

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

I. Definitions

1. For the purposes of Chapter 26 (Dispute settlement) and of this Annex, the following definitions apply:

- (a) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;
- (b) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;
- (c) "complaining Party" means any Party that requests the establishment of a panel pursuant to Article 26.4 (Initiation of panel procedures);
- (d) "day" means a calendar day;

- (e) "panel" means a panel established pursuant to Article 26.5 (Establishment of a panel);
- (f) "panellist" means a member of a panel;
- (g) "Party complained against" means the Party that is alleged to be in violation of the covered provisions; and
- (h) "representative of a Party" means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

II. Notifications

2. Any request, notice, written submission or other document of:

- (a) the panel shall be sent to both Parties at the same time;
- (b) a Party which is addressed to the panel shall be copied to the other Party at the same time; and
- (c) a Party which is addressed to the other Party shall be copied to the panel at the same time, as appropriate.

3. Any request, notice, written submission or other document referred to under Rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

4. Requests, notices, written submissions or other documents shall be addressed to the Directorate-General for Trade of the European Commission of the Union and to the Ministry of Foreign Affairs and Trade of New Zealand, respectively.

5. 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.

6. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the government of New Zealand, the time period for the delivery of the document shall end on the first following working day.

III. Appointment of panellists

7. If pursuant to Article 26.5 (Establishment of a panel), a panellist is selected by lot, the co-chair of the Trade Committee of the complaining Party shall promptly inform the co-chair of the Party complained against of the date, time and venue of the selection by lot. The Party complained against may, if it so chooses, be present during the selection. In any event, the selection shall be carried out with the Party or Parties that are present.

8. The co-chair of the complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of his or her selection. Each individual shall confirm his or her availability to both Parties within 10 days after the date of delivery of such notification.

9. The co-chair of the Trade Committee of the complaining Party shall select by lot the panellist or chairperson, within 10 days after the expiry of the time period referred to in Article 26.5(2) (Establishment of a panel), if any of the sub-lists referred in Article 26.6(2) (List of panellists):

- (a) is not established or contains only names of persons who are not available amongst those individuals who have been formally proposed by one or both Parties for the establishment or maintenance of that particular sub-list; or
- (b) no longer contains at least three individuals amongst those individuals who remain on that particular sub-list.

10. Without prejudice to Article 26.4(4) (Initiation of panel procedures), the Parties shall endeavour to ensure that, at the latest by the time all the panellists have accepted their appointment in accordance with Article 26.5(5) (Establishment of a panel), they have agreed on the remuneration and the reimbursement of expenses of the panellists and assistants, and have prepared the necessary appointment contracts with a view to having them signed promptly. The remuneration and expenses of the panellists shall be based on WTO standards. The remuneration and expenses of an assistant or all assistants of a panellist shall not exceed 50 % of the remuneration of that panellist.

IV. Organisational meeting

11. Unless the Parties agree otherwise, they shall meet the panel within seven days after its establishment in order to determine matters that the Parties or the panel deem appropriate, including the timetable of the proceedings. Panellists and representatives of the Parties may take part in such meeting through any means of communication, including telephone video conference or other electronic means of communication.

V. Written submissions

12. 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 submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

VI. Operation of the panel

13. The chairperson of the panel shall preside at all its meetings. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.
14. Unless otherwise provided in Chapter 26 (Dispute settlement), the panel may conduct its activities by any means, including telephone, video conference or other electronic means of communication.
15. Only panellists may take part in the deliberations of the panel, but the panel may permit their assistants to be present during its deliberations.
16. The drafting of any decision and report shall remain the exclusive responsibility of the panel and shall not be delegated.
17. Where a procedural question arises that is not covered by Chapter 26 (Dispute settlement), the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with Chapter 26 (Dispute settlement).

18. If the panel considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Chapter 26 (Dispute settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the time period or adjustment needed and the reasons therefor. The panel may adopt the modification or adjustment after consultation of the Parties.

VII. Replacement

19. If a Party considers that a panellist does not comply with the requirements of Annex 26-B (Code of conduct for panellists and mediators) and for this reason should be replaced, that Party shall notify the other Party within 15 days after the date on which it obtained sufficient evidence of the panellist's alleged failure to comply with the requirements of Annex 26-B (Code of conduct for panellists and mediators).

20. The Parties shall consult within 15 days after the date of the notification referred to in Rule 19. They shall inform the panellist of its alleged failure and they may request the panellist to take steps to ameliorate that failure. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 26.5 (Establishment of a panel).

