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WTO

**MEETING DOCUMENT**

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from: European Commission  
to: Trade Policy Committee  
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Subject: TTIP - Text proposal on Dispute Settlement  
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Delegation will find attached a note by the Commission Services on the above-mentioned subject.

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**CHAPTER [...]: DISPUTE SETTLEMENT**

## General Notes.

1. Articles are numbered from 1 for ease of reading especially when an Article cross-refers to another provision of the Dispute Settlement chapter. The final numbering will be revised once the chapter is integrated into the rest of the Agreement.
2. All reference to institutional bodies is provisional and will be revised in the light of the institutional part of the FTA.

**Section 1****Objective and Scope**

## ARTICLE 1

Objective

The objective of this chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arriving, where possible, at a mutually agreed solution.

## ARTICLE 2

Scope of application

This chapter shall apply with respect to any dispute concerning the interpretation and application of the provisions of this Agreement, except as otherwise provided.

**Section 2****Consultations and mediation**

## ARTICLE 3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the [institutional body to be defined], identifying the measure at issue and the provisions referred to in Article 2 that it considers applicable.

3. Consultations shall be held within 30 days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 30 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations in particular all information disclosed and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services shall be held within 15 days of the date of receipt of the request by the requested part, and shall be deemed concluded within those 15 days unless both Parties agree to continue consultations.

5. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 of this Article respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 5.

6. During consultations each Party shall deliver sufficient factual information, so as to allow a complete examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

#### ARTICLE 4

Any Party may request the other Party to enter into a mediation procedure with respect to any measures adversely affecting trade or investment between the Parties pursuant to Annex III (Mediation Mechanism) to this Agreement.

### **Section 3 Dispute Settlement Procedures**

#### **Sub-Section 1: Arbitration Procedure**

##### Article 5 Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3, the Party that sought consultations may request the establishment of an arbitration panel in accordance with this Article.
2. The request for the establishment of an arbitration panel shall be made in writing to the other Party and the [institutional body to be defined]. The complaining Party shall identify in its request the measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 2 in a manner sufficient to present the legal basis for the complaint clearly.

## ARTICLE 6

### Establishment of the arbitration panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, each Party may appoint an arbitrator from the sub-list of that Party established under Article 22 within 5 days from the expiry of the timeframe established in paragraph 2 of this Article. If any of the Parties fails to appoint the arbitrator, the arbitrator shall, upon request of the other Party, be selected by lot by the chair of the [institutional body to be defined], or the chair's delegate from the sub-list of that Party [contained in the list established under Article 22].
4. Unless the Parties reach an agreement concerning the chairperson of the arbitration panel within the timeframe established in paragraph 2 of this Article, the chair of the [institutional body to be defined] or the chair's delegate, shall, upon request of any of the Parties, select by lot the chairperson of the arbitration panel from the sub-list of chairpersons [contained in the list established under Article 22].
5. The chair of the [institutional body to be defined], or the chair's delegate, shall select the arbitrators within five days of the request by either party referred to in paragraph 3 or paragraph 4.
6. The date of establishment of the arbitration panel shall be the date on which the three selected arbitrators accept their appointment according to the Rules of Procedure.
7. Should any of the lists provided for in Article 22 not be established or not contain sufficient names at the time a request is made pursuant to paragraph 3 or paragraph 4 of this Article, the arbitrators shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.

ARTICLE 7  
Preliminary ruling on urgency

If a Party so requests the arbitration panel shall give, within 10 days of its establishment, a preliminary ruling on whether it deems the case to be urgent.

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ARTICLE 8  
Panel report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes, not later than 90 days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the [institutional body to be defined] in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of establishment of the arbitration panel.
2. Any Party may submit a written request to the arbitration panel to review precise aspects of the interim report within 14 days of its notification.
3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. Any Party may submit a written request to the arbitration panel to review precise aspects of the interim report, within 7 days of the notification of the interim report.
4. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The findings of the final panel ruling shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the questions and observations of the two Parties.

ARTICLE 9  
Notification of the Ruling of the Arbitration Panel

1. The arbitration panel shall notify its ruling to the Parties and to the [institutional body to be defined] within 120 days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the [institutional body to be defined] in writing, stating the reasons for the delay and the date on which the panel plans to issue its ruling. Under no circumstances should the ruling be notified later than 150 days after the date of establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to notify its ruling within 60 days from the date of its establishment. Under no circumstances should the ruling be notified later than 75 days after the date of its establishment.

