three arbitrators selected for this arbitration: Mr Mateo Diego-Fernández Andrade, Ms. Claudia Orozco, and Dr Penelope Ridings.

6. Dr Penelope Ridings has been elected as the Chairperson. The responsibilities of the Chairperson include: (a) chairing any hearings and meetings related to the proceedings; (b) receiving all requests for staff support from the arbitrators on the appeal and coordinating the provision of such support; (c) coordinating the drafting of the award; and (d) generally coordinating the overall conduct of the appeal arbitration including the discussions pursuant to paragraph 8 of the Agreed Procedures.

3 LANGUAGE OF THE ARBITRATION

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

4 CONFIDENTIALITY

8. The deliberations of the arbitrators and the documents submitted to them shall be kept confidential.² Parties and third parties shall treat as confidential any information submitted to the arbitrators which the submitting party or third party has designated as confidential.

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

¹ WT/DS611/7.

² The arbitrators are bound by Article VII of the Rules of Conduct.

5 EX PARTE COMMUNICATIONS

10. 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.

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

6 TIME-LIMIT FOR THIS ARBITRATION

12. Pursuant to paragraph 12 of the Agreed Procedures and Article 17.5 of the DSU, the arbitrators shall issue the award within 90 days following the commencement of this arbitration.

13. Pursuant to paragraphs 12 and 13 of the Agreed Procedures, in order to issue the award within 90 days following the commencement of this arbitration, 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", and may "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."³

14. In order to issue the award within the 90-day time-period, and in view of paragraphs 12 and 13 of the Agreed Procedures, rules and guidelines regarding the following aspects of the proceedings are set out in sections 7 to 12 below: length and style of written rebuttal and third parties' submissions, Working Schedule⁴, meetings with parties and third parties before the hearing, conduct of the hearing, and filing and service of documents.⁵

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

7 LENGTH OF WRITTEN SUBMISSIONS

16. In light of paragraph 12 of the Agreed Procedures, and in order to enhance procedural efficiency and facilitate meeting the 90-day time period:

- a. Parties and third parties are requested to keep their written 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 will 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);
- b. As an indicative guideline:
 - i. The rebuttal submission should normally be limited to a maximum of 27,000 words or 40% of the word count of the appealed panel report, whichever is the highest; and
 - ii. Third parties who wish to make a written submission should normally limit them to a maximum of 9,000 words.

³ Pursuant to paragraphs 12 and 13 of the Agreed Procedures, in order to issue the award within 90 days following the commencement of this arbitration, 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", and may "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.

⁴ The Working Schedule, as provided for in section 9 below, is set out in Annex 1.

⁵ In addition, guidelines relating to matters that have already transpired at the time of the adoption of these Additional Procedures for Arbitration are set out in a letter sent to the parties on 4 April 2025 by the pool of arbitrators of the Multi-Party Interim Appeal Arbitration Arrangement pursuant to Article 25 of the DSU (the "pre-arbitration letter"). That letter is attached as Annex 2.

- c. Each party or third party who files a written submission is requested to submit contemporaneously an executive summary of such submission of a maximum length of 10% of the total word count of the submission itself. These executive summaries as provided by the parties and third parties will be annexed as addenda to the award.

8 STYLE OF WRITTEN SUBMISSIONS

17. Parties and third parties are encouraged to follow the WTO Editorial Guide for Panel Submissions in preparing their written submissions, to the extent that it is practical to do so.

9 WORKING SCHEDULE

18. Each party and third party shall file written submissions in accordance with the time-periods stipulated in the Working Schedule contained in Annex 1 of these Additional Procedures for Arbitration.

19. The time-periods in the Working Schedule will be firm and no deviations will be permitted except for highly compelling reasons (such as sudden illness of counsel) and taking into account the impact on the 90-day time-period.

10 MEETINGS WITH PARTIES AND THIRD PARTIES

20. Pursuant to paragraph 12 of the Agreed Procedures, and in order to enhance procedural efficiency and facilitate meeting the 90-day time-period, a virtual pre-hearing conference may be convened by the arbitrators with the parties and third parties to help identify "those issues that are necessary for the resolution of the dispute", as provided in paragraph 10 of the Agreed Procedures, or to highlight the key issues raised by the parties in the appeal that need further discussion at the hearing.

11 HEARING

21. The arbitrators shall hold a hearing of no more than two days with the parties and third parties as set out in the Working Schedule.

22. The arbitrators will endeavour to provide a list of questions to the parties in advance of the hearing to facilitate the parties' preparation for the hearing.

23. Opening statements by parties shall be no longer than 30 to 35 minutes each; opening statements by third parties shall be limited to seven minutes each; and closing statements by parties and third parties shall be limited to five minutes each.

24. Each party and third party shall provide to the WTO Secretariat, via electronic mail (arbitration25@wto.org), the list of members of its delegation no later than 17:00 (Geneva time) three working days before the first day of the hearing. Each party and third 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, the Rules of Conduct, and these Additional Procedures for Arbitration, particularly with regard to the confidentiality of proceedings and the written and oral submissions of the parties and third parties.

12 FILING AND SERVICE OF DOCUMENTS⁶

25. No document shall be considered filed with the arbitrators unless the document is received by the WTO Secretariat within the time-period set out for filing in accordance with these Additional Procedures for Arbitration and the Working Schedule.

26. 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

⁶ For greater clarity, paragraphs 25-30 apply in lieu of Rule 18 of the Working Procedures for Appellate Review for purposes of these arbitration proceedings.

day that the document is due.⁷ 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 written submission deadlines and the record of the dispute. Upload of a document into DORA shall constitute electronic service on the arbitrators and parties and third parties.

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

28. 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, and to parties and third parties.

29. 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 WTO Secretariat promptly following the filing of the written submission in question. A copy of the request shall be served upon 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.

30. As a general rule, all communications from the arbitrators to the parties and third parties will be via DORA. In addition to transmitting the award to the parties in electronic format, the arbitrators shall provide them with a paper copy.

13 TRANSLATION OF THE AWARD⁸

31. The time period for translation of the award will be considered following consultation with the parties and in the light of the 90-day time-period requirement.

⁷ For greater clarity, paragraph 24 above applies to the filing of delegation lists, which shall be filed via electronic mail (arbitration25@wto.org).

⁸ For greater clarity, Section 12 applies in lieu of Rule 18 of the Working Procedures for Appellate Review for purposes of these arbitration proceedings.

ANNEX 1: WORKING SCHEDULE

Process	Days	Date
European Union's Notice of Appeal and appellant's submission	0	Tuesday, 22 April 2025
China Notice of Other Appeal and other appellant's submission	6	Monday, 28 April 2025
Parties' rebuttal submissions	20	Monday, 12 May 2025
Third parties' submissions	23	Thursday, 15 May 2025
Pre-hearing conference with parties and third parties	31	Friday, 23 May 2025
Circulation of advance questions (if arbitrators consider it necessary)	36	Wednesday, 28 May 2025
Hearing	43 and 44	Wednesday, 4 June 2025 and Thursday, 5 June 2025
Issuance of the Award	60-90	Saturday, 21 June – Monday, 21 July 2025

ANNEX 2: PRE APPEAL LETTER

4th April 2025

H.E. Ambassador LI Chenggang

Ambassador and Permanent Representative
of the People's Republic of China to the World Trade Organization
Permanent Mission of the People's Republic of China to the World Trade Organization

H.E. Ambassador João Aguiar Machado

Ambassador and Permanent Representative of the European Union to the World Trade Organization
Permanent Mission of the European Union to the World Trade Organization

Dear Ambassadors,

On 2nd April 2025, the Panel Report in ***China - Enforcement of Intellectual Property rights*** (WT/DS611/R) was communicated to the MPIA pool of arbitrators, following a request by the European Union to suspend the Panel proceedings pursuant to paragraph 4 of the Agreed Procedures for Arbitration under Article 25 of the DSU in Dispute DS611 (hereafter "the Agreed Procedures").

In accordance with paragraph 5 of the Agreed Procedures, appeal arbitration is initiated by filing a Notice of Appeal with the WTO Secretariat no later than 20 days after the suspension of the Panel proceedings. Where Panel proceedings have been suspended but no Notice of Appeal is filed, paragraph 6 of the Agreed Procedures provides that the Panel will resume its proceedings.

The information below is set out in order to assist the parties to this dispute in the event of an appeal of the Panel Report and is without prejudice to each party's right to decide whether or not to initiate such an appeal.

1. Length of Written Submissions

Paragraph 12 of the Agreed Procedures permits MPIA arbitrators to "take appropriate organizational measures to streamline the proceedings, without prejudice to the procedural rights and obligations of the parties and due process." One such measure explicitly suggested is "decisions on page limits".

