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EU-Mexico Free Trade Agreement

Chapter on Dispute Settlement

Annex on Rules of Procedure

Panel Procedures (Section 3) under Chapter XX (Dispute Settlement) shall be conducted in accordance with the Rules of Procedure set out in this Annex in accordance with Article X.19 (Rules of Procedure) of the Part III [Trade]¹ of the Agreement.

I. Definitions

1. In Chapter [X] (Dispute Settlement) and under these Rules of Procedure:

"administrative staff", in respect of a panellist, means individuals under the direction and control of a panellist, other than assistants;

"adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;

"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;

"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 Part X [Trade] of the Agreement, including a legal counsel or other advisor or consultant of a Party whom the Party has authorised to act on its behalf in the course of the dispute²;

"Code of Conduct" means the code of conduct contained in Annex XX to Chapter XX (Dispute Settlement);

"complaining Party" means any Party that requests the establishment of panel under Article [X.4] (Initiation of Panel Procedures) of Chapter [X] (Dispute Settlement);

"date of delivery" means:

- (a) for a document submitted by a Party, the date on which the other Party receives

¹ Note – references to Trade Chapter and provisions of DS text need to be revised in light of final structure.

² A Party shall not appoint as representative persons that could be reasonably be expected to benefit outside of proceedings under Chapter XX (Dispute Settlement) from the receipt of confidential information.

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the document; and

- (b) for a document from the panel, the date on which it transmits an electronic document to the Parties or non-governmental entities;]

“day” means a calendar day;

“expert” means a person or body providing information or technical advice under Article X.21 (Receipt of Information);

“panel” means a panel established under Article [X.5] (Establishment of a Panel) of Chapter [X] (Dispute Settlement);

“panellist” means a member of a panel;

“Party complained against” means the Party that is alleged to be in violation of the covered provisions; and

“public holiday” means for any year, Saturday, Sunday and any other day officially designated by that Party as a public holiday.

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 notification referred to under rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
4. All notifications shall be addressed to the office or offices designated by the Parties pursuant to Article [XX] (Administration of the Dispute Settlement Procedure) of Chapter [X] ("Dispute Settlement").
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. The correction of minor errors of a clerical nature shall not affect the timetable of the proceedings.
6. In the event that the date of delivery of a document falls on a public holiday of the European Commission or of Mexico, or any other days on which the offices designated pursuant to Article [XX] (Administration of the Dispute Settlement Procedure) of

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Chapter [X] ("Dispute Settlement"), the document shall be deemed delivered on the next business day. At the organisational meeting referred to in [Section] IV, each Party shall submit a list of its legal holidays, of any other days on which its office are officially closed, and the normal business hours of such office. Each Party shall keep its list updated during the panel procedure.

III. Appointment of Panellists

7. For the purposes of paragraph 6 and 7 of Article X.5 of Chapter SSDS, the following persons may serve as appointing authority for the composition of the panel:
 - (a) The President of the Appeal Tribunal of the ICS referred to in Article XX of Chapter XX (Investment/ICS); or
 - (b) The Secretary General of the Permanent Court of Arbitration.
8. In making the selection under paragraph 6 and 7 of Article X.5 (Composition of a Panel), the appointing authority shall select the panellist from the sub-list of the responding Party established under Article XX or the chairperson of the panel from the sub-list of chairpersons established under Article XX. The appointing authority shall respect any terms and conditions that may be agreed by the disputing Parties.
- X.8.bis The appointing authority shall promptly inform the Parties of the date, time and venue of the lot. The Parties shall be present during the lot.
- X.8.ter Without prejudice to Rule X.8.bis, the lot shall be carried out within the time period set out in paragraph 6 of Article X.5 with the Party or Parties that are present.
9. For the purposes of paragraph 4, 6 and 7 of Article X.5 of Chapter SSDS, if any of the sub-lists referred in paragraph 1 of Article [X.6] (List of Panellists):
 - (a) has not been adopted by the Joint Committee, the panelist(s) or chairperson shall be selected amongst those individuals who have been designated by one or both Parties for that particular sub-list and notified (in writing) to the other Party; or
 - (b) does not contain any longer at least five individuals, the panelist(s) or chairperson shall be selected amongst those individuals who remain on that particular sub-list.
- X. Immediately upon appointment, the designated office of the complainant or the office jointly designated by the Parties shall notify, in writing, each individual who has been selected to serve as a panellist of his or her appointment and provide them with a copy of the Code of Conduct. Each individual shall confirm his or her availability to the office or offices designated by the Parties within five days from the date on which he or she

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was informed of his or her appointment and shall provide a disclosure statement in accordance with section/part III of Annex Code of Conduct (Disclosure Obligations).

- X. Once all three selected panelists have confirmed that they are able to serve on the panel, the relevant designated office shall promptly notify the Parties of the composition of the panel.

