

**DECISION No. 1/2023 OF THE JOINT COMMITTEE UNDER THE AGREEMENT
BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND JAPAN FOR A COMPREHENSIVE ECONOMIC PARTNERSHIP
of 29 October 2023**

**on the establishment of the list of individuals who are willing and able to serve as
arbitrators, and on the adoption of the Rules of Procedure of a Panel, the Code of
Conduct for Arbitrators and the Mediation Procedure**

THE JOINT COMMITTEE FOR THE UK-JAPAN CEPA,

Having regard to the Agreement between the United Kingdom of Great Britain and Northern Ireland (the “UK”) and Japan for a Comprehensive Economic Partnership, done at Tokyo on 23 October 2020 (“UK-Japan CEPA”), and in particular paragraph 1 of Article 22.9, subparagraph 4(f) of Article 23.1 and Article 23.2 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The list of individuals who are willing and able to serve as arbitrators is established as set out in Annex I to this decision.

Article 2

The Rules of Procedure of a Panel, the Code of Conduct for Arbitrators and the Mediation Procedure are adopted as set out respectively in Annex II, III and IV to this decision.

Article 3

This decision will come into operation on the date of its adoption.

ANNEX I

LIST OF ARBITRATORS REFERRED TO IN PARAGRAPH 1 OF ARTICLE 22.9 OF THE UK-JAPAN CEPA

Sub-list for the United Kingdom of Great Britain and Northern Ireland

1. Stuart HARBINSON
2. Ian FORRESTER QC
3. Jan Yves Natalie REMY
4. Jesse G. KREIER
5. Maurice MENDELSON QC

Sub-list for Japan

1. ARAKI Ichiro
2. KAWAI Kozo
3. SAKAI Hironobu
4. SAIKI Naoko
5. SHIMIZU Akio

Sub-list of individuals who are not nationals of either Party and who shall act as the chairperson of the panel

1. David UNTERHALTER (South Africa)
2. Penelope J. RIDINGS (New Zealand)
3. Zachary DOUGLAS (Australia)
4. Jennifer A. HILLMAN (United States)
5. William J. DAVEY (United States)
6. TBD

ANNEX II

RULES OF PROCEDURE OF A PANEL

In panel procedures under Section C of Chapter 22 (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 United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive 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 22.30 of the Agreement;
 - (g) “complaining Party” means the Party that requests the establishment of a panel pursuant to Article 22.7 of the Agreement;
 - (h) “days” means calendar days;
 - (i) “panel” means a panel established pursuant to Article 22.7 of the Agreement;
 - (j) “Party complained against” means the Party against which a dispute has been brought before a panel pursuant to Article 22.7 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 22.25 of the Agreement shall be responsible for the organisation of the lot referred to in paragraphs 3, 4 and 5 of Article 22.8 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 22.8 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 22.25 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 22.25 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 United Kingdom of Great Britain and Northern Ireland 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 40 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 22 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 22 of the Agreement, these Rules or the Code of Conduct, 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 periods set out in Chapter 22 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 22.15 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 22.25 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 22.25 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 22.17 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 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 15 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 10 days of the receipt of such copy.

X. Replacement of arbitrators

30. For the replacement of an arbitrator in accordance with Article 22.11 of the Agreement, Article 22.8 applies *mutatis mutandis*.
31. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct, 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, no later than 10 days after the date of the notification referred to in paragraph 31, 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, no later than 10 days after the date of the notification referred to in paragraph 31, 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 or arguments of a Party contain information designated by a Party as confidential. 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 22.17 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 no later than 5 days after the date of delivery of the written counter-submission of the Party complained against. 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 22 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 22.5 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.
- 43. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its own language, providing at the same time a translation into the language of the other Party. The Party responsible for organising the oral hearing shall arrange, in consultation with the other Party, for the interpretation of oral submissions into English or Japanese, as 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 English and Japanese. The costs incurred for translation of a panel report shall be borne equally by the Parties.
- 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 is necessary, that Party shall bear the costs thereof.