Since the Appellant's submission must be filed on the same day as the Notice of Appeal is filedⁱ, any "decision on page limits" would need to be issued *before* the Notice of Appeal is filed.

In this context, and in order to enhance procedural efficiency and facilitate meeting the 90-day time period, the arbitrators:

- (i) encourage Participants to be selective in the number of claims filed on appeal/other appeal and to prioritize such claims in the event more than one claim is filed;
- (ii) request Participants and Third Participants 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);
- (iii) suggest that, as an indicative guidelineⁱⁱ:
 - a. Notices of Appeal/Other Appeal should normally be limited to a maximum of 3,000 wordsⁱⁱⁱ, Appellant/Other Appellant/Appellee submissions should normally be limited to a maximum of 27,000 words^{iv} or 40% of the word count of the appealed Panel report^v, whichever is the highest;

- b. Third Participants who wish to make a submission should normally limit them to a maximum of 9,000 words;^{vi} and
- c. where MPIA appeal proceedings are conducted in French or Spanish, the above indicative limits are increased by 15%;^{vii} and
- (iv) request that each Participant who files an Appellant's, Other Appellant's, or Appellee's submission, and each Third Participant who files a written submission, submit contemporaneously an executive summary of such written submission of a maximum length of 10% of the total word count of the submission itself.^{viii} These executive summaries will be annexed as addenda to MPIA awards and the content of such executive summaries will not be revised or edited by the MPIA arbitrators.

2. Style of Written Submissions

Participants and Third Participants are invited to follow the WTO Editorial Guide for Panel Submissions in preparing their written submissions, to the extent that it is practical to do so.

3. Claims Based on the Alleged Lack of an Objective Assessment of the Facts Pursuant to Article 11 of the DSU

Paragraph 13 of the Agreed Procedures provides that "[i]f necessary in order to issue the award within the 90 day time-period, the arbitrators may ... propose substantive measures to the parties". One such measure explicitly suggested is "an exclusion of claims based on the alleged lack of an objective assessment of the facts pursuant to Article 11 of the DSU." Footnote 6 clarifies that such 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".

Taking into account paragraph 13 of the Agreed Procedures and in order to enhance procedural efficiency and facilitate meeting the 90 day time-period, the parties in this dispute are invited to consider refraining from making claims based on the alleged lack of an objective assessment of the facts pursuant to Article 11 of the DSU.

In this light, any party considering making such claims is encouraged to:

- (i) appraise how any such Article 11 claim would affect the 90 day time-period for the issuance of the award as referred to in paragraphs 12 and 13 of the Agreed Procedures; and
- (ii) evaluate, in the light of paragraph 10 of the Agreed Procedures which requires arbitrators to address only "those issues that are necessary for the resolution of the dispute" and Article 3.7 of the DSU which calls on each WTO Member to "exercise its judgement as to whether action under these procedures would be fruitful", whether such Article 11 claim has the potential to impact the substantive outcome of the dispute and whether and how it is "necessary for the resolution of the dispute."

Any such party is also urged to consider whether the substance of any possible Article 11 claim could be brought under one of the substantive treaty provisions at issue in the dispute, for example as an allegation of panel error in the application of that provision to the facts of the case (rather than an allegation of error in the assessment of facts under Article 11 of the DSU).

In the event a party nonetheless decides to bring an Article 11 claim related to the Panel's assessment of the facts, and without prejudice to the question of whether (and, if so, under what conditions) such claims fall within the appeal mandate set out in Article 17.6 of the DSU and/or paragraph 9 of the Agreed Procedures, the party is requested to set forth succinctly in its Notice of Appeal or Appellant/Other Appellant Submission:

- (i) whether and how the alleged panel error was raised before the Panel, in particular during the interim review stage, thereby providing the Panel an opportunity to address

the alleged error, taking into account that paragraph 9 of the Agreed Procedures limits appeals to "issues of law covered in the panel report and legal interpretations developed by the panel" (underlining added);

- (ii) in what way the Article 11 claim is an issue "necessary for the resolution of the dispute" in the sense of paragraph 10 of the Agreed Procedures and a matter that cannot be brought under one of the substantive treaty provisions at issue in the dispute; and
- (iii) in what way the alleged panel error is not simply an appreciation of a factual issue (within the exclusive domain of panels) and amounts to an "issue of law" covered in the Panel Report or "legal interpretation" developed by the Panel, and thereby falls within the mandate of appellate review under paragraph 9 of the Agreed Procedures.

4. Time Limits, Deadlines and Length and Number of Hearings Required

In addition to "page limits", paragraph 12 of the Agreed Procedures refers to "time limits and deadlines as well as ... length and number of hearings required."

In this context, and in order to enhance procedural efficiency and facilitate meeting the 90 day time-period, the arbitrators have determined that:

- (i) an organizational meeting may be convened by the arbitrators with the Participants and Third Participants to discuss practical matters;
- (ii) following consultation with the Participants and Third Participants, a virtual prehearing conference may be convened by the arbitrators with the Participants and Third Participants to help identify "those issues that are necessary for the resolution of the dispute" (paragraph 10 of the Agreed Procedures), to highlight the key issues raised by the Participants in the appeal that need further discussion at the hearing, and/or to discuss any Article 11 claims filed by the parties; and that
- (iii) unless exceptional circumstances arise:
 - a. oral hearings will be limited to one hearing of no more than two days;
 - b. opening statements by Participants will be limited to 25 minutes; opening statements by Third Participants who have notified their intention to make an oral statement will be limited to seven minutes; and
 - c. the standard deadlines set forth in the Working Procedures for Appellate Review, as set forth below, will apply. These time limits and deadlines will be firm and no deviations will be permitted except for highly compelling reasons (such as sudden illness of counsel) and taking into account the impact on the 90 day time-period.

	<u>General Appeals</u>	<u>Prohibited Subsidies Appeals</u>
	Day	Day
Notice of Appeal	0	0
Appellant's Submission	0	0
Notice of Other Appeal	5	2
Other Appellant's Submission	5	2
Appellee's Submission	18	9
Third Participant's Submission	21	10
Third Participant's Notification	21	10
Oral Hearing	30 – 45	15 – 23
Issuance of MPIA Award	60 – 90	30 – 60

5. Language of Proceedings

Participants and Third Participants are requested to inform the WTO Secretariat as soon as possible prior to the filing of the Notice of Appeal in which language they intend to conduct the appeal proceedings.

6. Filing and Service of Documents

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 the final working schedule to be established.

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 pursuant to the final working schedule shall constitute electronic filing on the arbitrators, and service the other Party, and the third Parties.

As a general rule, all communications from the arbitrators to the Parties and Third Parties will be via electronic mail 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.

7. Translation of the MPIA Award

The time period for translation of the award will be considered following consultation with the parties and in the light of the 90 day time-period requirement.

ENDNOTES

i Pursuant to Rule 21 of the Working Procedures for Appellate Review (AB/WP/6), which apply *mutatis mutandis* to MPIA appeals following paragraph 5 of the Agreed Procedures.

ii The word limits referred to in this letter include all words in the document except for words in tables of content, lists of annexes, exhibits, abbreviations or cases cited, and annexes, exhibits or appendices attached to the document.

iii In the 32 proceedings pending before the Appellate Body in September 2022, only four Notice of Appeal/Other Appeal exceeded nine pages.

iv The 27,000 word limit was arrived at, *inter alia*, with reference to the calculations found in the Appellate Body's Annual Report for 2015 (WT/AB/26, dated March 2016). More recent official data on length of submissions before the Appellate Body are not publicly available. In the 2015 Report (on p. 119, footnote 4) it is noted that "over the period from January 2009 to October 2015, the average length (excluding the top two outliers) of appellants' and other appellants' submissions was 30,425 words and the average length of appellees' submissions was 28,875 words." Given the express wish of MPIA participants to streamline proceedings, seek procedural efficiency and meet the 90-day time period, and taking into account the Consolidated text contained in JOB/GC/385, dated 16 February 2024, the arbitrators have opted for a 27,000 word limit.

v The alternative word limit with reference to the length of the appealed Panel report has been added in order to allow for longer submissions in exceptionally long and complex cases. The 40% ratio was arrived at, *inter alia*, based on the Appellate Body's Annual Report for 2015 (WT/AB/26, dated March 2016) which "shows the trend line for the ratio of the total number of words contained in the participants' submissions in each appeal as compared to the total number of words in the corresponding panel report" (at p. 120). This trend line, for the period between January 2009 and October 2015 (excluding the top two outliers) "shows an increase in the ratio from 0.7 to about 1.6" (*ibidem*). Given the express wish of MPIA participants to streamline proceedings, seek procedural efficiency and meet the 90-day time period, the arbitrators have opted for the lower range and

rounded it to a ratio of 0.8, which is then divided by two (as the 2015 Report refers to the sum of both participants' submissions) to arrive at 0.4 or 40%.

vi No data on length of Third Participants' submissions before the Appellate Body are publicly available. Given the obvious difference between main and Third Participants, but recognizing the importance of Third Participants' submissions in disputes concerning multilateral treaties such as WTO covered agreements, the indicative limit for Third Participants' submissions has been set at one third of the limit for main participants' submissions.

vii The 15% extra for documents in French or Spanish was arrived at by comparing the page length of the ten most recent Appellate Body reports. On average, page numbers in the French versions of those Appellate Body reports were 14.55% higher as compared to the English version; page numbers in the Spanish versions were 16.23% higher as compared to the English version. The same top-up of 15% is suggested for both French and Spanish.

viii This follows the practice of the Appellate Body. See Communication from the Appellate Body, Executive Summaries of Written Submissions in Appellate Proceedings, WT/AB/23, 11 March 2015.

