



Joint Minutes of the Fourth Meeting of the Committee on Trade and Sustainable Development under the Agreement between the European Union and Japan for an Economic Partnership

Brussels (via videoconference), 28 February-01 March 2023

The fourth meeting of the Committee on Trade and Sustainable Development (TSD Committee) under the Agreement between the European Union (EU) and Japan for an Economic Partnership (EPA) took place on 28 February and 1 March 2023 via videoconference.

Japanese participants from MOFA, MHLW, MAFF, METI and MOE, as well as the Japanese Mission to the EU, and EU participants from the Directorates-General TRADE, JUST, GROW, FISMA, ENV, CLIMA and EMPL and from the EU Delegation to Japan had a fruitful exchange of views on matters related to Chapter 16 of the EPA (Trade and Sustainable Development).

1. OPENING AND ADOPTION OF AGENDA

The agenda for the meeting was adopted (cf. attachment).

2. PROCEDURAL AND INSTITUTIONAL ITEMS

Both sides proceeded with the formal adoption of Decision 1/2023 of the Committee on Trade and Sustainable Development concerning the establishment of the list of individuals who are willing and able to serve as experts, and the adoption of rules of procedure for the panel of experts.

The EU and Japan also shared their views on the recent submission from the EU civil society, in particular, in relation to the suggestion to invert the sequence of the meetings of the TSD committee and the Joint Dialogue.

Both sides indicated their openness to consider alternative arrangements, and

concluded on the fact that, in order to provide meaningful input to the meeting of the Committee on Trade and Sustainable Development, such input would need to be prepared and provided sufficiently in advance.

The EU and Japan confirmed to follow up this discussion at technical level.

3. CROSS-CUTTING (LABOUR/ENVIRONMENT) MATTERS: PRIORITIES FOR COOPERATION

Presentation of the EU TSD review Communication

The EU presented the outcome of the review of the trade and sustainable development policy concluded in June 2022, and confirmed that the EU approach of its TSD policy remains based on cooperation and engagement with partners to promote jointly internationally recognised standards for labour and environment.

The EU also indicated that review of the policy added further emphasis on the implementation and on the effective enforcement of commitments, including sanctions as measure of last resort.

The EU further explained how the TSD review identifies 6 policy goals and 20 action points. The EU pointed out that the outcome of the Communication is applied in future and ongoing trade negotiations as appropriate.

The EU further indicated its intention to open with Japan, as with all its FTA partners, discussions with a view to reflect, as appropriate, key elements of the trade and sustainable development policy in the implementation of the EPA. In particular, the EU suggested focussing on occupational health and safety, and on further strengthening the role of civil society.

Japan recalled its commitment to the good-faith implementation of the TSD chapter.

The EU and Japan will follow up with discussions at technical level.

Corporate Social Responsibility/Responsible Business Conduct (CSR/RBC)

The EU gave an update of the proposal for a Directive on Corporate

Sustainability Due Diligence (CSDDD), which introduces due diligence obligations for companies with the aim to generate a shift in their behaviour towards more sustainable operations across their value chains.

Similarly, the EU informed Japan about the adoption of the Corporate Sustainability Reporting Directive (CSRD), which introduces reporting requirements for companies based on a principle of double materiality. The EU pointed out the complementary nature of the two Directives (CSDDD and CSRD), in relation to the reporting of due diligence actions to be mandated by the CSDDD. Furthermore, the EU clarified that EU sustainability reporting standards (ESRS) strive to ensure maximum interoperability with global standards, including those being developed by the International Sustainability Standards Board.

Finally, the EU illustrated the Forced Labour Regulation proposed in September 2022, which introduces a marketing prohibition in the EU market for products made with forced labour, whether produced domestically, imported or exported. The EU stressed the non-discriminatory nature of the proposed instrument, and the fact that it is based on international standards and cooperation.

On its part, Japan referred to the release, in September 2022, of the ‘Guidelines on Respecting Human Rights in Responsible Supply Chains’, which aim at supporting the voluntary efforts by business across sectors to respect human rights. Japan indicated that it continues the efforts to promote and raise awareness, with a view to facilitate the uptake by business enterprises, confronted with the issue of how to operationalise the Guidelines in practical terms.

On the international cooperation front, Japan mentioned that METI recently signed with the USTR a Memorandum of Cooperation to launch the Japan-U.S. Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains, aiming to protect and promote human rights and internationally recognized labour rights in supply chains.