ANNEX III

CODE OF CONDUCT FOR STATE-STATE DISPUTE SETTLEMENT

I. Definitions

1. In this Code of Conduct:
 - (a) “administrative staff”, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;
 - (b) “Agreement” means the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership;
 - (c) “arbitrator” means a member of a panel;
 - (d) “assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
 - (e) “candidate” means an individual who is under consideration for appointment as an arbitrator pursuant to Article 22.8 of the Agreement;
 - (f) “panel” means a panel established pursuant to Article 22.7 of the Agreement; and
 - (g) “proceedings” means the proceedings of the panel.

II. Provision of Code of Conduct

2. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement set out in the Appendix to this Code of Conduct to each candidate prior to the acceptance of his or her appointment as an arbitrator.

III. Governing principles

3. Each candidate and arbitrator shall observe high standards of conduct, in accordance with this Code of Conduct, so that the integrity and impartiality of the dispute settlement mechanism is preserved.

IV. Disclosure obligations

4. Prior to the acceptance of his or her appointment as an arbitrator, a candidate requested to serve as an arbitrator shall submit the Initial Disclosure Statement and disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, he or she shall make all reasonable efforts to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests. Therefore, a candidate shall disclose, at a minimum, the following interests, relationships and matters:
 - (i) any financial or personal interest of the candidate in:
 - (a) the proceedings or its outcome; and
 - (b) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the proceedings for which the candidate is under consideration;
 - (ii) any financial interest of the candidate's employer, business partner, business associate or family member in:
 - (a) the proceedings or its outcome; and
 - (b) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the proceedings for which the candidate is under consideration;
 - (iii) any past or current financial, business, professional, family or social relationship with any interested parties in the proceedings, or their counsel, or any such relationship involving a candidate's employer, business partner, business associate or family member; and
 - (iv) public advocacy or legal or other representation concerning an issue in dispute in the proceedings or involving the same goods, services or investments.
5. The disclosure obligation under paragraph 4 is a continuing duty and shall also apply to an arbitrator after acceptance of his or her appointment. During the course of the proceedings, an arbitrator shall disclose in writing any new information regarding the obligation under paragraph 4 to the Parties at the earliest time he or she becomes aware of it.
6. In meeting these disclosure requirements, personal privacy shall be respected.

V. Performance of duties

7. Upon acceptance of his or her appointment, an arbitrator shall be available to perform and shall perform his or her duties thoroughly and expeditiously throughout the proceedings, and with fairness and diligence.
8. An arbitrator shall consider only those issues raised in the proceedings and necessary for a decision and shall not delegate the duty of such consideration to any other person.
9. An arbitrator shall not engage in *ex parte* contacts concerning matters under consideration by the panel in the proceedings.

VI. Independence and impartiality

10. An arbitrator shall be independent and impartial, shall avoid direct and indirect conflicts of interests, shall not be influenced by self-interest, outside pressure, political considerations, public clamour and loyalty to a Party or fear of criticism, and shall avoid creating an appearance of impropriety or bias.
11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way affect, or appear to affect, the proper performance of his or her duties.
12. An arbitrator shall not use his or her position on the panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.
13. An arbitrator shall not allow past or existing financial, business, professional, personal, family or social relationships or responsibilities to influence his or her conduct or judgement.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interests that are likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.
15. A former arbitrator shall avoid actions that may create the appearance that he or she was biased in carrying out his or her duties or derived advantage from the decision of the panel in which he or she served.

VII. Confidentiality

16. No arbitrator shall at any time disclose any non-public information concerning, or acquired during, the proceedings for which he or she is appointed. No arbitrator shall in any case use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
17. No arbitrator shall disclose the decision of the panel or parts thereof, unless the decision is made publicly available.
18. An arbitrator shall not, at any time, disclose the deliberations of a panel or any arbitrator's view, nor make any statements on the proceedings for which he or she is appointed or on the issues in dispute in such proceedings.
19. The obligations under paragraphs 16 to 18 shall continue to apply to a former arbitrator.

VIII. Other obligations

20. A candidate or an arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to both Parties for their consideration at the earliest possible time and on a confidential basis.
21. An arbitrator shall take all reasonable and appropriate steps to ensure that his or her assistant and administrative staff is aware of and comply with the obligations incurred by arbitrators under Parts III, IV, VI, VII and paragraph 9 of this Code of Conduct.
22. Each arbitrator shall keep a record and render a final account of the time devoted to the proceedings and of his or her expenses, as well as the time and expenses of his or her assistants.