ANNEX B**NOTICES OF APPEAL AND OTHER APPEAL TO ARBITRATION UNDER ARTICLE 25 OF THE DSU**

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ANNEX B-1*

**NOTIFICATION OF AN APPEAL BY THE EUROPEAN UNION UNDER ARTICLE 25
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT
OF DISPUTES ("DSU"), PARAGRAPH 5 OF THE AGREED PROCEDURES FOR ARBITRATION
UNDER ARTICLE 25 OF THE DSU (THE "AGREED PROCEDURES") AND RULE 20 OF
THE WORKING PROCEDURES FOR APPELLATE REVIEW**

Pursuant to paragraph 5 of the Agreed Procedures,¹ the European Union hereby notifies the Dispute Settlement Body of its decision to initiate an arbitration under Article 25 of the DSU with regard to certain issues of law and legal interpretations covered in the Panel Report in the dispute *China — Enforcement of intellectual property rights* (WT/DS611/FR).

Pursuant to paragraph 5 of the Agreed Procedures and Rule 20(1) of the Working Procedures for Appellate Review, the European Union simultaneously files this Notice of Appeal and its Appellant Submission with China 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 submissions to the Arbitrators, the European Union appeals and requests the Arbitrators to reverse the conclusions and related findings of the Panel containing the errors of law and legal interpretations identified below and, where appropriate, to complete the analysis on the basis of the Panel's findings and uncontested facts on the record:²

1. The Panel erred in the interpretation of Article 1.1, first sentence, of the TRIPS Agreement by determining that this provision merely requires WTO Members to implement the provisions of the Agreement within their domestic legal systems and does not require them to refrain from taking measures that undermine the protection and enforcement of IP rights in the territories of other Members.³ Accordingly, the European Union requests the Arbitrators to reverse the Panel's findings on the interpretation of Article 1.1, first sentence, of the TRIPS Agreement in paragraphs 7.217, 7.224 and 7.226 to 7.231 of the Report.
2. The Panel erred in the interpretation of Article 1.1, first sentence, in conjunction with Article 28.1 of the TRIPS Agreement, by finding that these provisions merely require Members to ensure that, within their domestic legal systems, a patent confers on its owners the exclusive rights set forth in Article 28.1 and that the European Union has not demonstrated that China's ASI policy is inconsistent with Article 28.1, whether or not read in conjunction with Article 1.1, first sentence.⁴ Accordingly, the European Union requests the Arbitrators to reverse the Panel's conclusion and related findings on the interpretation of Article 1.1, first sentence, in conjunction with Article 28.1 of the TRIPS Agreement in paragraphs 7.240 to 7.242 and 8.2.a. of the Report.
3. The Panel erred in the interpretation of Article 1.1, first sentence, in conjunction with Article 28.2 of the TRIPS Agreement by finding that these provisions only require a WTO Member to ensure that, within its domestic legal system, patent owners have the right to assign or transfer by succession their patent, as well as the right to conclude licensing contracts in respect of patents granted by that Member, and that the European Union has not demonstrated that China's ASI policy is inconsistent with those provisions.⁵ Accordingly,

* WT/DS611/11 and WT/DS611/11/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 4 July 2023, the European Union'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/DS611/7, 4 July 2023.

² Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review*, which apply *mutatis mutandis* to this arbitration pursuant to paragraph 5 of the Agreed Procedures, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the European Union's ability to refer to other paragraphs of the Panel Report during the arbitration proceedings.

³ Panel Report, paras. 7.217, 7.224 and 7.226 to 7.231.

⁴ Panel Report, paras. 7.240 to 7.242 and 8.2.a.

⁵ Panel Report, paras. 7.247, 7.248, 7.250 to 7.252 and 8.2.b.

the European Union requests the Arbitrators to reverse the Panel's conclusion and related findings on the interpretation of Article 1.1, first sentence, in conjunction with Article 28.2 of the TRIPS Agreement in paragraphs 7.247, 7.248, 7.250 to 7.252 and 8.2.b of the Report.

4. The Panel erred in the interpretation of Article 1.1, first sentence, in conjunction with Article 44.1 of the TRIPS Agreement by finding that these provisions do not require Members to refrain from adopting or maintaining in force measures that prevent, or seek to prevent, the judicial authorities of other WTO Members from ordering a party to desist from a patent infringement in the territories of those Members and that the European Union has not demonstrated that the ASI policy is inconsistent with those provisions.⁶ Accordingly, the European Union requests the Arbitrators to reverse the Panel's conclusion and related findings on the interpretation of Article 1.1, first sentence, in conjunction with Article 44.1 of the TRIPS Agreement in paragraphs 7.260 to 7.262 and 8.2.c. of the Report.
5. The Panel erred in the interpretation and application of the second sentence of Article 41.1 of the TRIPS Agreement by finding that enforcement procedures as specified in Part III are limited to procedures launched by right holders seeking to stop, prevent, deter or remedy infringement of IP rights provided for in the TRIPS Agreement and that the second sentence of Article 41.1 is not applicable to the ASI policy.⁷ Accordingly, the European Union requests the Arbitrators to reverse the Panel's conclusion and related findings on the interpretation and application of the second sentence of Article 41.1 of the TRIPS Agreement in paragraphs 7.284 to 7.312 and 8.2.d. of the Report.
6. Should the Arbitrators reverse the Panel's erroneous legal interpretations of Article 1.1, first sentence, in conjunction with either Article 28.1, 28.2 or 44.1, and of Article 41.1 of the TRIPS Agreement, the European Union requests the Arbitrators to complete the analysis and find that China's ASI policy and the five individual ASI court decisions are inconsistent with China's obligations under those provisions.

Pursuant to Rule 20(2)(c) of the Working Procedures for Appellate Review, the service address, telephone and facsimile numbers of the European Union are:

European Commission
Permanent Mission of the European Union to the World Trade Organization
Rue du Grand-Pré 64-66
CH-1211 Geneva 7
Switzerland
Telephone number: +41.(0)22.918.22.11
Facsimile number: +41.(0)22.734.22.36

⁶ Panel Report, paras. 7.260 to 7.262 and 8.2.c.

⁷ Panel Report, paras. 7.284 to 7.312 and 8.2.d.

ANNEX B-2

NOTIFICATION OF AN OTHER APPEAL BY THE PEOPLE'S REPUBLIC OF CHINA UNDER ARTICLE 25 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES ("DSU"), PARAGRAPH 5 OF THE AGREED PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU ("AGREED PROCEDURES"), AND RULE 23 OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

1. Pursuant to paragraph 5 of the Agreed Procedures¹ and Rule 23 of the Working Procedures for Appellate Review, China hereby notifies the Dispute Settlement Body of its decision to file an Other Appeal with regard to certain issues of law and legal interpretation contained in the Panel Report in *China – Enforcement of Intellectual Property Rights* (WT/DS611/FR) ("Panel Report").
2. In accordance with paragraph 5 of the Agreed Procedures and Rules 23(1) and 23(3) of the Working Procedures for Appellate Review, China is simultaneously filing this Notice of Other Appeal and its Other Appellant's Submission and providing these submissions to the European Union and to the third parties in the underlying panel proceedings, as well as to the WTO Secretariat.
3. For the reasons set forth in the accompanying Other Appellant's submission, China appeals the following errors of law and legal interpretation contained in the Panel Report:
 - (i) The Panel erred in its application of the DSU, including Articles 3.3, 7.1, and 19.1, when it concluded that the European Union had proven the existence and precise content of an alleged unwritten "anti-suit injunction policy" in the absence of a finding by the Panel that this alleged "policy" has normative content distinct from the written Chinese laws and judicial decisions that the European Union challenged separately and identified as evidence of the existence and content of the "policy".² In the absence of a finding that the so-called "ASI policy" has distinct normative content, the "policy" cannot constitute a "measure" within the meaning of the DSU. The Panel committed legal error in concluding that the European Union had proven the existence and precise content of the alleged "ASI policy" measure in the absence of such a finding. Accordingly, China requests the Arbitrators to reverse the Panel's conclusion and related findings at paragraphs 7.197, 7.205, 7.206, and 8.1 that the European Union had established the existence and precise content of the alleged "ASI policy" measure.
 - (ii) The Panel erred in its interpretation and application of Article 63.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") as it pertains to what constitutes a "final judicial decision ... of general application" within the meaning of that provision.³ As a result of the Panel's errors of legal interpretation, the Panel erroneously concluded that the decision of the Wuhan Intermediate People's Court in *Xiaomi v. InterDigital*, including its decision on reconsideration, constituted a "final judicial decision ... of general application" subject to the obligation of publication or public availability under Article 63.1.⁴ Accordingly, China requests the Arbitrators to reverse the Panel's conclusions and related findings at paras. 7.383, 7.388-7.391, 7.394(b), 7.412(b)(i) and 8.4(a) of the Panel Report.
4. Should the Arbitrators agree with China that the Panel erred in its interpretation and application of the phrase "final judicial decision ... of general application", China further requests that the Arbitrators declare as moot and of no legal effect the Panel's conclusions and related findings in Part 7.5.1.2.5 of the Panel Report, paragraph 7.412(b)(ii) of the Panel Report, and paragraph 8.4(a) of the Panel Report. These concern the Panel's assessment of whether China made the decision in *Xiaomi v. InterDigital* publicly available in such a manner as to enable governments and right holders