**Sub-Section 2: Compliance**

## ARTICLE 10

Compliance with the arbitration panel ruling

The Party complained against shall take any measure necessary to comply promptly and in good faith with the arbitration panel ruling.

## ARTICLE 11

Reasonable period of time for compliance

1. If immediate compliance is not possible, the Parties shall endeavour to agree on the period of time not to comply with the ruling. In such a case, the Party complained against shall, no later than 30 days after the receipt of the notification of the arbitration panel ruling to the Parties notify the complaining Party and the [institutional body to be defined] of the time it will require for compliance ("reasonable period of time").

2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the [institutional body to be defined]. The arbitration panel shall notify its ruling to the Parties and to the [institutional body to be defined] within 20 days from the date of the submission of this request.

3. The Party complained against shall inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.

4. The reasonable period of time may be extended by mutual agreement of the Parties.

## ARTICLE 12

Review of any measure taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the complaining Party and the [institutional body to be defined] before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure taken to comply with the provisions referred to in Article 2, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and explain how such measure is inconsistent with the provisions referred to in Article 2, in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel shall notify its ruling to the Parties and to the [institutional body to be defined] within 45 days of the date of the submission of the request.

## ARTICLE 13

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under Article 12.1 is inconsistent with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party and after consultation with that Party, present an offer for temporary compensation.
2. If the complaining Party decides not to request an offer for temporary compensation under paragraph 1 of this article, or, in case such request is made, if no agreement on compensation is reached within 30 days after the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 12 that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the [institutional body to be defined], to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of suspension of obligation. The complaining Party may implement the suspension at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.
3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or the impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the [institutional body to be defined] before the expiry of the 10 day period referred to in paragraph 2. The original arbitration panel shall notify its ruling on the level of the suspension of obligation to the Parties and to the [institutional body to be defined] within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling and any suspension shall be consistent with the arbitration panel ruling.
4. The suspension of obligations and the compensation foreseen in this Article shall be temporary and shall not be applied after:
  - (a) the Parties have reached a mutually agreed solution pursuant to Article 17; or
  - (b) the Parties have agreed that the measure notified under Article 12.1 brings the Party complained against into conformity with the provisions referred to in Article 2; or

(c) any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under Article 12.2.

#### ARTICLE 14

##### Review of any measure taken to comply after the adoption of temporary remedies for non-compliance

1. The Party complained against shall notify the complaining Party and the [institutional body to be defined] of the measure it has taken to comply with the ruling of the arbitration panel following the suspensions of concessions on following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining party shall terminate the suspension of concessions within thirty (30) days from the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the defending party may terminate the application of such compensation within thirty (30) days from its notification that it has complied with the ruling of the arbitration panel.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such a request shall be notified simultaneously to the other Party and to the [institutional body to be defined]. The arbitration panel ruling shall be notified to the Parties and to the [institutional body to be defined] within 45 days of the date of the submission of the request. If the arbitration panel rules that the measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations or compensation as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the arbitration ruling.

#### **Sub-Section 3: Common Provisions**

#### ARTICLE 15

##### Replacement of Arbitrators

If an arbitration proceeding under Chapter [...], the original panel, or some of its members, are unable to participate, withdraw or need to be replaced because they do not comply with the requirements of the Code of Conduct set out in Annex II to this Agreement, the procedure set out in Article 6 of Chapter [...] shall apply. The time limit for the notification of the ruling shall be extended for the time necessary for the appointment of a new arbitrator but for no more than 20 days.

## ARTICLE 16

Suspension and termination of Arbitration and Compliance Procedures

The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months. The arbitration panel shall resume its work before the end of that period at the written request of both Parties or at the end of that period at the written request of any Party. The requesting Party shall inform the Chairperson of the [institutional body] and the other Party, accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in another proceeding subject to Article 23.

## ARTICLE 17

Mutually agreed solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the [institutional body to be defined] and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to this requirement, and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

## ARTICLE 18

Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure set out in Annex I to this Agreement and by the Code of Conduct set out in Annex II to this Agreement.
2. Any hearing of the arbitration panel shall be open to the public unless provided otherwise in the Rules of Procedure.

ARTICLE 19  
Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may request any information it deems appropriate for the arbitration panel preceeding from any source, including the Parties involved in the dispute. The arbitration panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Natural or legal persons established in the territory of a Party may submit *amicus curiae* briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained under this Article shall be disclosed to each of the Parties and submitted for their comments.