The TSD committee invited the ILO Office for Japan for a presentation of their new Strategy on Decent Work in Supply Chains, which puts an emphasis on policy coherence and on the role of trade agreements to advance labour standards. In this context, the ILO Office for Japan stressed the relevance of the ratification of ILO fundamental labour conventions.

In relation to the decent work agenda, the ILO Office for Japan referred to the recently-issued Policy recommendations to Japan towards achieving the labour dimension of corporate social responsibility, and illustrated the successful implementation of projects on responsible supply chains financed by the EU¹ and by Japan².

Both sides confirmed they would continue cooperating in this policy area, including through technical exchanges.

4. DEDICATED SESSION ON TRADE AND ENVIRONMENT, INCLUDING TRADE AND CLIMATE ACTION

Update on the developments on trade and environment, including the implementation of MEAs (Environment) and cooperation with relevant international organisations

The EU provided a targeted overview of recent developments with a focus on the November 2022 Communication setting out an EU policy framework on biobased, biodegradable, and compostable plastics, which lays out the approach for future EU policy initiatives in line with the objective to accelerate the transition of the plastic sector towards circularity, resource efficiency and climate neutrality.

Recalling that both Japan and the EU are important producers of bioplastics, the EU pointed at opportunities for collaboration at early stages of policy development.

Furthermore, the EU provided some clarification regarding the compliance requirements in the context of the November 2021 Regulation on deforestation and forest degradation free supply chains, in line with the areas of cooperation identified under the Japan-EU Green Alliance.

The EU indicated its openness to work jointly with Japan towards approximating policies in the respective jurisdictions, also with a view to

¹ “Responsible Supply Chains in Asia”, to be followed-up by the project “Responsible Business Conduct for Green, Digital and Resilient Supply Chain”.

² “Building responsible value chains in Asia through promotion of decent work in business operations”

create a more homogeneous framework for economic operators concerned by the regulatory developments on both sides.

On its part, Japan made reference to the 19th Japan-EU High-Level Dialogue on Environment held on 23 January, highlighting the mutual interest in close cooperation towards the implementation of the Kunming-Montreal Global Biodiversity Framework, in particular on nature positive economy and the issue of Invasive Alien Species, as well as the adoption of an ambitious international legally binding instrument on plastic pollution. In the area of circular economy, Japan explained "Circular Economy Roadmap," which outlines the circular economy with a view to carbon neutrality in 2050, and the direction of measures to be taken by 2030.

The EU considered that the large amount of on-going activities reflects similar advancements in terms of ratification of MEA instruments and their effective implementation. The EU further underscored that there are opportunities for further technical level engagement, notably in the area of bio-based plastics, biodiversity, including invasive alien species, and of the regulatory requirements linked to the deforestation regulation.

Update on the developments on trade and environment, including the implementation of MEAs (Climate Change)

Both sides provided updates on their respective climate policy developments and took stock of the joint work in the field of climate change, and environmental issues including the finalisation of the Japan-EU Green Alliance operational work plan.

Japan emphasized the central role of UNFCCC COP 27 as the basis for cooperation and invited the EU to join the "Article 6 Implementation Partnership" to promote capacity building. Japan stressed the importance of climate finance mobilisation, and referred to the initiatives involving local authorities, notably the "Japan-EU 100 Cities Event on Climate Action". As regards the support for climate-related disclosure schemes, Japan reiterated its support for the work of the Task-force for Climate-related Financial Disclosure (TCFD). It also indicated that the uptake is particularly widespread among Japanese corporates and recalled that in October 2022 Japan hosted the 4th TCFD summit.

Japan briefly illustrated the recently adopted Basic Policy for the Realization of GX (Green Transformation), centred around the Pro-Growth Carbon Pricing concept. The policy is based on voluntary emission reduction targets, coupled with public disclosure and with a comply-or-explain incentive system, and introduces a pilot Emission Trading System as from 2026.

The EU, on its side, presented an overview of the policy developments in the context of the “Fit for 55 package”, reiterating EU ban on the sale of new petrol and diesel cars from 2035, which was approved by Parliament in February 2023, and the political agreement reached on the Carbon Border Adjustment Measure (CBAM), as well as the determination of the EU to accelerate the transition towards renewable energies and increase the efforts to decarbonize industries and sectors, including with a new ETS covering road transport and buildings.