¹ WT/DS611/7 (7 July 2023).

² Panel Report, paragraphs 8.1, 7.197, 7.205-7.206. Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review, China provides in this Notice of Other Appeal an indicative list of paragraphs in the Panel Report containing the identified errors, without prejudice to its ability to refer to other paragraphs of the Panel Report during the course of the arbitration proceedings.

³ Panel Report, para. 7.383.

⁴ Panel Report, paras. 7.388-7.391, 7.394(b), 8.4(a).

to become acquainted with it, as required by Article 63.1 of the TRIPS Agreement. Because the judicial decision in *Xiaomi v. InterDigital* is not one "of general application" on the premise of this request, and therefore not subject to the obligation of publication or public availability under Article 63.1, the Arbitrators should declare these findings and conclusions moot and of no legal effect

5. Pursuant to Rule 23(2)(c) of the Working Procedures for Appellate Review, the service address, telephone, and facsimile numbers of China are:

Permanent Mission of China to the World Trade Organization
Route de Lausanne 228
1292 Chambesey
Switzerland
Telephone number: +41-022-9097615
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ANNEX C**ARGUMENTS OF THE PARTIES¹**

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¹ Reproduced in their original form. See para. 1(iv) of the Pre-appeal letter dated 4 April 2025, "[t]hese executive summaries will be annexed as addenda to MPIA awards and the content of such executive summaries will not be revised or edited by the MPIA arbitrators."

ANNEX C-1

EXECUTIVE SUMMARY OF THE EUROPEAN UNION'S WRITTEN SUBMISSION

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1 THE PANEL ERRED IN THE INTERPRETATION OF ARTICLE 1.1, FIRST SENTENCE, OF THE TRIPS AGREEMENT

1. The European Union appeals the Panel's findings that Article 1.1, first sentence of the TRIPS Agreement merely requires WTO Members to implement the provisions of the Agreement within their domestic legal systems and does not require them to refrain from taking measures that undermine the protection and enforcement of IP rights in the territories of other Members.¹
2. The Panel reached this erroneous conclusion by making a narrow interpretation of Article 1.1, first sentence, which is not in accordance with customary international law rules of interpretation of treaties.
3. Article 1.1, first sentence, must be understood to refer to a broader obligation to make the provisions of the TRIPS Agreement "operative", namely "productive of their intended effect", that is not limited to implementing the TRIPS Agreement in Members' domestic legal systems.
4. The first sentence of Article 1.1 requires from Members something more than what is required by the second and third sentences of that article. For the European Union, the first sentence lays down a more general obligation to give effect to the provisions of the TRIPS Agreement, which includes an implicit obligation on Members to refrain from adopting, within their own territory, measures that undermine the protection and enforcement of intellectual property rights in the territory of other Members. This interpretation is supported also by the fact that the terms of the first sentence of Article 1.1 do not specify that Members are only required to give effect to the provisions of that Agreement within their own territory.
5. The Panel's narrow understanding of the content of the obligation in Article 1.1, first sentence, as only prohibiting acts that undermine the operation of a Member's own national system of IP protection and enforcement, fails to take into account the specific nature of the TRIPS Agreement. In the European Union's view, the aim of reducing distortions and impediments to international trade cannot take effect through each Member's isolated implementation of the provisions of the TRIPS Agreement in its domestic legal system. Instead, the object and purpose of the TRIPS Agreement may only be realised through the concerted operation of national systems of protection and enforcement of IP rights across all Members.
6. Contrary to what the Panel stated in footnote 625 to paragraph 7.224 of its Report, customary rules of interpretation usually require specific provisions of a treaty to be interpreted as prohibiting measures that contradict or run counter the object and purpose of that treaty. Only in exceptional cases would such measures be allowed following the customary rules of interpretation of public international law.
7. The Panel erred in finding that the principle of good faith is not a principle of interpretation of the covered agreements² and that the sole purpose of Article 1.1, first sentence, is to clarify and set forth an unambiguous obligation on Members to ensure that within their legal systems there exist the measures necessary to implement the provisions of the TRIPS Agreement.
8. An interpretation in good faith of Article 1.1, first sentence, of the TRIPS Agreement in accordance with the ordinary meaning to be given to the terms of that provision, in their context and in light of the object and purpose of the TRIPS Agreement, includes an obligation on Members to refrain from taking measures that undermine or frustrate the protection and enforcement of IP rights in the territories of other Members.
9. The Arbitrators should reverse the findings of the Panel in paragraphs 7.217, 7.224, and 7.226 to 7.231 of the Report.

¹ Panel Report, paras. 7.217, 7.224 and 7.226 to 7.231.

² Panel Report, para. 7.226.

2 THE PANEL ERRED IN THE INTERPRETATION OF ARTICLE 1.1, FIRST SENTENCE, IN CONJUNCTION WITH ARTICLE 28.1 OF THE TRIPS AGREEMENT

10. The European Union appeals the Panel's conclusion and related findings that the European Union has not demonstrated that China's ASI is inconsistent with Article 1.1, first sentence, in conjunction with Article 28.1 of the TRIPS Agreement.³

11. The Panel erred in finding that Article 1.1, first sentence, in conjunction with Article 28.1 of the TRIPS Agreement, only requires Members to ensure that, within their domestic legal systems, a patent confers on its owners the exclusive rights set forth in Article 28.1.⁴

12. For the European Union, Members are not allowed to take measures that interfere, *inter alia*, with the exercise by patent owners of their exclusive rights in the territories of other Members, while China's ASI policy does precisely that. The Panel failed to engage with the European Union's arguments and merely asserted that the inconsistency of China's ASI policy with Article 28.1, whether or not read in conjunction with Article 1.1, first sentence, had not been demonstrated.⁵

13. The Arbitrators should reverse the Panel's conclusion and findings in paragraphs 7.240 to 7.242 and 8.2.a of the Report.

3 THE PANEL ERRED IN THE INTERPRETATION OF ARTICLE 1.1, FIRST SENTENCE, OF THE TRIPS AGREEMENT, IN CONJUNCTION WITH ARTICLE 28.2 OF THE TRIPS AGREEMENT

14. The European Union appeals the Panel's conclusion and related findings that the European Union has failed to demonstrate that China's ASI policy is inconsistent with Article 1.1, first sentence, in conjunction with Article 28.2 of the TRIPS Agreement.⁶

15. The Panel erred in finding that Article 1.1, first sentence, in conjunction with Article 28.2 of the TRIPS Agreement, only requires Members to ensure that, within their domestic legal systems, patent owners have the right to assign or transfer by succession their patent, and the right to conclude licensing contracts.

16. The Panel's interpretation does not consider that SEP licensing negotiations are usually conducted on a global basis, and that licensing contracts often cover families of SEPs that have been granted by several countries in respect of the same inventions.

17. The terms of Article 28.2 do not indicate that the obligation of each WTO Member to ensure that patent owners have the right "to conclude licensing contracts" is limited to ensuring that patent owners have the right to conclude licensing contracts *in respect of patents granted by that Member*.