ARTICLE 20  
Rules of interpretation

Any arbitration panel shall interpret the provisions referred to in Article 2 in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention of 1969 on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of panels and the Appellate Body adopted by the WTO Dispute Settlement Body (hereinafter referred to as the "DSB"). The rulings of the arbitration panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 21  
Decisions and Rulings of the Arbitration Panel

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case shall dissenting opinions of arbitrators be disclosed [? - *unreadable*].
2. The ruling of the arbitration panel shall be unconditionally accepted by the Parties. It shall not create any rights or obligations for natural or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 2 and the basic rationale behind any findings and conclusions that it makes. The [institutional body to be defined] shall make the ruling of the arbitration panel publicly available in its entirety within 10 days of issuance, unless it decides not do so in order to protect the confidentiality of confidential information.

## Section 4

### General Provisions

#### ARTICLE 22

##### List of Arbitrators

1. The [institutional body to be defined] shall, no later than six months after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that are not nationals of either Party and who may serve as chairperson to the arbitration panel. Each sub-list shall include at least five individuals. The [institutional body to be defined] will ensure that the list is always maintained at that level.

2. Arbitrators shall have specialised knowledge and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct set out in Annex II to this Agreement.

3. The [institutional body to be defined] may establish additional lists of X individuals with knowledge and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 6 of this Chapter.

#### ARTICLE 23

##### Relation with WTO obligations

1. Recourse to the dispute settlement provisions of this Title shall be without prejudice to any action in the WTO framework, including dispute settlement action.

2. However a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under both this Agreement and the WTO Agreement in both fora. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of this Article,

- dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO;

- dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 5 paragraph 1.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

ARTICLE 24  
Time limits

1. All time limits laid down in this Chapter including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or the fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time-limit referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 25  
Review and Modification of the Chapter

The [institutional body to be defined] may decide to modify this Chapter and its Annexes.

**ANNEXES**

ANNEX I: RULES OF PROCEDURE

ANNEX II: CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS

ANNEX III: MEDIATION MECHANISM

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**ANNEX I**  
**RULES OF PROCEDURE**  
**General Provisions**

1. In Chapter [...] and under these rules:

"adviser" means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceeding;

"arbitrator" means a member of an arbitration panel established under Article 6 of Chapter [...];

"assistant" means a person who, under the terms of appointment of an arbitrator conducts research or provides assistance to that arbitrator;

"complaining Party" means any Party that requests the establishment of an arbitration panel under Article 5 of Chapter [...];

"Party complained against" means any Party that is alleged to be in violation of the provisions referred to in Article 2 of Chapter [...];

"arbitration panel" means a panel established under Article 6 of Chapter [...];

"representative of a Party" means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement;

"day" means calendar day.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. The Parties shall share the expenses derived from organizational matters, including the remuneration and the expenses of the arbitrators.

**Notifications**

3. Each Party to the dispute and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail to the other Party, and as regards written submissions and requests in the context of arbitration to each of the arbitrators. The arbitration panel shall circulate documents to the Parties also by e-mail. Unless proven otherwise an e-mail message shall be deemed to be received on the date of its sending. If any of the supporting documents are above 10 MB, they shall be provided in another electronic format to the other Party and where relevant to each of the arbitrators within x days from the sending of the e-mail.

4. A copy of the documents transmitted in accordance with paragraph 3 shall be submitted to the other Party and where relevant to each of the arbitrators on the day of sending the e-mail by facsimile transmission, registered post, courier, or delivery

against receipt or any other means of telecommunication that provides a record of the sending thereof.

5. All notifications shall be addressed to the [...] of [USTR] and to the Directorate-General for Trade of the European Commission respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on an official legal holiday of the US or of the EU, the document shall be deemed received the next business day.

#### **Commencing the Arbitration**

8. (a) If pursuant to Article 6 of Chapter [...] or to rules 19, 20 or 46 of these Rules of Procedure, any member of the arbitration panel is selected by lot, the lot shall be carried out at a time and place decided by the complaining Party to be promptly communicated to the Party complained against. Representatives of both Parties shall be invited, with sufficient advance notice, to be present when the lots are drawn. In any event, the lot shall be carried out with the Party/Parties that are present.

(b) If pursuant to Article 6 of Chapter [...] or to rules 19, 20 or 46 of these Rules of Procedure any member of the arbitration panel is selected by lot and there are two chairpersons of [institutional body to be defined], both chairpersons, or their delegates or one chairperson alone in cases where the other chairperson or his/her delegate does not accept to participate in the lot, shall perform the selection by lot.

