

This document contains an EU proposal for an Annex on Rules of procedure in the Dispute Settlement Chapter in the Trade Part of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

EU-Chile Free Trade Agreement

EU TEXTUAL PROPOSAL

DISPUTE SETTLEMENT CHAPTER

ANNEX XX

RULES OF PROCEDURE

I. Definitions

1. In Chapter [...] and under these Rules of Procedure:
 - (a) "administrative staff", in respect of a panellist, means individuals under the direction and control of a panellist, other than assistants;
 - (b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;
 - (c) "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;
 - (d) "complaining Party" means any Party that requests the establishment of panel under Article [X.4] (Initiation of Panel Procedures) of Chapter [X] (Dispute Settlement);
 - (e) "day" means a calendar day;
 - (f) "panel" means a panel established under Article [X.5] (Establishment of a Panel) of Chapter [X] (Dispute Settlement);
 - (g) "panellist" means a member of a panel;
 - (h) "Party complained against" means the Party that is alleged to be in violation of the covered provisions;
 - (i) "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 XX] of 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 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 Directorate-General for Trade of the Commission of the Union and to [...] of [...], 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 public holiday of the European Commission or of [XX] the document shall be deemed delivered on the next business day.

III. Appointment of Panellists

7. If pursuant to Article [X.5] (Establishment of a Panel) of Chapter [X] (Dispute Settlement), a panellist is selected by lot, the co-chair of the [institutional body to be defined] of the complaining Party shall promptly inform the co-chair of the Party complained against of the date, time and venue of the lot. The Party complained against may, if it so chooses, be present during the lot. In any event, the lot 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 appointment. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment.
9. The co-chair of the [institutional body to be defined] of the complaining Party shall select by lot the panellist or chairperson, within five days from the expiry of the time period referred to in paragraph 2 of Article [X.5] (Establishment of a Panel), if any of the sub-lists referred in paragraph 1 of Article [X.6] (List of Panellists):
 - (a) is not established, amongst those individuals who have been formally proposed by one or both Parties for the establishment of that particular sub-list; or
 - (b) does not contain any longer at least five individuals, amongst those individuals who remain on that particular sub-list.

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:
 - (a) the remuneration and expenses to be paid to the panellists, which will be in accordance with WTO standards;
 - (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 panellist.
 - (c) the timetable of the proceedings.

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 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

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 telephone, facsimile transmissions or computer links.
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.
16. Where a procedural question arises that is not covered by the Chapter [X] (Dispute Settlement) and its Annexes, 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 XX (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 XX (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 (Establishment 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 XX (Code of Conduct for Panellists and Mediators), the new panellist shall be selected in accordance with Article X.5 (Establishment 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 co-chair of the [institutional body to be defined] 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 this person finds that the chairperson does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators), the new chairperson shall be selected in accordance with Article X.5 (Establishment of Panels) of Chapter [X] (Dispute Settlement).

VIII. Hearings

22. Based upon the timetable determined pursuant to rule 10, 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. 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 Chile and in Santiago 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).

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 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.

IX. Questions in Writing

32. The panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
33. Each Party shall provide the other Party with a copy of its 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.

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 which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which shall 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. The panel shall meet in closed session when the submission and arguments of a Party contains business confidential information. The Parties shall maintain the confidentiality of the panel hearings when the hearings are held in closed session.

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

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 10 days of 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;
 - (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.

XIII. Urgent cases

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 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. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

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).
