

**General Council Meeting
July 23-24, 2019**

Statement by India

***Agenda No. 12: Transparency in WTO Dispute Settlement -
Statement by the United States***

Thank you Chair,

India takes note of the detailed statement made by the United States at the DSB and the one today on transparency in the WTO Dispute Settlement.

2. At the outset, we would like to suggest that the existing provisions contained in the DSU and the rules followed by Panels and the Appellate Body transparency appear appropriate. The Paragraph 2 of the Appendix 3 (working procedures) makes it mandatory on the Panel to meet in closed session which includes the meeting of parties with the Panel. We believe there is no need to derogate from the existing written rules agreed by all Members.

3. The provisions of Article 18 of the DSU and Paragraph 3 of the Appendix 3 allow a party to a dispute from disclosing statements of its own positions to the public provide for substantial transparency. However, the right of a party to disclose its statements to the public under this provision has to be circumscribed by the right of the other party to keep its statements confidential.

4. The WTO Dispute Settlement System was originally conceived to be a government to government process for efficient settlement of disputes. One of the objectives of Dispute Settlement System is to resolve the disputes among the Members by preferring a solution mutually acceptable to parties to a dispute without invoking the dispute settlement procedures of the DSU. We have concerns that fully open Panel and Appellate Body proceedings could lead to “trial by media” and could eventually place unwarranted public pressure on the panelists or Appellate Body members. This situation will affect the interests of Developing Countries and LDCs which have resource and capacity constraints on Dispute Settlement System.

5. We would also like to state that India’s position on transparency is consistent both at the WTO and in its Regional Trade Agreements.

6. The issue of transparency is one of the 12 issues under negotiation in the DSB-Special Session. We should allow the DSB-Special Session negotiate and come out a text on transparency acceptable to all Members.

7. At present the WTO Dispute Settlement System is facing the existential crisis of gravest concern as the Appellate Body will be paralysed by December

2019. We believe that an independent, two-stage dispute settlement system is imperative for the fair enforcement of the rules of international trade. The impending paralysis and possible disappearance of the Appellate Body will be a fatal blow to the credibility of the WTO. Therefore, an expeditious resolution of the Appellate Body crisis needs to be at the top of the agenda and discussion on any other issue would divert the attention of the Members.