(c) The Parties shall notify the selected arbitrators of their appointment.

(d) An arbitrator who has been appointed according to the procedure established in Article 6 of Chapter [...] shall confirm his/her availability to serve as member of the arbitration panel to the [institutional body to be defined] within five days of the date in which he/she was informed of his/her appointment

(e) Unless the Parties to the dispute agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties of the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards. The remuneration for each arbitrator's assistant shall not exceed 50% of the remuneration of that arbitrator. Members of the arbitration panel and representatives of the Parties to the dispute may take part in this meeting via telephone or video conference.

9. (a) Unless the Parties agree otherwise within five days from the date of selection of the arbitrators the terms of reference of the arbitration panel shall be:

*"to examine, in the light of the relevant provisions of the Agreement invoked by the parties to the dispute, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the*

*provisions referred to in Article 2 of Chapter [...] and to make a ruling in accordance with Articles 8 and 9 of Chapter [...] on Dispute Settlement."*

(b) The Parties must notify the agreed terms of reference to the arbitration panel within three days of their agreement.

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### **Initial Submissions**

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

### **Working of Arbitration Panels**

11. The chairperson of the arbitration panel shall preside over all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

12. Unless otherwise provided in Chapter [...], the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

13. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

14. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.

15. Where a procedural question arises that is not covered by the provisions of Chapter [...] and its annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

16. When the arbitration panel considers that there is a need to modify any of the time limits for its proceedings other than the time-limits set out in Chapter [...] or to make any other procedural or administrative adjustment, it shall inform the Parties to the dispute in writing of the reason for the change or adjustment and of the period of time or adjustment needed.

### **Replacement**

17. If an arbitrator is unable to participate in an arbitration proceeding under this Chapter, withdraws from it, or must be replaced because of non-compliance with the requirements of the Code of Conduct, a replacement shall be selected in accordance with Article 6 of Chapter [...] and rule 8 of these Rules of Procedure.

18. Where a Party to the dispute considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party should notify the other Party to the dispute within 15 days from the time at which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

19. Where a Party to the dispute considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties to the dispute shall consult and, if they so agree, select a new arbitrator in accordance with Article 6 of Chapter [...] and Rule 8 of these Rules of Procedure.

If the Parties to the dispute fail to agree on the need to replace an arbitrator, any Party to the dispute may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with Article 6 of Chapter [...] and Rule 8 of these Rules of Procedure.

20. Where a Party considers that the chairperson of the arbitration 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 Article 6 of Chapter [...] and Rule 8 of these Rules of Procedure.

If the Parties fail to agree on the need to replace the chairperson, any party may request that such matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons referred to in Article 22 paragraph 1 of Chapter [...]. His/her name shall be drawn by lot by the chair of the [institutional body to be defined], or the chair's delegate. The decision by that person on the need to replace the chairperson shall be final.

If that person decides that the original chairperson does not comply with the requirements of the Code of Conduct, he/she shall select a new chairperson by lot among the remaining pool of individuals from the sub-list of chairpersons referred to under Article 22 paragraph 1 of Chapter [...]. The selection of the new chairperson shall be carried out within five days of the date of the submission of the date of the decision referred to in this paragraph.

21. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in Rules 18, 19 and 20, but for no more than 20 days.

### **Hearings**

22. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties to the dispute and the other members of the arbitration panel, and shall confirm this in writing to the Parties to the dispute. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the US and in [Washington, D.C.] if the complaining Party is the EU.

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

25. All arbitrators shall be present during the entirety of any hearings.

26. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

(a) representatives of the Parties to the dispute;

- (b) advisers to the Parties to the dispute;
- (c) administrative staff, interpreters, translators and court reporters and
- (d) arbitrators' assistants.

Only the representatives and advisers of the Parties to the dispute may address the arbitration panel.

27. No later than five days before the date of a hearing, each party to the dispute shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentation at the hearing on behalf of that Party and of other representatives or advisers attending the hearing.

28. The arbitration panel shall conduct the hearing in the following manner ensuring that the complaining Party and the Party complained against are afforded equal time:

*Argument*

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

*Rebuttal Argument*

- (a) argument of the complaining Party
- (b) counter-reply of the Party complained against

29. The arbitration panel may direct questions to either Party to the dispute at any time during the hearing.

30. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties to the dispute. The Parties to the dispute may comment on the transcript and the arbitration panel may consider those comments.