IX. Responsibilities of Experts, Assistants and Administrative Staffs

23. Parts III, IV, VI, VII and paragraph 9 of this Code of Conduct shall also apply to experts, assistants and administrative staff.

Appendix to Code of Conduct
Initial Disclosure Statement

1. I acknowledge having received a copy of the Code of Conduct under Chapter 22 (Dispute Settlement) of the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership.
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the proceedings, to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
 - (a) My financial interest in the proceedings for which I am under consideration or in its outcome is as follows:
 - (b) My financial interest in any administrative proceeding, domestic judicial proceeding or other international dispute settlement proceeding that involves issues that may be decided in the proceedings is as follows:
 - (c) The financial interest that any employer, business partner, business associate or family member of mine may have in the proceedings or in its outcome are as follows:
 - (d) The financial interest that any employer, business partner, business associate or family member of mine may have in any administrative proceeding, domestic judicial proceeding or other international dispute settlement proceeding that involves issues that may be decided in the proceedings are as follows:
 - (e) My past or current financial, business, professional, family and social relationships with any interested parties in the proceedings, or their counsel, are as follows:
 - (f) The past or current financial, business, professional, family and social relationships with any interested parties in the proceedings, or their counsel, involving any employer, business partner, business associate or family member of mine are as follows:
 - (g) My public advocacy or legal or other representation concerning an issue in dispute in the proceedings or involving the same goods, services or investments is as follows:
 - (h) My other interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) through (g) above are as follows:

Signed on this _____ day of _____, 20__.

By:

Signature _____

Name _____

ANNEX IV

MEDIATION PROCEDURE

I. Objective

1. The objective of the mediation procedure under Article 22.6 of the Agreement, as provided for in this document, is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

II. Definitions

2. For the purposes of this document:
 - (a) “Agreement” means the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership;
 - (b) “Code of Conduct” means the Code of Conduct for Arbitrators referred to in Article 22.30 of the Agreement;
 - (c) “days” means calendar days;
 - (d) “Joint Committee” means the Joint Committee established pursuant to Article 23.1 of the Agreement;
 - (e) “requested Party” means the Party to which the request to enter into a mediation procedure is addressed pursuant to Article 22.6 of the Agreement;
 - (f) “requesting Party” means the Party that requests to enter into a mediation procedure pursuant to Article 22.6 of the Agreement; and
 - (g) “Rules of Procedure” means the Rules of Procedure of a Panel referred to in Article 22.30 of the Agreement.

III. Initiation of the mediation procedure

3. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed so as for the other Party to understand clearly the concerns of the Party requesting the mediation procedure. The requesting Party shall in its request describe the matter at issue by:
 - (a) identifying the specific measure;
 - (b) providing a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and
 - (c) explaining the causal link between the measure and the adverse effects on trade and investment between the Parties.
4. A Party is normally expected to avail itself of any relevant cooperation or consultation provisions of the Agreement before addressing to the other Party a written request

pursuant to paragraph 3. For greater certainty, consultations under Article 22.5 of the Agreement are not required before initiating the mediation procedure.

5. The mediation procedure may only begin by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator. The requested Party shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within 10 days of its receipt. If the requested Party does not reply within this timeframe, the request shall be regarded as rejected. The date of receipt by the requesting Party of the requested Party's reply of acceptance shall be considered as the date of initiation of the mediation procedure.

IV. Selection of the mediator

6. The Parties shall endeavour to agree on a mediator no later than 15 days after the date of the initiation of the mediation procedure.
7. If the Parties do not reach an agreement on the mediator within the time period provided for in paragraph 6, upon request of either Party, the co-chair of the Joint Committee from the requesting Party, or its designee, shall select by lot, within five days of the request, the mediator from the sub-list of chairpersons established pursuant to paragraph 1 of Article 22.9 of the Agreement. The request shall be copied to the other Party.
8. The office designated by the requesting Party pursuant to paragraph 1 of Article 22.25 of the Agreement shall be responsible for the organisation of the lot, 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 requested Party 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.
9. Unless the Parties agree otherwise, the mediator shall not be a national of either Party nor be employed by either Party.
10. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the matter at issue, including the possible effects of the specific measure on trade or investment, and in reaching a mutually agreed solution.
11. The Code of Conduct shall apply to the mediator *mutatis mutandis*.