21. If the Parties fail to agree on the need to replace a panellist, other than the chairperson of the panel, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final. If the chairperson of the panel finds that the panellist does not comply with the requirements of Annex 26-B (Code of conduct for panellists and mediators), the panellist shall be removed and a new panellist shall be selected in accordance with Article 26.5 (Establishment of a panel).

22. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons established pursuant to Article 26.6 (Lists of panellists). His or her name shall be drawn by lot by the co-chair of the Trade Committee from the requesting Party, or the chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final. If that person finds that the chairperson does not comply with the requirements of Annex 26-B (Code of conduct for panellists and mediators), the chairperson shall be removed and a new chairperson shall be selected in accordance with Article 26.5 (Establishment of a panel).

VIII. Hearings

23. Based on the timetable determined pursuant to Rule 11, after consulting with the Parties and the other panellists, the chairperson of the panel shall notify the Parties the date, time and venue of the hearing. Such information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public.

24. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is New Zealand and in Wellington if the complaining Party is the Union. The Party complained against shall bear the administrative expenses of the hearing. In duly justified circumstances and at the request of a Party, the panel may decide to hold a virtual or hybrid hearing and make appropriate arrangements, taking into account the rights of due process and the need to ensure transparency, and after consulting both Parties.

25. The panel may convene additional hearings if the Parties so agree.

26. All panellists shall be present during the entirety of the hearing.

27. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:

(a) representatives and advisers of a Party; and

(b) assistants, interpreters and other persons whose presence is required by the panel.

28. No later than five days before the date of a hearing, each Party shall deliver to the panel and to the other Party a list of the names of the 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.

29. The panel shall ensure that the Parties are treated on an equal footing and are afforded sufficient time to present their arguments.

30. The panel may direct questions to either Party at any time during the hearing.

31. The panel shall arrange for a transcript or recording of the hearing to be delivered to the Parties as soon as possible after the hearing. Where a transcript is prepared, the Parties may comment on the transcript and the panel may consider such comments.

32. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days after the date of the hearing.

IX. Questions in writing

33. 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.

34. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within seven days after the delivery of such a copy.

X. Confidentiality

35. Each Party and the panel shall treat as confidential any information submitted by the other Party to the panel that the other Party has designated as confidential. When a Party submits to the panel a written submission that contains confidential information, it shall also provide, within 15 days, a submission without the confidential information, which shall be disclosed to the public.

36. Nothing in this Annex shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

37. The panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the panel hearings when the hearings are closed to the public.

XI. *Ex parte* contacts

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

39. A panellist shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other panellists.

XII. *Amicus curiae* submissions

40. Unless the Parties agree otherwise, within five days after the date of the establishment of the panel, the panel may receive unsolicited written submissions from a natural person of a Party or a legal person established in the territory of a Party who is independent from the governments of the Parties, provided that they:

- (a) are received by the panel within 10 days after the date of the establishment of the panel;
- (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
- (c) are directly relevant to a factual or a legal issue under consideration by the panel;
- (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives and its source of financing;
- (e) specify the nature of the interest that the person has in the panel proceedings; and
- (f) are drafted in the working language determined in accordance with Rules 44 and 45.

41. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments to the panel within 10 days after such delivery.

42. The panel shall list in its report all the submissions it has received pursuant to Rule 40. The panel shall not be obliged to address in its report the arguments made in those submissions, however, if it does, it shall also take into account any comments made by the Parties pursuant to Rule 41.

XIII. Urgent cases

43. In cases of urgency referred to in Article 26.10 (Decision on urgency), the panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in this Annex. The panel shall notify the Parties of such adjustments.

XIV. Working language, translation and interpretation

44. During the consultations referred to in Article 26.3 (Consultations), and no later than the meeting referred to in Rule 11, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.

45. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party. The panel shall give positive consideration to a request from one Party or both Parties to modify the time periods for delivering written submissions if translations are required. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

46. Panel reports and decisions shall be issued in the language or languages chosen by the Parties. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in one of the working languages of the WTO.

47. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with this Annex.

48. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

XV. Other procedures

49. The time periods set out in this Annex shall be adjusted in line with the special time periods provided for the adoption of a report or decision by the panel in the proceedings under Article 26.14 (Reasonable period of time), Article 26.15 (Compliance review), Article 26.16 (Temporary remedies) and Article 26.17 (Review of any measure taken to comply after the adoption of temporary remedies).

50. Time periods for delivering written submissions shall also be adjusted in line with any determination of the panel following a request by one or both Parties as referred to in Rule 43.