As regards the Japan-EU Green Alliance, both sides made reference to the operational work plan and concurred on the importance to deliver, and on the positive contribution of the TSD implementation process, in particular due to the potential to engage relevant stakeholders in a dialogue.

The EU invited Japan to deepen the dialogue, making reference to the ongoing work in the appropriate fora towards the development of an international standardization and certification framework for renewable and low-carbon hydrogen.

The two sides had also a preliminary exchange on other topics for possible future co-operation and relevant for the green transition, including on renewable energies, batteries, and Carbon Capture, Utilisation and Storage (CCUS).

Both sides will continue discussing in the near future in line with the ambitious objectives set out in the Green Alliance and its operational work plan, including in technical contacts.

5. DEDICATED SESSION ON TRADE AND LABOUR

Updates on the developments on trade and labour, including the ratification and implementation of ILO conventions, and potential cooperation activities

The EU gave an update on recent labour market developments and the recent

initiatives related to decent work, in particular the Communication on Decent Work Worldwide, as well as the European Care Strategy and a proposal for a Council Recommendation on strengthening social dialogue in the EU.

The EU further updated on recent ratifications of ILO conventions by the Member States (C177(home work) & C190(violence and harassment)). In terms of the developments in the area of occupational safety and health, the EU referred to the continuous reduction of fatal accidents at work in the EU, explained the current regulatory situation, and the forward-looking Strategic Framework on Health and Safety at Work 2021-2027. It also referred to the inclusion in 2022 of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work, stressing that all EU and its member states already comply with the new principle and are positively considering pending ratifications of the two new ILO fundamental conventions on occupational safety and health (OSH) (C155 & C187).

Japan provided an update on ratification of ILO fundamental convention (C 105 (abolition of forced labour)) and gave a presentation on recent domestic labour policies, including gender gap, workers with disabilities, investment in human capital and technical cooperation through ILO. Japan also introduced recently emerged topics related to OSH, such as accidents of elderly workers and mental health at workplaces.

As regards the other core ILO conventions, the EU welcomed Japan's strong commitment to high labour standards, as demonstrated by the ratification of C105 in July 2022, and encouraged Japan to share information about concrete steps towards the ratification of C111(discrimination (employment and occupation)), as well as on C155.

The EU invited Japan to continue exchanging information and supporting each other on making progress on their respective ratifications of ILO conventions, including via technical exchanges.

6. SUMMARY AND CONCLUSIONS

Both sides confirmed that they would continue to work together in close coordination and further discuss topics of interest including informally and ahead of the next TSD Committee meeting, covering topics as they had identified during their discussions.

EU- JAPAN ECONOMIC PARTNERSHIP AGREEMENT (EPA)

4TH MEETING OF THE COMMITTEE

ON TRADE AND SUSTAINABLE DEVELOPMENT

28 FEBRUARY-01 MARCH 2023

08:00–11:00 BRUSSELS/16:00– 19:00 TOKYO

ANNOTATED AGENDA

1. OPENING AND ADOPTION OF AGENDA

2. PROCEDURAL AND INSTITUTIONAL ITEMS

3. CROSS-CUTTING (LABOUR/ENVIRONMENT) MATTERS: PRIORITIES FOR COOPERATION

- Presentation of the EU TSD review Communication
- Corporate Social Responsibility/Responsible Business Conduct (CSR/RBC)

4. DEDICATED SESSION ON TRADE AND ENVIRONMENT, INCLUDING TRADE AND CLIMATE ACTION

- Update on the developments on trade and environment, including the implementation of MEAs (Environment) and cooperation with relevant international organizations
- Update on the developments on trade and climate, including the implementation of MEAs (Climate Change)

5. DEDICATED SESSION ON TRADE AND LABOUR

- Updates on the developments on trade and labour, including the ratification and implementation of ILO conventions, and potential cooperation activities

6. SUMMARY AND CONCLUSIONS

DECISION No 1/2023
OF THE COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT
UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN
FOR AN ECONOMIC PARTNERSHIP

of 1 March 2023

**concerning the establishment of the list of individuals who are willing and able to
serve as experts, and the adoption of rules of procedure for the panel of experts**

THE COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership (the “EU-Japan EPA”) and in particular paragraph 2 and subparagraph 4(d) of Article 16.18 thereof,

Whereas:

- (1) Subparagraph 4(d) of Article 16.18 of the EU-Japan EPA provides that the Committee on Trade and Sustainable Development (the “Committee”) is to establish a list of at least 10 individuals who are willing and able to serve as experts pursuant to that Article,
- (2) Paragraph 2 of Article 16.18 of the EU-Japan EPA provides that the Committee is to adopt the rules of procedure for the panel of experts,

HAS ADOPTED THIS DECISION:

Article 1

The list of individuals who are willing and able to serve as experts is established as set out in Annex 1 to this Decision.