18. The Panel therefore erred in assessing exclusively whether "China ensures that patent owners have the right to conclude contracts licensing patents granted in China consistent with Article 28.2."⁷

19. The Panel erred in the interpretation of Article 1.1 first sentence, in conjunction with Article 28.2 of the TRIPS Agreement, by finding that these provisions only require a WTO Member to ensure that, *within its domestic legal system*, patent owners have the right to assign or transfer by succession their patent, as well as the right to conclude licensing contracts in respect of patents granted by that Member.⁸

20. The Panel also erred in finding that, because SEP owners have committed to license their patents on FRAND terms, provisional measures imposed by courts called upon to determine FRAND terms cannot negate the SEP owners right to license the patent.⁹ The Panel thus made an erroneous narrow interpretation of the SEP owners right to "conclude licensing contracts", excluding that such

³ Panel Report, paras. 7.240 to 7.242 and 8.2.a.

⁴ Panel Report, para. 7.240.

⁵ Panel Report, para. 7.242.

⁶ Panel Report, paras. 7.247, 7.248, 7.250 to 7.252 and 8.2.b.

⁷ Panel Report, para. 7.248.

⁸ Panel Report, paras. 7.247 and 7.248.

⁹ Panel Report, paras. 7.250 to 7.252.

right can be affected by broad ASIs that leverage the position of implementers in the negotiation of the FRAND terms of licensing contracts and force SEP owners to reach a settlement.

21. The Arbitrators should reverse the Panel's conclusion and findings in paragraphs 7.247, 7.248, 7.250 to 7.252 and 8.2.b. of the Panel Report.

4 THE PANEL ERRED IN THE INTERPRETATION OF ARTICLE 1.1, FIRST SENTENCE, IN CONJUNCTION WITH ARTICLE 44.1 OF THE TRIPS AGREEMENT

22. The European Union appeals the Panel's conclusion and related findings that the European Union has failed to substantiate its claim under Article 1.1, first sentence, in conjunction with Article 44.1 of the TRIPS Agreement.¹⁰

23. The Panel erred in the interpretation of Article 1.1, first sentence, in conjunction with Article 44.1 of the TRIPS Agreement by finding that these provisions do not require Members to refrain from adopting or maintaining in force measures that prevent, or seek to prevent, the judicial authorities of other Members from ordering a party to desist from a patent infringement in the territories of those Members.¹¹

24. The Arbitrators should reverse the Panel's conclusion and findings on the interpretation of Article 1.1, first sentence, in conjunction with Article 44.1 of the TRIPS Agreement in paragraphs 7.260 to 7.262 and 8.2.c. of the Report.

5 THE PANEL ERRED IN THE INTERPRETATION AND APPLICATION OF THE SECOND SENTENCE OF ARTICLE 41.1 OF THE TRIPS AGREEMENT

25. The European Union appeals the Panel's conclusion and related findings on the interpretation and application of the second sentence of Article 41.1 of the TRIPS Agreement.¹²

26. Panel erred in the interpretation of the second sentence of Article 41.1 of the TRIPS Agreement by finding that enforcement procedures as specified in Part III are limited to procedures launched by right holders seeking to stop, prevent, deter or remedy infringement of IP rights provided for in the TRIPS Agreement.

27. The Panel also erred in the consequent application of Article 41.1 by finding that the ASI policy does not qualify as "enforcement procedure" because it is not against an infringement and it is not launched by right holders.

28. Instead, enforcement procedures are broader than infringement procedures seeking to stop, prevent, deter or remedy infringement of IP rights provided for in the TRIPS Agreement. The Panel failed to analyse Article 42 which specifies the enforcement procedures referred to in Article 41.1. The term "concerning" in Article 42 denotes that enforcement procedures encompass not only cover civil judicial proceedings seeking the enforcement of IP rights, but also civil judicial proceedings which involve claims related to the enforcement of IP rights. Thus, whether the procedure is an action against infringement is not decisive; what matters is whether it is about or relates to enforcement of IP rights covered by the TRIPS Agreement. The Panel failed to recognise that a procedure whereby a party seeks to restrict or prohibit enforcement of IP rights by right holder in other Members or a procedure relating to the setting of licence terms also concerns the enforcement of IP rights provided in the TRIPS Agreement and therefore, qualifies as an enforcement procedure.

29. The Panel also failed to recognize that the civil judicial procedures concerning the enforcement of any IP right, as referenced in Article 42 of this Agreement, do not impose restrictions on the identity of applicants or defendants. The Panel incorrectly deduced an understanding from the enforcement procedures specified at Articles 44 and subsequent that the defendant must be an alleged unauthorized user of IP-protected subject matter and not the right holder. Nothing in Part III indicates that civil judicial procedures are limited to those specified in Articles 44 and subsequent. Excluding procedures where right holders, acting as defendants, enforce rights conferred by the

¹⁰ Panel Report, paras. 7.260 to 7.262 and 8.2.c.

¹¹ Panel Report, paras. 7.260 and 7.261.

¹² Panel Report, paras. 7.284 to 7.312 and 8.2.d.

TRIPS Agreement fails to take into account the entire context of Article 41.1, namely Article 42, and would also go against the object and purpose of the TRIPS Agreement.

30. The Arbitrators should reverse the Panel's conclusion and related findings on the interpretation and application of the second sentence of Article 41.1 of the TRIPS Agreement in paragraphs 7.284 to 7.312 and 8.2.d. of the Report.

6 THE PANEL SHOULD ALSO COMPLETE THE ANALYSIS WITH RESPECT TO THE FIVE INDIVIDUAL ASI COURT DECISIONS

31. Should the Arbitrators reverse the Panel's erroneous legal interpretations of Article 1.1, first sentence, in conjunction with either Article 28.1, 28.2 or 44.1, and of Article 41.1 of the TRIPS Agreement, the European Union requests the Arbitrators to complete the analysis and find that China's ASI policy and the five individual ASI court decisions are inconsistent with China's obligations under those provisions.

ANNEX C-2

EXECUTIVE SUMMARY OF CHINA'S WRITTEN SUBMISSION

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I. THE PANEL COMMITTED LEGAL ERROR IN FINDING THAT THE EUROPEAN UNION HAD PROVEN THE EXISTENCE OF THE SO-CALLED "ASI POLICY" MEASURE

1. China appeals the Panel's finding that the European Union identified and proved the existence of an unwritten measure in the form of an "anti-suit injunction policy" allegedly maintained by China. The Panel committed legal error when it misapplied the applicable legal standard and found that the European Union had proven the existence of the alleged "ASI policy" as a separately cognizable measure under the DSU without making a finding that this "policy" has normative content *distinct* from the written Chinese laws and judicial decisions that the European Union had identified as evidence of the existence and content of the "policy".

2. As has been established in previous disputes, an alleged unwritten measure must be operationally *distinct* from other measures, instrumentalities, or components that the complaining Member identifies as evidence of the existence of the unwritten measure. This is because, consistent with relevant provisions of the DSU, including Articles 3.3, 7.1, and 19.1, every "measure" identified in dispute settlement (whether written or unwritten) must be capable, at least potentially, of independently violating a Member's legal obligations.

3. As the panel in *US – Export Restraints* explained, a "measure" subject to WTO dispute settlement "would have to *do something concrete*, independently of any other instruments, for it to be able to give rise independently to a violation of WTO obligations".¹ To the same effect, previous reports have held that each measure challenged in dispute settlement must have its own "autonomous status"² and that where a complaining Member alleges that multiple distinct instruments constitute a single "measure", the complainant must demonstrate that the alleged single measure has distinct normative content, i.e. that it has identifiable normative content "distinct from its components".³

4. In the present dispute, the European Union identified as a measure at issue an alleged unwritten "ASI policy". The Panel discerned what it considered to be the "common thread" underlying the European Union's characterizations of the precise content of the alleged "ASI policy":

The precise content of the ASI policy, as set out by the European Union, is one that empowers Chinese courts to issue a range of possible prohibitions at the request of implementers in the context of SEP litigation, which can be enforced through the imposition of cumulative daily fines, and which is elaborated and promoted by the [Supreme People's Court ("SPC")] and the [National People's Congress Standing Committee].⁴

5. The Panel proceeded to evaluate whether the European Union had proven the existence of this "policy", so defined, and found that it had, based on three categories of evidence put forth by the European Union: (i) the existence of similarities between the five court decisions granting ASIs identified by the European Union; (ii) the fact that four of the five court decisions had been designated by courts as "typical" cases or other similar designations; and (iii) the fact that the National People's Congress ("NPC") and its Standing Committee have "endorsed" the legal approach taken by the SPC in assessing requests to grant ASIs in SEP litigation.

6. In essence, underlying the Panel's conclusion is its understanding that prior to the SPC's decision in *Huawei v. Conversant*, there was "uncertainty" as to whether China's law authorized the issuance of ASIs in SEP disputes. In *Huawei v. Conversant*, the SPC interpreted the Civil Procedure Law to conclude that it did. Subsequent decisions issued by other courts interpreted and applied the Civil Procedure Law and other related provisions of Chinese law in a broadly similar manner. Some of these decisions were given designations highlighting them as noteworthy. Subsequently, the SPC and the National People's Congress, including its Standing Committee, made statements that the Panel construed as supportive of the SPC's holding in *Huawei v. Conversant* as one that was

¹ Panel Report, *US – Export Restraints*, para. 8.85 (emphasis in original). See also Panel Report, *China – Publications and Audiovisuals*, para. 7.214.

