

ANNEX III

RULES OF PROCEDURE OF A PANEL

In panel procedures under Section C of Chapter 21 (Dispute Settlement) of the Agreement, the following rules apply:

I. Definitions

1. In these Rules of Procedure:
 - (a) “administrative staff”, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;
 - (b) “adviser” means a person retained by a Party to advise or assist that Party for the purposes of the panel procedure, other than representatives of that Party;
 - (c) “Agreement” means the Agreement between the European Union and Japan for an Economic Partnership;
 - (d) “arbitrator” means a member of a panel;
 - (e) “assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
 - (f) “Code of Conduct” means the Code of Conduct for Arbitrators referred to in Article 21.30 of the Agreement;
 - (g) “complaining Party” means the Party that requests the establishment of a panel pursuant to Article 21.7 of the Agreement;
 - (h) “days” means calendar days;
 - (i) “panel” means a panel established pursuant to Article 21.7 of the Agreement;
 - (j) “Party complained against” means the Party against which a dispute has been brought before a panel pursuant to Article 21.7 of the Agreement;
 - (k) “proceedings” means the proceedings of the panel; and
 - (l) “representative” with respect to a Party means an official or any other person of a government department or agency or any other public entity of

a Party and other personnel, that the Party nominates as its representative for the purpose of the panel proceedings.

II. Appointment of arbitrators

2. The office designated by the complaining Party pursuant to paragraph 1 of Article 21.25 of the Agreement shall be responsible for the organisation of the lot referred to in paragraphs 3, 4 and 5 of Article 21.8 of the Agreement, and shall inform the co-chairs of the Joint Committee, with due anticipation, about the date, time and venue of the lot. The co-chair from the Party complained against may be present or be represented by another person when the lots are drawn. Representatives of both Parties may also be present. In any event, the lot shall be carried out with the Party or Parties that are present.
3. The Parties shall inform in writing each individual who has been appointed to serve as an arbitrator pursuant to Article 21.8 of the Agreement of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days of the date on which he or she was informed of his or her appointment.

III. Organisational meeting

4. Unless the Parties agree otherwise, the Parties shall meet with the panel within seven days of the date of the establishment of the panel in order to determine those matters that the Parties or the panel deem appropriate, including:
 - (a) the remuneration and expenses to be paid to the arbitrators which shall be in accordance with WTO standards and criteria;
 - (b) the remuneration to be paid to the assistants. The total amount of remuneration for each arbitrator's assistant or assistants shall not exceed 50% of the remuneration of that arbitrator, unless the Parties agree otherwise; and
 - (c) the timetable for the proceedings, which shall be established based on the time zone of the Party complained against.

Only the arbitrators and the representatives of the Parties who are officials or other persons of a government department or agency or any other public entity, may take part in this meeting in person or via telephone or video conference.

IV. Notifications

5. Any request, notice, written submission or other document transmitted by:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party to the panel shall be copied to the other Party at the same time; and
 - (c) a Party to the other Party shall be copied to the panel at the same time, as appropriate.

Any document referred to in this paragraph shall also be copied at the same time to the external body referred to in paragraph 2 of Article 21.25 of the Agreement, where relevant.

6. The notification to a Party of any document referred to in paragraph 5 shall be addressed to the office designated by that Party pursuant to paragraph 1 of Article 21.25 of the Agreement.
7. Any notification referred to under paragraph 5 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be received on the date of its sending.
8. Minor errors of a clerical nature in a request, notice, written submission or other document related to the panel proceedings may be corrected by delivery of a new document clearly indicating the changes.
9. If the last day for delivery of a document falls on a legal holiday of Japan or of the European Union or on any other day on which the offices of the Government of a Party are officially or by force majeure closed, the document shall be deemed received on the next working day. At the organisational meeting referred to in paragraph 4, each Party shall submit a list of its legal holidays and any other days on which its offices are officially closed. Each Party shall keep its list updated during the panel procedure.

V. Written submissions

10. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the written submission of the complaining Party.

VI. Operation of the panel

11. The chairperson of the panel shall preside at all of its meetings. A panel may delegate to the chairperson authority to make administrative and procedural decisions.
12. Unless otherwise provided for in Chapter 21 of the Agreement or in these Rules, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
13. Where a procedural question arises that is not covered by Chapter 21 of the Agreement, these Rules or the Code of Conduct for Arbitrators referred to in Article 21.30, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
14. The panel may modify any time period other than the time period set out in Chapter 21 of the Agreement and make any other procedural or administrative adjustment in the proceedings after consulting with the Parties. When the panel consults with the Parties, it shall inform the Parties in writing of the proposed modification or adjustment and the reason therefor.

VII. Hearings

15. Based upon the timetable determined pursuant to paragraph 4, after consulting with the Parties and the other arbitrators, the chairperson of the panel shall determine the date and time of the hearing.
16. Unless the Parties agree otherwise, the Party in which the hearing takes place in accordance with paragraph 2 of Article 21.15 of the Agreement shall:
 - (a) determine the venue of the hearing and inform the chairperson of the panel thereof; and
 - (b) be in charge of the logistical administration of the hearing.
17. Unless the Parties agree otherwise, and without prejudice to paragraph 46, the Parties shall share the expenses derived from the logistical administration of the hearing.
18. The chairperson of the panel shall notify in due course the Parties, and where relevant the external body referred to in paragraph 2 of Article 21.25 of the Agreement, in writing, of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing

takes place or, where relevant, by the external body referred to in paragraph 2 of Article 21.25 of the Agreement, unless the hearing is closed to the public.