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

**Questions in writing**

32. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties to the dispute. Each Party to the dispute shall receive a copy of any questions put by the arbitration panel.

33. A Party to the dispute shall also provide a copy of its written response to the arbitration panel's questions to the other Party to the dispute. Each Party to the dispute shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt of such reply.

**Confidentiality**

34. Each Party to the dispute and its advisers shall treat as confidential any information submitted by the other Party to the dispute to the arbitration panel which that Party has designated as confidential. Where a Party to the dispute submits a confidential version of its written submission to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later, and an explanation as to why the non-disclosed information is confidential. Nothing in these rules shall preclude a Party to the dispute 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. The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties to the dispute and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are in closed session.

***Ex-parte contacts***

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

36. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties to the dispute in the absence of the other arbitrators.

***Amicus curiae submissions***

37. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party to the dispute who are independent from the governments of the Parties to the dispute, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 pages typed at double space and that they are directly relevant to a factual or a legal issue under consideration by the arbitration panel.

38. The submission shall contain a description of the person making the submission whether natural or legal including its nationality or place of establishment, the nature of its activities, its legal status, general objectives and the source of its financing, and specify the nature of the interest that the person has in the arbitration panel proceeding. It shall be drafted in the languages chosen by the Parties to the dispute in accordance with rules 41 and 42 of these Rules of Procedure.

39. The arbitration panel shall list in its ruling all the submissions it has received that conform to rules 37 and 38. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any such submission shall be submitted to the Parties to the dispute for their comments. The comments of the Parties to the dispute shall be submitted within 10 days, and any such comments shall be taken into consideration by the arbitration panel.

**Urgent cases**

40. In the cases of urgency referred to in Chapter [...], the arbitration panel, after consulting the Parties, shall adjust the time-limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

41. During the consultations referred to in Article 3 of Chapter [...], and no later than the meeting referred to in Rule 8(e) of these Rules of Procedure, the Parties to the dispute shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

42. If the Parties to the dispute are unable to agree on a common working language, each Party shall make its written submissions in its chosen language. In such case, each Party shall provide at the same time a translation in the language chosen by the other Party, unless its submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

43. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties to the dispute.

44. Any party to the dispute may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these rules.

45. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for the translation of an arbitration ruling shall be borne equally by the Parties to the dispute.

**Other procedures**

46. These Rules of Procedure are also applicable to procedures established under Article 3, 11(2), 12(3), 13(2) and 14(2) of Chapter [...]. However, this time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

**Annex II**  
**CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND  
MEDIATORS**

**Definitions**

1. In this Code of Conduct:

- (a) "arbitrator" means a member of an arbitration panel effectively established under Article 6 of Title [...];
- (b) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 22 of Chapter [...] and who is under consideration for selection as a member of an arbitration panel under Article 5 of Chapter [...];
- (c) "assistant" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the arbitrator;
- (d) "proceeding", unless otherwise specified, means an arbitration panel proceeding under Chapter [...];
- (e) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants;
- (f) "mediator" means a person who conducts a mediation procedure in accordance with Annex III (Mediation)".

**Responsibilities to the Process**

2. Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former arbitrators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

**Disclosure obligations**

3. Prior to confirmation of his/her selection as an arbitrator under Chapter [...], a candidate shall disclose any interest, relationship or matter that is likely to affect his/her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or arbitrator shall communicate in writing matters concerning actual or potential violations of this Code of Conduct only to the [institutional body to be defined] for consideration of the Parties.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code

of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The arbitrator shall disclose such interests, relationships or matters by informing the [institutional body to be defined], in writing, for consideration by the Parties.

#### **Duties of arbitrators**

6. Upon confirmation of his/her selection, an arbitrator shall be available to perform and shall perform his/her duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. An arbitrator shall take all appropriate steps to ensure that his/her assistant and staff are aware of, and comply with paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. An arbitrator shall not engage in ex parte contacts concerning the proceeding.

#### **Independence and impartiality of arbitrators**

10. An arbitrator must be independent and impartial, avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his/her duties.
12. An arbitrator may not use his/her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence him/her.
13. An arbitrator may not allow financial, business, professional, personal, or social relationships or responsibilities to influence his/her conduct or judgement.
14. An arbitrator must avoid entering into any relationship or acquiring any financial interest that is likely to affect his/her impartiality or that might reasonably create an appearance of impropriety or bias.