² Panel Report, *US – COOL*, para. 7.50 (observing that each challenged measure must have its own "autonomous status").

³ Appellate Body Report, *Argentina – Import Measures*, para. 5.108.

⁴ Panel Report, para. 7.63.

consistent with China's policy interests in the field of international intellectual property litigation. On the basis of this story, the Panel concluded "that the European Union has demonstrated the existence of a policy, going beyond a simple repetition of a similar legal approach by Chinese courts in different cases where ASIs were requested".⁵

7. China has numerous *factual* objections to the Panel's account, however, even taking the Panel's factual findings regarding the existence and content of the so-called "ASI policy" at face value, none of those findings amount to, or would even support, the necessary legal conclusion that the supposed "policy" has normative content *distinct from written Chinese law and written Chinese judicial decisions interpreting and applying that law*. The Panel's view that the SPC's interpretation of the Civil Procedure Law in *Huawei v. Conversant* was "novel", while factually mistaken, is irrelevant to whether the putative "ASI policy" has distinct normative content. Similarly, the purported "policy objectives" tied to this "policy" have no bearing on whether it adds anything beyond written Chinese law or judicial decisions interpreting and applying that law. Even if government bodies later "endorsed" the SPC's interpretation, the Panel did not demonstrate how these "policy objectives" contributed any operational content beyond existing law and judicial decisions

8. Because the Panel did not identify any respect in which the "policy" has "normative attributes" that are distinct from written Chinese law and written judicial decisions, the Panel's ultimate conclusion that the so-called "ASI policy" constitutes a "measure" within the meaning of the DSU was in error. Accordingly, China respectfully requests the Arbitrators to reverse the Panel's conclusion and related findings that the European Union established the existence of an unwritten "ASI policy" that was cognizable as a "measure" under the DSU.

II. THE PANEL ERRED IN ITS INTERPRETATION AND APPLICATION OF ARTICLE 63.1 OF THE TRIPS AGREEMENT

9. China appeals the Panel's interpretation of the term "of general application" under Article 63.1 of the TRIPS Agreement as it pertains to final judicial decisions. China also appeals the Panel's application of the relevant legal standard to the facts of this case, which led it to conclude that the decision of the Wuhan Intermediate People's Court in *Xiaomi v. InterDigital*, read together with the reconsideration decision in that case, constitutes a final judicial decision "of general application" and thus subject to the obligation of publication or public availability under Article 63.1.

10. Regarding the Panel's interpretation of Article 63.1, China takes issue with two specific positions adopted by the Panel.

11. First, China disagrees with the Panel's finding that a decision applying an existing provision to a novel factual situation "breaks new ground" and can therefore be considered to amount to a "revision of a principle or criteria".⁶ The Panel's interpretation implies that whenever a court applies an existing provision of law to a novel factual situation, it establishes or revises principles or criteria, and thus could be subject to the obligation of publication or public availability. China considers the Panel's interpretation to be overly broad and subjective, as it could potentially apply to any judicial decision and fails to account for the exceptional and limited nature of the judicial decisions encompassed by Article 63.1 of the TRIPS Agreement.

12. Second, China challenges the Panel's view that new or revised principles or criteria should be considered applicable in future cases if they "may be intended to serve as a reference for other courts".⁷ This interpretation deviates significantly from the ordinary meaning of the term "of general application" in the treaty text, which signifies a measure that bears upon all or nearly all relevant cases, without being limited in its scope. The Panel's interpretation also diverges from prior adopted reports, which have clarified that a measure "of general application" must carry a certain level of authoritativeness, creating a reasonable "expectation" that it will be followed (even if it lacks legally binding force) or triggering legal consequences if it is not adhered to.

⁵ Panel Report, para. 7.197.

⁶ Panel Report, para. 7.383.

⁷ Panel Report, para. 7.383.

13. The Panel applied this erroneous interpretation of Article 63.1 of the TRIPS Agreement to conclude that the decision of the Wuhan Intermediate People's Court in *Xiaomi v. InterDigital*, together with the court's reconsideration decision, constituted a "final judicial decision ... of general application" subject to the obligation of publication or public availability. This interpretation, if left uncorrected, would improperly expand the scope of judicial decisions that are covered by Article 63.1 and introduce considerable uncertainty into Members' implementation of this provision.

14. Accordingly, China respectfully requests that the Arbitrators reverse the Panel's interpretation of the phrase "final judicial decision ... of general application" in Article 63.1 of the TRIPS Agreement and reverse the Panel's conclusion that the decision in *Xiaomi v. InterDigital* constitutes a "final judicial decision ... of general application" within the meaning of Article 63.1 of the TRIPS Agreement.

15. Should the Arbitrators agree with China that the Panel erred in its interpretation and application of the phrase "final judicial decision ... of general application", China further requests that the Arbitrators declare as moot and of no legal effect the Panel's conclusion and related findings regarding the assessment of whether China made the decision in *Xiaomi v. InterDigital* publicly available in such a manner as to enable governments and right holders to become acquainted with it, as required by Article 63.1 of the TRIPS Agreement.

ANNEX C-3

EXECUTIVE SUMMARY OF CHINA'S REBUTTAL

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I. THE EUROPEAN UNION'S CLAIMS OF ERROR BY THE PANEL ARE UNFOUNDED

A. The European Union Misinterprets Article 1.1 of the TRIPS Agreement

1. China argues that the object and purpose of the TRIPS Agreement is to establish minimum standards for the protection and enforcement of intellectual property rights within the territory of each Member. The TRIPS Agreement does not, in addition, "implicitly" seek to establish a "concerted" supranational system governing the litigation of private intellectual property disputes across national borders, contrary to the European Union's claims.

2. The TRIPS Agreement says nothing about issues of private international law that may arise in connection with intellectual property disputes between private parties. Most importantly in the context of the present dispute, the TRIPS Agreement says nothing about matters relating to cross-border judicial cooperation and coordination, such as the use of anti-suit injunctions to preserve a court's jurisdiction or the circumstances in which a court should stay or dismiss its proceedings in deference to a court of another jurisdiction that was seized first of the matter (i.e. the doctrine of *lis alibi pendens*). This is because the TRIPS Agreement is concerned exclusively with the maintenance of certain minimum standards of intellectual property protection and enforcement within the territory of each Member.

3. Furthermore, the European Union has confirmed throughout these proceedings that it does not consider *all* ASIs to be inconsistent with the TRIPS Agreement.¹ The European Union considers ASIs to be inconsistent with the TRIPS Agreement only if they are too "broad".² However, in the absence of any provisions in the TRIPS Agreement that address the subject of ASIs, there is no basis for a Member or a panel to determine when an ASI is too "broad".

4. The European Union also relies upon the principle of good faith to discern an obligation that Members undertake to refrain from adopting "measures that contradict or undermine the object and purpose" of the agreement.³ However, the principle of good faith cannot be used to create rights and obligations that go beyond the ordinary meaning of a treaty's provisions, as interpreted in their context and in light of the treaty's object and purpose. The Panel correctly noted the well-established principle that good faith is not in itself a source of obligation where none would otherwise exist.

B. The Panel Correctly Interpreted and Applied Article 28.1 of the TRIPS Agreement, both on its Own and in Conjunction with Article 1.1 of the TRIPS Agreement

5. To establish a violation of Article 28.1 of the TRIPS Agreement, the complaining Member must show that the responding Member's legal framework fails to grant patent holders these exclusive rights for patents issued within its territory. In its appellant's submission, the European Union does not claim that patents granted in China fail to confer the exclusive rights set forth in Article 28.1. Instead, the European Union argues that the measures at issue impact a patent holder's ability to exercise exclusive rights in countries other than China, for patents issued in those countries.

6. However, neither Article 28.1 nor any other provision of the TRIPS Agreement addresses this subject. Consistent with the object and purpose of the TRIPS Agreement and the territorial scope of the TRIPS Agreement as discussed in Part I.A, Article 28.1 is concerned only with ensuring that each Member accords a minimum standard of patent protection within its own territory. This provision does not speak to whether and how an *in personam* order directed toward a party to litigation in Country A may affect, even if temporarily, that party's incentives to exercise patent rights that it holds in Country B.

7. The unfounded nature of the European Union's claim under Article 28.1 is also evident from its suggestion that only "broad" ASIs are inconsistent with the provisions it cites. The European Union does not elaborate upon what it means by a "broad" ASI, and there is no interpretative basis to discern such a distinction within Article 28.1.

¹ See, for instance, European Union's first written submission, para. 324.