Article 2

The rules of procedure for the panel of experts are adopted as set out in Annex 2 to this Decision.

Article 3

The list of individuals and the rules of procedure for the panel of experts set out in Annex 1 and Annex 2 to this Decision in accordance with paragraph 2 and subparagraph 4(d) of Article 16.18 of the EU-Japan EPA shall be valid from the date of adoption of this Decision.

Done at ...

*For the Committee on Trade and
Sustainable Development
Chair*

ANNEX 1

LIST OF EXPERTS

REFERRED TO IN SUBPARAGRAPH 4(d) OF ARTICLE 16.18 OF THE EU-JAPAN EPA

Sub-list for the European Union

1. Jorge CARDONA
2. Karin LUKAS
3. Laurence BOISSON DE CHAZOURNES
4. Geert VAN CALSTER

Sub-list for Japan

1. AGO Shin-ichi
2. TAKAMURA Yukari
3. TAMADA Dai
4. YAGI Nobuyuki

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

1. Armand DE MESTRAL (Canada)
 2. Jennifer A. HILLMAN (United States)
 3. Arthur Edmond APPLETON (United States)
 4. Nathalie BERNASCONI (Switzerland)
-

ANNEX 2

RULES OF PROCEDURE OF THE PANEL OF EXPERTS

In procedures of panel of experts under Chapter 16 (Trade and Sustainable Development) of the Agreement between the European Union and Japan for an Economic Partnership, the following rules apply:

I. Definitions

1. In these Rules of Procedure:

- (a) ‘administrative staff’, in respect of an expert, means persons under the direction and control of the expert, 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) ‘assistant’ means a person who, under the terms of appointment of an expert, conducts research or provides assistance to that expert;

- (e) ‘Code of Conduct’ means the Code of Conduct for Arbitrators referred to in Article 21.30 of the Agreement and adopted by Decision No 1/2019 of 10 April 2019 of the Joint Committee of the Agreement;
- (f) ‘Committee’ means the Committee on Trade and Sustainable Development established pursuant to Article 22.3 of the Agreement;
- (g) ‘days’ means calendar days;
- (h) ‘expert’ means a member of a panel;
- (i) ‘panel’ means a panel of experts convened pursuant to paragraph 1 of Article 16.18 of the Agreement;
- (j) ‘proceedings’ means the proceedings of the panel;
- (k) ‘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;
- (l) ‘requesting Party’ means the Party that requests the convening of a panel pursuant to paragraph 1 of Article 16.18 of the Agreement; and

- (m) ‘responding Party’ means the Party that receives a request from the requesting Party that a panel of experts be convened pursuant to paragraph 1 of Article 16.18 of the Agreement.

II. Appointment of experts

2. The co-chair of the requesting Party of the Committee shall be responsible for the organisation of the lot referred to in subparagraph 4(c) of Article 16.18 of the Agreement, and shall inform the co-chair from the responding Party, with due anticipation, about the date, time and venue of the lot. The co-chair from the responding 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.
3. The Parties shall inform in writing each individual who has been appointed to serve as an expert pursuant to Article 16.18 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. Code of Conduct

4. The Code of Conduct shall apply, *mutatis mutandis*, to the experts serving in the Panel of Experts.

IV. Organisational meeting

5. 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 experts which shall be in accordance with WTO standards and criteria;
 - (b) the expenses for any assistants or administrative staff that an expert may decide to hire, with the total amount of remuneration for each expert's assistant or administrative staff not to exceed 50 % of the remuneration of that expert, unless the Parties agree otherwise; and
 - (c) the timetable for the proceedings, which shall be established based on the time zone of the responding Party.

Only the experts 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.

V. Notifications

6. 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.
7. Any notification referred to under paragraph 6 shall be made by email 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 5, 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.

VI. Written submissions

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

VII. Requests for information and advice

11. In accordance with paragraph 3 of Article 16.18 of the Agreement, the panel should seek information and advice from the relevant international organisations or bodies for matters related to International Labour Organization instruments or multilateral environmental agreements, as it deems appropriate.
12. Before seeking information and advice from the entities referred to in paragraph 11, the panel shall allow the Parties the opportunity to comment on the list of entities and the requests to be addressed to them.
13. The panel shall submit any information obtained pursuant to paragraph 11 to the Parties, which shall have an opportunity to comment on such information.