IV bis. Lists of Panellists

- X1. Each Party shall, no later than 2 months after the entry into force of this Agreement, notify in writing to the other Party the individuals that it designates for the sub-lists referred to in paragraph 1 of Article X.6 (Lists of Panellists).
- X2. Within a period of 30 days after the notification under [Rule X1], a Party may object an individual designated by the other Party for the sub-list referred to in paragraph 1(a) and 1(b) of Article X.6 if it considers that such individual does not comply with Article X.7 (Requirements for Panellists). The Parties shall consult on whether the individual complies with requirements in Article X.7 within 15 days from the receipt of the notification of the objection. In case of disagreement, the Party shall remove the individual objected by the other Party from the sub-list and designate a new individual.
- X3. Within a period of 30 days after the notification under [Rule X1], the Parties shall agree on the sub-list of individuals who shall serve as chairperson to the panel referred to in paragraph 1(c) of Article X. 6 on the basis of individuals designated by each Party.
- X4. Each Party may decide to modify its sub-list at any time. In such case, each Party shall notify in writing to the other Party the individuals that it designates; the procedure set out under [rule X2] shall apply mutatis mutandis. The Parties may also modify the sub-list of individuals who shall serve as chairperson by mutual agreement.
- X5. The Joint Committee shall adopt any modifications to the sub-lists of the Parties at the latest within 6 months from the receipt of the notification in [Rule X4].

IV. Organisational Meeting

10. Unless the Parties agree otherwise, they shall meet the panel within seven days of its establishment in order to determine such matters that the Parties or the panel deem appropriate, including:

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- (a) the remuneration and expenses to be paid to the panellists, which will be in accordance with WTO standards³;
- (b) the remuneration to be paid to assistants. The total amount of the remuneration of an assistant or assistants of each panellist shall not exceed 50% of the remuneration of that panellists; and
- (c) the timetable of the proceedings, setting forth *inter alia* precise dates for the filing of submissions and the date for the oral hearing.

Panellists and representatives of the Parties may take part in this meeting *via* telephone or video conference.

V. Written Submissions

11. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the panel. The Party complained against shall deliver its initial written submission no later than 20 days after the date of delivery of the written submission of the complaining Party. The complaining Party shall deliver its rebuttal written submission, if any, no later than [20] days after the date set for submission of the initial written submission of the responding Party. The Party complained against shall deliver its rebuttal written submission, if any, no later than [20] days after the date set for submission of the written rebuttal submission of the complaining Party.

VI. Operation of the Panel

12. 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.
13. Unless otherwise provided in Chapter [X] (Dispute Settlement) or in these Rules of Procedure, the panel may conduct its activities by any means, including by telecommunication means.
14. Only panellists may take part in the deliberations of the panel, but the panel may permit their assistants to be present at its deliberations.
15. The drafting of any decision and report shall remain the exclusive responsibility of the panel and shall not be delegated.

³ MX: May propose a specific provision for remuneration.

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16. Where a procedural question arises that is not covered by the provisions of Chapter [X] (Dispute Settlement), including this Annex, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
17. When 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 [X] (Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consultation of the Parties, of the reasons for the change or adjustment and of the time period or adjustment needed.

VII. Replacement

18. When a Party considers that a panellist does not comply with the requirements of Annex II (Code of Conduct for Panellists and Mediators) 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 panellist's alleged failure to comply with the requirements of Annex II (Code of Conduct for Panellists and Mediators).
19. The Parties shall consult within 15 days. They shall inform the panellist of its alleged failure and they may request the panellist to take steps to ameliorate the failure. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article X.5 (Composition of Panels) of Chapter [X] (Dispute Settlement).
20. If the Parties fail to agree on the need to replace the 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 II (Code of Conduct for Panellists and Mediators), the new panellist shall be selected in accordance with Article X.5 (Composition of Panels) of Chapter [X] (Dispute Settlement).

21. 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 under Article X.6 (Lists of Panellists) of Chapter [X] (Dispute Settlement). His or her name shall be drawn by lot by the appointing authority. The decision by the selected person on the need to replace the chairperson shall be final.

If this person finds that the chairperson does not comply with the requirements of Annex II (Code of Conduct for Panellists and Mediators), the new chairperson shall be selected in accordance with Article X.5 (Composition of Panels) of Chapter [X] (Dispute Settlement).

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VIII. Hearings⁴

22. After consulting with the Parties and the other panellists, the chairperson of the panel shall notify the Parties the date (which shall normally correspond to the date set out in the timetable determined pursuant to rule 10), 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.
23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Mexico, and in Mexico if the complaining Party is the Union. The Party complained against shall bear the expenses derived from the logistical administration of the hearing.
24. The panel may convene additional hearings if the Parties so agree.
25. All panellists shall be present during the entirety of the hearing.
26. 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 of a Party;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and
 - (e) experts, as decided by the panel pursuant to paragraph 2 of Article [21] (Receipt of Information) of Chapter [X] (Dispute Settlement).
- X. The responsible/designated office shall, in consultation with the panel and the Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public. Members of the public, including accredited journalists and non-governmental entities, wishing to attend hearings may be asked to register in advance of the hearing, and depending on the venue, seats may be limited. If seats are limited, they shall be allocated on a first-come, first-served basis upon receipt of the completed registration form. No audio or visual recording of the hearing by members of the public shall be permitted.
- X. A Party that wishes to submit or discuss confidential information during a hearing shall provide prior notice to the panel and the designated/responsible office. To the extent possible, the Party shall provide the notice at least 10 days before the first day of the hearing.
- X. During a closed portion of a hearing, only persons referred to under Rule 26 may be present. Persons who view and hear confidential information shall not disclose it, or