#### **Obligations of former arbitrators**

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

#### **Confidentiality**

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the

purposes of that proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Chapter [...].

18. An arbitrator or former arbitrator shall not disclose the deliberations of an arbitration panel, or any arbitrator's view at any time.

#### **Expenses**

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his/her expenses, as well as the time and expenses of his/her assistant and staff.

#### **Mediators**

20. The disciplines described in this Code of Conduct as applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators.

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**ANNEX III**  
**MEDIATION MECHANISM**

**ARTICLE 1**

**Objective**

The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

**Section A**  
**Procedure under the Mediation Mechanism**

**ARTICLE 2**

**Request for Information**

1. Before the initiation of the mediation procedure, a Party may request at any time in writing information regarding a measure adversely affecting trade or investment between the Parties. The party to which such request is made shall provide, within 20 days of receipt of the request, a written response containing its comments on the information contained in the request.

2. Where the responding Party considers that a response within 20 days of receipt of the request is not practicable, it shall inform the requesting Party of the reasons for the delay, together with an estimate of the shortest period within which it will be able to provide its response.

**ARTICLE 3**

**Initiation of the Procedure**

1. 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 to present the concerns of the requesting Party clearly and shall:

(a) identify the specific measure at issue;

(b) provide 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) explain how the requesting Party considers that those effects are linked to the measure.

2. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which a request pursuant to paragraph 1 is addressed shall give sympathetic consideration to the request and reply in writing within 10 days of its receipt.

#### ARTICLE 4

##### Selection of the Mediator

1. Upon the launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the receipt of the reply to the request referred to in Article 3.

2. In the event that the Parties are unable to agree on the mediator within the time frame laid down in paragraph 1, either Party may request the chair of the [institutional body to be defined], or the chair's delegate, to select the mediator by lot from the list of chairpersons established under Article [22 paragraph 1 of the DS chapter]. Representatives of both Parties shall be invited, with sufficient advance notice, to be present when the lots are drawn. In any event, the drawing of lots shall be carried out with the Party/Parties that are present.

3. The chair of the [institutional body to be defined], or the chair's delegate, shall select the mediator within five working days of the request made by either party under paragraph 2 of this Article.

4. Should the list referred to in Article [22 paragraph 1 of the DS chapter] not be established at the time a request is made pursuant to Article 3 the mediator shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties for the list of chairpersons.

5. A mediator shall not be citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The [Code of Conduct] shall apply to mediators, *mutatis mutandis*. Rules 3 to 7 (Notifications) and 41 to 45 (Translation and calculation of time limits) of the [Rules of Procedure] shall also apply, *mutatis mutandis*.

## ARTICLE 5

Rules of the Mediation Procedure

1. Within 10 days after the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days after the date of delivery of this description, the other Party may provide, in writing, its comments on the description of the problem. Either Party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organize meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the parties.
3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution or agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.
4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.
5. The Parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.
6. The solution may be adopted by means of a decision of the [institutional body to be defined]. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public may not contain any information that a Party has designated as confidential.
7. On request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within that period, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;
- (b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;
- (c) 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, or
- (d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

**Section B**  
**Implementation**

ARTICLE 6

Implementation of a Mutually Agreed Solution

1. Where the Parties reached agreement on a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

**Section C**  
**General Provisions**

ARTICLE 7

Confidentiality and Relationship to Dispute Settlement

1. Unless the Parties agree otherwise, and without prejudice to Article 5 paragraph 6, all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public the fact that mediation is taking place.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement in this Agreement or any other agreement.

3. Consultations under the Dispute Settlement Chapter are not required before initiating the mediation procedure. However, a Party should normally avail itself of the other relevant cooperation or consultation provisions provided for in this Agreement before initiating the mediation procedure.

4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this agreement or any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information gathered under Article 5 paragraph 2.

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

5. A mediator may not serve as a member of a panel in a dispute settlement proceeding under this Agreement or under WTO Agreement involving the same matter for which he/she has been a mediator.

#### ARTICLE 8 Time Limits

Any time-limit referred to in this Annex may be modified by mutual agreement between the Parties involved in these procedures.

#### ARTICLE 9 Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.

2. The Parties shall share jointly and equally the expenses derived from the organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that foreseen for a chairperson of an arbitration Panel in accordance with [Rule 8(e) of the Rules of Procedure].

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