V. Rules of the mediation procedure

12. Within 10 days of the date on which the mediator was agreed upon pursuant to paragraph 6 or selected pursuant to paragraph 7, the requesting Party shall submit, in writing, to the mediator and to the requested Party a detailed description of the matter at issue, including how the specific measure is or would be applied and how it affects trade or investment. Within 20 days of the date of delivery of this submission, the requested Party may provide, in writing, its comments to the description. Each Party may include in its description or comments any information that it deems relevant.
13. The mediator may decide on the most appropriate way of bringing clarity to the matter at issue, including the possible effects of the specific measure on trade or investment. In particular, the mediator may organise meetings between the Parties, consult the

Parties jointly or individually, and provide any additional support requested by the Parties. The mediator may also seek the assistance of, or consult with, relevant experts and stakeholders after consultations with the Parties.

14. The mediator shall endeavour to offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution or may agree on a different solution. The mediator shall not give advice or comments on the consistency of the specific measure with the Agreement.
15. The procedure shall take place in the requested Party, unless the Parties agree otherwise.
16. Within 60 days of the date on which the mediator was agreed upon pursuant to paragraph 6 or selected pursuant to paragraph 7, the Parties shall endeavour to reach a mutually agreed solution. If so requested by a Party, the mutually agreed solution shall be adopted by means of a decision of the Joint Committee. The mutually agreed solutions shall be made publicly available, unless the Parties agree otherwise. The version disclosed to the public may not contain any information that a Party has designated as confidential. Pending a final mutually agreed solution, the Parties may consider possible interim solutions.
17. Upon request of either Party, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the matter at issue, including the possible effects of the specific measure on trade or investment;
 - (b) the procedures followed;
 - (c) the views expressed by the Parties, experts and stakeholders, where relevant; and
 - (d) if applicable, any mutually agreed solution and interim solutions,within 15 days of the request for this report.

The Parties may comment on the draft factual report within 15 days of its issuance. After considering the comments submitted by the Parties, the mediator shall submit, in writing, the final factual report to the Parties within 30 days of the issuance of the draft factual report. The factual report shall not include any interpretation of the Agreement by the mediator.

18. The mediation procedure shall be terminated:
 - (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption;
 - (b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration;
 - (c) by a mutual agreement of the Parties at any stage of the procedure, on the date of that agreement; or
 - (d) by a written and substantiated declaration of a Party after exploring mutually agreed solutions under the mediation procedure, on the date of that declaration.

The termination of the mediation procedure is without prejudice to paragraph 17.

19. Paragraphs 5 to 9, 15 to 26, 33, 34, and 42 to 46 of the Rules of Procedure shall apply to the mediation procedure, *mutatis mutandis*.

VI. Confidentiality

20. Unless the Parties agree otherwise, and without prejudice to paragraph 16, all steps of the mediation procedure, including any advice or proposed solution, shall be confidential. The mediator and the Parties shall treat as confidential any information submitted to the mediator by a Party or received from any other source which has been designated as confidential. However, any Party may disclose to the public that mediation is taking place.

VII. Relationship to other Dispute Settlement Procedures

21. The mediation procedure shall be without prejudice to the Parties' rights and obligations under Chapter 22 (Dispute Settlement) of the Agreement or under a dispute settlement procedure of any other agreement.
22. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall it be accepted that a panel takes into consideration:
- (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph 13;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the matter subject to mediation; or
 - (c) advice given or proposals made by the mediator.
23. Unless the Parties agree otherwise, a mediator may not serve as an arbitrator or panellist in other dispute settlement procedures under the Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

VIII. Time period

24. Any time period referred to in this mediation procedure may be modified by mutual agreement between the Parties.

IX. Costs

25. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
26. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be equivalent to the remuneration of the arbitrators set out in paragraph 4 of the Rules of Procedure.