² See e.g. European Union's appellant's submission, para. 76.

³ European Union's appellant's submission, para. 56.

C. The Panel Correctly Interpreted and Applied Article 28.2 of the TRIPS Agreement, both on its Own and in Conjunction with Article 1.1 of the TRIPS Agreement

8. The European Union's claim under Article 28.2 of the TRIPS Agreement is not that patentees in China lack the right to conclude licensing contracts, but rather that the issuance of ASIs affects the relative negotiating power of SEP owners and implementers in negotiations over the terms on which a patent is licensed. However, as the Panel correctly noted, such negotiations typically occur after SEP holders commit to licensing their patents on FRAND terms. Litigation or negotiations over royalty rates do not negate the right to conclude licensing contracts described in Article 28.2.

9. In its appeal, the European Union claims that the Panel erred (i) in focusing only on the rights conferred by patents in China; and (ii) in its interpretation of what the right "to conclude licensing contracts" entails under Article 28.2. With regard to the European Union's first claim of error, this is identical from an interpretative point of view to its claim under Article 28.1 that these provisions concern not only the rights conferred by a patent issued in China, but also the effects that an *in personam* order directed to a private party in litigation may have on that party's incentives to exercise patent rights held in a different country. China has explained above why this understanding of Article 28 is unfounded.

10. Regarding the second claim, the European Union argues that Article 28.2 requires SEP owners to negotiate licenses free from coercion imposed by broad ASIs. This argument is unfounded both legally and factually.

11. Legally, Article 28.2 does not regulate factors affecting negotiating power between private parties, nor does it address actions taken by SEP holders, such as obtaining ASIs in other jurisdictions. The European Union's interpretation also introduces bias in favour of SEP owners with no basis in the text of Article 28.2. Furthermore, the European Union's argument relies on distinguishing between "broad" ASIs and permissible ones. Yet, Article 28.2 provides no basis for such distinctions, as the provision does not address the issue of ASIs.

12. Factually, the European Union's claim that ASIs coerced SEP owners into settlements inconsistent with normal patent exploitation lacks evidentiary support. China pointed out throughout the proceedings that the European Union failed to substantiate these assertions. Even if the European Union's legal interpretation were valid, which it is not, the claim would fail due to lack of evidence.

D. The Panel Correctly Interpreted and Applied Article 44.1 of the TRIPS Agreement, both on its Own and in Conjunction with Article 1.1 of the TRIPS Agreement

13. As with its claims under Articles 28.1 and 28.2, the European Union argues that Members have an implied obligation under Article 44.1 of the TRIPS Agreement, read together with Article 1.1, to avoid measures that undermine intellectual property protection and enforcement in other Members' territories. The Panel rightly rejected this understanding of Article 1.1, and the European Union's argument should be dismissed as it relies on this flawed interpretation.

14. China nevertheless makes two further observations about the European Union's claim under Article 44.1.

15. First, an *in personam* order directed at a private party in Country A does not affect Country B's ability to ensure its judicial authorities can "order a party to desist from an infringement," as required by Article 44.1. While such an order may temporarily impact a private party's incentives to pursue litigation elsewhere, this issue falls under private international law and does not undermine other Members' ability to implement their TRIPS obligations.

16. Second, the European Union's claim under Article 44.1 appears categorical, implying that *all* ASIs violate this provision, not just "broad" ones (a term the European Union fails to define). This contradicts the European Union's assertion under Articles 28.1 and 28.2 that only "broad" ASIs are inconsistent with the TRIPS Agreement. This discrepancy underscores the incoherence of the European Union's interpretation of the TRIPS Agreement and the risks of using dispute settlement to create new rights and obligations.

E. The Panel Correctly Interpreted and Applied Article 41.1 of the TRIPS Agreement

17. Article 41.1, second sentence, of the TRIPS Agreement refers to "these procedures", which is a reference to the "enforcement procedures" as specified in Part III of the TRIPS Agreement. This includes civil procedures which Article 42 of the TRIPS Agreement requires should be made available to "right holders", as a means of obtaining "effective action against any act of infringement".

18. In the Panel Report, the Panel exhaustively reviewed the different types of "enforcement procedures" set forth in Part III of the TRIPS Agreement and correctly noted that they are all initiated by right holders (or governments) against alleged acts of infringement. The European Union claims the Panel erred in its interpretation and argues that the term "concerning" in Article 42 should be read as referring to any procedure broadly related to intellectual property enforcement, including proceedings initiated by implementers.⁴

19. The European Union's proposed interpretation ignores the significance of the fact that Article 42 concerns civil enforcement procedures that Members must make available *to right holders*. This fact confirms that, like all the other enforcement procedures that Members must make available under Part III, Article 42 concerns enforcement procedures initiated by right holders against alleged acts of infringement by parties other than the right holder. Were that not the case, the inclusion of "to right holders" in Article 42 would be meaningless, contrary to the principle of effective treaty interpretation.

20. As for the European Union's request to complete the legal analysis in respect of its claim under Article 41.1, second sentence, the European Union claims that the so-called "ASI policy" does not provide appropriate "safeguards against [the] abuse" of anti-suit injunctions because Chinese courts allegedly issued ASIs "with *little consideration* of their impact on the enforcement procedures of other Members" and "did not satisfy themselves with a *sufficient degree of certainty* that the applicants' purported interests were violated or that such violation was imminent."⁵ While these assertions are factually inaccurate, the European Union in any event fails to define what level of "consideration" or "certainty" would be adequate to prevent ASIs from being abusive under Article 41.1, second sentence. This is unsurprising, as the TRIPS Agreement does not address ASIs and the latter are not part of the "enforcement procedures ... against any act of infringement" specified in Part III thereof.

II. THE ARBITRATORS SHOULD NOT MAKE FINDINGS IN RESPECT OF THE INDIVIDUAL COURT DECISIONS

21. The European Union claims that Chinese courts may continue issuing ASIs inconsistent with the TRIPS Agreement even if the alleged "ASI policy" is rescinded, which supports China's argument that the policy lacks independent "normative content" and that ASIs in China can be issued solely on the basis of written law and judicial interpretation.

22. The European Union also asserts that completing the analysis on individual ASI court decisions is necessary to resolve the dispute, but such findings on expired measures are at the Panel's discretion, and the Panel appropriately chose not to address the five expired measures. Moreover, the Panel declined to analyze whether individual judicial decisions can breach TRIPS obligations, an issue of systemic importance. China argues it would be inappropriate for the Arbitrators to address this matter in the absence of any analysis by the Panel on this matter.

⁴ European Union's appellant's submission, para. 174.

⁵ European Union's appellant's submission, paras. 202, 203 (emphases added).

ANNEX C-4**EXECUTIVE SUMMARY OF THE EUROPEAN UNION'S REBUTTAL****1 THE PANEL DID NOT ERR IN FINDING THAT THE ASI POLICY MEASURE EXISTS AND HAS DISTINCT NORMATIVE CONTENT**

1. Contrary to China's claims, the Panel correctly established the existence of the ASI policy. The Panel rejected a similar request at the stage of interim review. The Panel found that the ASI policy is distinct from China's law because it is constructed by a number of elements, including court judgements and numerous policy documents that go beyond the existing legal framework.

2. The Panel concluded, based on the evidence assessed as a whole, that the ASI policy is a single measure operating, pursuant to a shared objective, to empower Chinese courts to impose a range of possible prohibitions at the request of implementers in the context of SEP litigation, which can be enforced through the imposition of cumulative daily fines, and which is elaborated and promoted by the SPC and endorsed by the NPC Standing Committee.

3. The Panel also found that the ASI policy is a rule or norm of general and prospective application as it creates expectations by public and private actors regarding the availability of ASIs in the context of SEP litigation, it is meant to be applied generally by Chinese courts, it affects an undetermined number of economic operators, and there is a high likelihood of its continuation in the future.

4. Further, the European Union submits that China's first claim on appeal should be rejected altogether because China freely takes issue with factual findings of the Panel and is essentially asking the Arbitrators to re-examine the facts and evidence already debated during panel proceedings.

5. China infers that the ASI policy is not a measure that can be subject to the WTO dispute settlement because the precise content identified by the Panel lacks normative content distinct from the underlying evidence and simply reflects existing Chinese law.

6. China errs. The Panel found that the ASI policy goes beyond the pre-existing Chinese law and creates a novel legal path providing Chinese courts with the authority to issue ASIs in SEP litigation. The Panel confirmed the precise scope of the ASI policy based on the evidence as a whole and not by reference to any specific instrument.

7. Finally, the Panel correctly applied the correct legal standard to determine whether the ASI policy is an unwritten measure subject to WTO dispute settlement. It found that the policy gives authority to Chinese courts to issue ASIs, provides guidance on how to use this authority and creates expectations among the public. In light of the case law, it is irrelevant that the ASI policy does not "encourage" Chinese courts to adopt anti-suit injunctions.