⁴ Note - To be reviewed in the light of the agreements in the DS Chapter

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allow it to be disclosed, and shall only use that information for the purposes of the panel proceeding.

27. 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 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.
28. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time in both argument and rebuttal argument:

Argument

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

Rebuttal Argument

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

29. The panel shall afford the possibility to the Parties to issue closing statements. The panel may direct questions to either Party at any time during the hearing.
30. 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.
31. 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. The other Party may provide written comments on any supplementary written submission that a Party submits within five days after the delivery of such submission.

IX. Questions in Writing

32. The panel may at any time during the panel 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 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 five days after the delivery of such copy.

Public Release of Documents

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XX. Subject to the protection of confidential information, in accordance with Rules 34 and 35:

- (a) a Party making a request pursuant to Article [X.3 bis] (Consultations) or Article [X. 4] ([EU: Initiation of Panel Proceedings] [MX; Establishment of a Panel]) shall release a copy of the request to the public no later than 15 days after date of delivery of that request; and
- (b) each disputing Party shall make available to the public its written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, as soon as possible after such documents are filed and no later than the date of the delivery of the final report.

XX. No Party may disclose publicly the contents of an initial report presented to the disputing Parties pursuant to Article [X.11] (Interim Report) or the contents of any comments made on an interim report.

X. Confidentiality

- 34. 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, written version of an oral statement, and written response to a request or question from the panel, which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which can be disclosed to the public.
- 35. Nothing in these Rules of Procedure 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.
- 36. After consulting the Parties, the panel may establish additional ad hoc procedures that it considers necessary to protect confidential information.

XI. Ex parte contacts

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

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39. Unless the Parties agree otherwise within five days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from natural person of a Party or legal persons established in the territory of a Party who are independent from the governments of the Parties, provided that they:
- (a) are received by the panel within ten days of the date of the establishment of the panel;
 - (b) are concise and in no case longer than fifteen 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;
 - (f) specify the nature of the interest that the person has in the panel proceedings; and
 - (g) are drafted in the languages chosen by the Parties in accordance with rules 43 and 44 of these Rules of Procedure.
40. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 10 days of the delivery, to the panel.
41. The panel shall list in its report all the submissions it has received pursuant to rule 39. The panel shall not be obliged to address in its report the arguments made in such submissions, however, if it does, it shall also take into account any comments made by the Parties pursuant to rule 40.

XXX. Receipt of Opinion or Technical Advice from Experts

- XX. If a Party requests the panel to seek the opinion or technical advice from an expert, that Party shall notify the panel and the other Party of such request. If a panel wishes to seek an opinion or technical advice from an expert, it shall also notify the Parties. No later than 15 days after the date of delivery of any such notification, the panel shall consult with the Parties to determine whether such consultation is warranted, and to agree on the terms and conditions of the request for opinion or technical advice, including, as appropriate, the source (alt. person) from which the opinion or technical advice should be sought.

XIII. Urgent cases

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42. In cases of urgency referred to in Article X.10 (Decision of Urgency) of Chapter [X] (Dispute Settlement), the panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure. The panel shall notify the Parties of those adjustments.

XIV. Translation and interpretation

43. During the consultations referred to in Article X.3 of Chapter [X] (Dispute Settlement), and no later than the meeting referred to in rule 10 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.
44. If the Parties are unable to agree on a common working language, each Party shall make its written submissions, written version of an oral statement, and written response to a request or question from the panel, or any other document related to the panel proceedings, in its chosen language. 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.
45. 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.
46. Any 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.
47. Each Party shall bear the costs of the translation of its written submissions, written version of an oral statement, and written response to a request or question from the panel or any other document related to the panel proceedings. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

Time periods

- XX. Where Chapter [X] (Dispute Settlement), these Rules, or the panel requires a notification to be made, or an action to be taken, before or after a date or event, the computation of such time period shall not include the day of that date or event.
- XX. In the event of an extension of a time period, including when an extension is necessary due to *force majeure* reasons affecting a Party, the relevant time periods shall be adjusted accordingly.

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XV. Other Procedures

48. The time periods laid down in these Rules of Procedure 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 X.14 (Reasonable Period of Time), Article X.15 (Compliance Review), Article X.16 (Temporary Remedies) and Article X.17 (Review of any Measure taken to comply after the Adoption of Temporary Remedies) of Chapter [X] (Dispute Settlement).