VIII. Operation of the panel

14. The chairperson of the panel shall preside at all of its meetings. A panel may delegate to the chairperson the authority to make administrative and procedural decisions.
15. Unless otherwise provided for in Article 16.18 of the Agreement or in these Rules of Procedure, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
16. Where a procedural question arises that is not covered by Article 16.18 of the Agreement or these Rules of Procedure or the Code of Conduct, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
17. The panel may modify any time period other than the time periods set out in Article 16.18 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.

IX. Hearings

18. Based upon the timetable determined pursuant to paragraph 5, after consulting with the Parties and the other experts, the chairperson of the panel shall determine the date and time of the hearing.
19. Unless the Parties agree otherwise, the venue shall alternate between the Parties with the first hearing to be held in the responding Party. Unless the Parties agree otherwise, the Party in which the hearing takes place 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.
20. Unless the Parties agree otherwise, and without prejudice to paragraph 49, the Parties shall share the expenses derived from the logistical administration of the hearing.
21. The chairperson of the panel shall notify in due course the Parties, 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, unless the hearing is closed to the public.

22. 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 18 to 21 apply *mutatis mutandis*.
23. Any hearing of the panel shall be open to the public unless the Parties agree otherwise or the submissions and arguments of a Party contain confidential information. There should be no audio or visual recording of the hearing by the public. Hearings held in closed session shall be confidential in accordance with paragraph 39.
24. All experts shall be present during the entirety of the hearing.
25. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public:
 - (a) representatives of the Parties;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and

- (e) representatives of the relevant international organisations or bodies, as decided by the panel pursuant to paragraph 3 of Article 16.18 of the Agreement.
26. 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.
27. The panel shall conduct the hearing in the following manner, ensuring that the requesting Party and the responding Party are afforded equal time in both argument and rebuttal argument:

Argument

- (a) argument of the requesting Party; and
- (b) argument of the responding Party.

Rebuttal Argument

- (a) reply of the requesting Party; and
 - (b) counter-reply of the responding Party.
28. The panel may direct questions to either Party at any time during the hearing.

29. 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.
30. 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.

X. Deliberations

31. Only the experts may take part in the deliberations of the panel.

XI. Questions in writing

32. 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.
33. 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.

XII. Replacement of experts

34. If any of the experts of the original panel withdraws, is unable to participate, or otherwise needs to be replaced in panel proceedings pursuant to Article 16.18 of the Agreement, paragraph 4 of Article 16.18 of the Agreement applies *mutatis mutandis*.
35. Where a Party considers that an expert 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 expert's failure to comply with the requirements of the Code of Conduct.
36. Where a Party considers that an expert 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 expert in accordance with paragraph 34.

If the Parties fail to agree on the need to replace the expert, 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 expert does not comply with the requirements of the Code of Conduct, a new expert shall be selected in accordance with paragraph 34.

37. 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 34.

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 experts. The experts 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 experts on the need to replace the chairperson shall be final.

If the experts 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 34.

38. The proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 34 to 37.

XIII. Confidentiality

39. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel which that Party has designated as confidential. 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 of Procedure 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.

XIV. *Ex parte* contacts

40. The panel shall not meet or communicate with a Party in the absence of the other Party.

41. An expert shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other experts.

XV. *Amicus curiae* submissions

42. 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 any natural persons of a Party or legal persons established in a Party, 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.
43. 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 45 and 46 of these Rules of Procedure.

44. The panel shall list in its report all the submissions it has received pursuant to paragraphs 42 and 43. 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 30 days shall be taken into consideration by the panel.

XVI. Language and translation

45. During the consultations referred to in Article 16.17 of the Agreement, and no later than the time of the organisational meeting referred to in paragraph 5, 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 Committee in accordance with paragraph 2 of Article 16.18 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.

46. 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 45, 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.
47. 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 46.
48. 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 of Procedure.
49. 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.

XVII Panel Report

50. The panel shall present an interim and a final report to the Parties in accordance with paragraph 5 of Article 16.18 of the Agreement. The final report shall be made publicly available. The panel should not disclose its report before publication by the Parties.

XVIII Revision

51. These Rules of Procedure may be revised by agreement between the Parties.