2 THE PANEL PROPERLY INTERPRETATED AND APPLIED ARTICLE 63.1 OF THE TRIPS AGREEMENT

8. The Panel properly interpreted the scope of the obligation under Article 63.1 of the TRIPS Agreement to publish final judicial decisions "of general application".

9. The Panel articulated a two-step legal standard and concluded that a final judicial decision is "of general application" within the meaning of Article 63.1 if: (i) it establishes or revises principles or criteria, which are (ii) applicable in future cases.

10. Regarding the first step, the Panel found that a decision that determines that an existing provision can be applied in a novel fact situation breaks new ground and amounts to a revision of principles or criteria.

11. China incorrectly argues that a final judicial decision establishes or revises principles or criteria *only* when the application of an existing provision to a new factual situation has a rule-making effect.

New factual patterns differ from routine variations across cases, as they imply substantive differences in the facts that explore the application of existing law in a new way, setting out a new legal path.

12. Regarding the second step, the Panel found that a final judicial decision is applicable in future cases even where it is not binding outside the context of the specific dispute, if it has persuasive value and may be intended to serve as a reference for other courts.

13. China argues that decisions that may serve as a reference for future cases cannot be considered "of general application". China's allegations are without merit. If China's interpretation were correct, *quod non*, it would entail that those Members without a system of binding precedent would not be subject to Article 63.1 of the TRIPS Agreement, resulting in a significant limitation of the effectiveness of the transparency obligations. However, this was not the intention of the treaty drafters.

14. Finally, the Panel properly applied Article 63.1 of the TRIPS Agreement to the decision of the Wuhan Intermediate People's Court to issue an ASI in *Xiaomi v. InterDigital*, read together with its reconsideration decision. The Panel correctly concluded that it is a final judicial decision "of general application" within the meaning of Article 63.1 of the TRIPS Agreement, based on its global scope and on its identification as a "typical case" in official publications.

3 CONCLUSIONS

15. For the reasons set out in the European Union's submission, the European Union requests the Arbitrators to dismiss all the grounds of appeal submitted by China.

ANNEX DARGUMENTS OF THE THIRD PARTIES¹

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¹ Reproduced in their original form. See para. 1(iv) of the Pre-appeal letter dated 4 April 2025, "[t]hese executive summaries will be annexed as addenda to MPIA awards and the content of such executive summaries will not be revised or edited by the MPIA arbitrators."

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LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
IPR	Intellectual property right
TRIPS, or TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights

1. Australia agrees with the European Union's claim that the Panel erred in the interpretation of the first sentence of Article 1.1 of the TRIPS Agreement. In Australia's view, the Panel incorrectly excluded the requirement upon Members to ensure their implementation of TRIPS provisions does not interfere with, or undermine, the ability of other Members to uphold their own TRIPS obligations.

A. THE PANEL ERRED FINDING THAT "NOTHING" RELEVANT SUPPORTS AUSTRALIA'S INTERPRETATION OF THE FIRST SENTENCE OF ARTICLE 1.1

2. The plain meaning of "give effect to" is to "to render operative".¹ Contrary to the Panel's findings, this plain meaning does not support an interpretation that is confined to domestic implementation. The context of the second and third sentences of Article 1.1 does not contradict that interpretation, because those provisions are conditional upon the first sentence.

3. The requirement for "effective" protection of IPRs in the Preamble to the TRIPS Agreement² is relevant to the interpretation of its object and purpose. That requirement necessitates that Members ensure their actions do not impair another's ability to uphold their obligations under the TRIPS Agreement.

4. Further, the balance of rights and obligations enshrined in Article 7 (Objectives) restrains Members from ignoring the effect of their measures on the ability of other Members to comply with their own TRIPS obligations. In Australia's submission, the Panel erred in failing to take proper account of those provisions.

B. THE PANEL ERRED IN ITS APPLICATION OF THE PRINCIPLE OF "GOOD FAITH"

5. Contrary to what appears to be the Panel's understanding, Australia does not rely upon principles of good faith to support the existence an obligation in the first sentence of Article 1.1, where it otherwise does not exist.

6. As set out in the above section, Australia's interpretive analysis of the first sentence of Article 1.1 is based on customary principles of interpretation. Australia's analysis draws on principles of good faith in support of its interpretation. A Member cannot give effect to the provisions of the TRIPS Agreement in good faith if it actively hampers another Member's ability to meet their own TRIPS obligations.

¹ Oxford English Dictionary online, definition of "to give effect to" and "operative"
https://www.oed.com/dictionary/effect_n?tab=meaning_and_use#5751968 (accessed 9 May 2025).

² Preamble to the TRIPS Agreement, first recital.

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

1. First, Japan concurs with the Panel's findings that the five identified ASIs were expressions of China's ASI policy¹, which is an unwritten measure with the specific nature of a rule or norm of general and prospective application.²
2. Second, Japan notes that anything that makes it difficult to prevent trade in IP-infringing goods would constitute a "barrier [...] to legitimate trade" under Article 41.1. China's ASI policy prevents right holders from seeking legal recourse against infringements, systematically undermining the competitiveness of licensed products. It also lacks safeguards against abuse.
3. Third, Article 63.1 intends "'to enable governments and right holders to become acquainted' with measures pertaining to [...] IP rights".³ Accessing new final judicial decisions with differences in scope or effect from prior decisions is important to understand developments in the relevant Member's IP system because it can indicate the trend or direction in which the IP system will develop in the future. In this regard, there were some judicial decisions that endorse previously established principles or criteria but lead to a different outcome, including an ASI in *OPPO v. Sharp* which was different from prior ASI decisions in that it did not enjoin Sharp from initiating certain other lawsuits.⁴ Despite the Panel's finding to exclude that case from the scope of Article 63.1, Japan maintains that such judicial decisions should also be subject to the transparency obligation under Article 63.1.

¹ Panel Report, paras. 7.163-7.175.

² Panel Report, paras. 7.204-7.205.

³ Panel Report, para. 7.371.

⁴ Panel Report, para. 7.392.

ANNEX D-3**EXECUTIVE SUMMARY OF THE UNITED KINGDOM'S THIRD PARTY'S WRITTEN SUBMISSION****I. RULES OF INTERPRETATION APPLICABLE TO THE WTO COVERED AGREEMENTS**

1. A treaty interpreter must weigh and balance the ordinary meaning of treaty terms, context and object and purpose to reach an overall conclusion on the meaning of a provision.
2. Relevant context includes both immediate and broader context of an Agreement. The use of different terms across a treaty may imply a difference in intended meaning. However, the significance of minor differences in terms throughout a treaty should not be overstated.
3. The requirement to interpret a treaty "in good faith" refers to *how* the task of treaty interpretation is undertaken and is distinct from the obligation for a party to perform its treaty obligations in good faith.
4. While a treaty must be interpreted in the light of its object and purpose, this does not permit an adjudicator to revise the treaty, or to override clear text.

II. ARTICLE 1.1, FIRST SENTENCE, OF THE TRIPS AGREEMENT

5. The Panel provided a robust analysis of the relevant ordinary meaning, context, and object and purpose, when concluding that the requirement to "give effect to" the TRIPS Agreement in Article 1.1, first sentence, does not contain any obligation relating to the object and purpose of the TRIPS Agreement or its implementation by other WTO Members.¹
6. The Panel correctly understood the ordinary meaning of Article 1.1, first sentence. It also correctly observed that the context, including the focus on domestic implementation of TRIPS in the second and third sentences of Article 1.1, and the use of the phrase "give effect to" in the Paris and Berne Conventions², indicate that the first sentence was simply intended to require Members to implement the TRIPS Agreement minimum standards into their domestic law.
7. In conducting its analysis, the Panel correctly understood the limits of the object and purpose, and the role of good faith in treaty interpretation.³

III. ARTICLE 41.1 OF THE TRIPS AGREEMENT

8. The Panel's analysis, which led it to conclude that "enforcement procedures as specified in Part III permit a right holder (or the government) to seek to stop, prevent, deter or remedy infringement of IP rights provided for in the TRIPS Agreement, where the defendant is an alleged unauthorized user of IP-protected subject matter and not the right holder"⁴, was correct.
9. The text of Article 41.1 clarifies that the enforcement procedures specified are those that permit a right holder (or a government), acting as the applicant, to take action against an alleged act of infringement of IP rights.
10. The Panel's interpretation is supported by the context of the provisions contained under "Part III - Enforcement of Intellectual Property Rights", as well as the architecture of the TRIPS Agreement. It is also in keeping with the object and purpose of the TRIPS Agreement.

¹ Panel Report, para. 7.231.

² Article 25(2) and 36(2), respectively.

³ Panel Report, para. 7.226.

⁴ Panel Report, para.7.301.