19. As a general rule there should be only one hearing. If the dispute involves issues of exceptional complexity, the panel may convene additional hearings on its own initiative or, upon request of either Party, after consulting the Parties. For each of the additional hearings, paragraphs 15 to 18 apply *mutatis mutandis*.
20. All arbitrators shall be present during the entirety of the hearing.
21. The following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:
 - (a) representatives of the Parties;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and
 - (e) experts, as decided by the panel pursuant to paragraph 2 of Article 21.17 of the Agreement.
22. No later than five days before the date of a hearing, each Party shall deliver to the panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.
23. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time in both argument and rebuttal argument:

Argument

 - (a) argument of the complaining Party; and
 - (b) argument of the Party complained against.

Rebuttal Argument

 - (a) reply of the complaining Party; and
 - (b) counter-reply of the Party complained against.
24. The panel may direct questions to either Party at any time during the hearing.

25. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments.
26. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

VIII. Deliberations

27. Only the arbitrators may take part in the deliberations of the panel. Notwithstanding the previous sentence, the panel may permit assistants to be present during its deliberations.

IX. Questions in writing

28. The panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
29. Each Party shall provide the other Party with a copy of its response to the questions submitted by the panel. A Party shall be given an opportunity to provide comments in writing on the other Party's response within five days of the receipt of such copy.

X. Replacement of arbitrators

30. For the replacement of an arbitrator in accordance with Article 21.11 of the Agreement, Article 21.8 applies mutatis mutandis.
31. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, that Party shall notify the other Party within 15 days from the time at which it obtained sufficient evidence of the arbitrator's failure to comply with the requirements of the Code of Conduct.
32. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new arbitrator in accordance with paragraph 30.

If the Parties fail to agree on the need to replace the arbitrator, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final.

If, pursuant to this request, the chairperson finds that the arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with paragraph 30.

33. Where a Party considers that the chairperson of the panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new chairperson in accordance with paragraph 30.

If the Parties fail to agree on the need to replace the chairperson, either Party may request that the matter be referred to the two remaining arbitrators. The arbitrators shall decide, no later than 10 days after the date of delivery of the request, whether there is a need to replace the chairperson of the panel. The decision by the arbitrators on the need to replace the chairperson shall be final.

If the arbitrators decide that the chairperson does not comply with the requirements of the Code of Conduct, a new chairperson shall be selected in accordance with paragraph 30.

34. The proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 30 to 33.

XI. Confidentiality

35. Where a Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other Party, provide, within 20 days of the date of the request, a non-confidential version of the submissions that could be disclosed to the public. Nothing in these rules precludes a Party from disclosing its own submissions to the public to the extent that it does not disclose any information designated by the other Party as confidential. The panel shall meet in closed session if the submissions and arguments of a Party contain confidential information. The panel and the Parties shall maintain the confidentiality of the hearing of the panel where the hearing is held in closed session.

XII. Ex parte contacts

36. The panel shall not meet or communicate with a Party in the absence of the other Party.
37. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

XIII. Amicus curiae submissions

38. Unless the Parties agree otherwise within three days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from persons referred to in paragraph 3 of Article 21.17 of the Agreement and who are independent from the governments of the Parties, provided that the submissions are received within 10 days of the date of the establishment of the panel.
39. The submissions shall be concise and in no case longer than 15 pages at double space, and shall be directly relevant to a factual or a legal issue under consideration by the panel. The submissions shall contain a description of the person providing the submissions including:
 - (a) for a natural person, his or her nationality; and
 - (b) for a legal person, its place of establishment, the nature of its activities, its legal status, its general objectives and the source of its financing.

Any person shall specify in its submissions the interest that it has in the proceedings. The submissions shall be drafted in the languages chosen by the Parties in accordance with paragraphs 42 and 43 of these Rules of Procedure.

40. The panel shall list in its report all the submissions it has received pursuant to paragraphs 38 and 39. The panel is not obliged to address in its report the arguments made in such submissions. Those submissions shall be provided to the Parties for their comments. The comments of the Parties which have been submitted to the panel within 10 days shall be taken into consideration by the panel.

XIV. Urgent cases

41. In cases of urgency referred to in Chapter 21 of the Agreement, the panel shall, after consulting the Parties, adjust the time periods referred to in these Rules, as appropriate. The panel shall notify the Parties of such adjustments.

XV. Language and translation

42. During the consultations referred to in Article 21.5 of the Agreement, and no later than the time of the organisational meeting referred to in paragraph 4, the Parties shall endeavour to agree on a common working language for the proceedings before the panel. Each Party shall notify the other Party, no later than 90 days after the adoption of these Rules of Procedure by the Joint Committee in accordance with subparagraph 4(f) of Article 22.1 of the Agreement, a list of languages for which it has a preference. The list shall include at least one working language of the WTO.
43. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language, providing at the same time a translation into one of the working languages of the WTO notified by the other Party in accordance with paragraph 42, where appropriate. The Party responsible for organising the oral hearing shall arrange for the interpretation of oral submissions into the same working language of the WTO, where appropriate.
44. The interim and final report of the panel shall be issued in the common working language. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in the working languages of the WTO referred to in paragraph 43.
45. A Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these rules.
46. In case a translation or interpretation of written and oral submissions of a Party in the relevant working language of the WTO is necessary, that Party shall bear the costs thereof.