

Chapter 28: Dispute Settlement – Text of the 2023 Canada - Ukraine Free Trade Agreement

The 2017 CUFTA will remain in force until entry into force of the 2023 modernized agreement. Until such time, please refer to the [2017 CUFTA text](#) for information on the existing trade agreement between Canada and Ukraine.

Section A - State to State Dispute Settlement

Article 28.1: Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 28.7;

panel means a panel established under Article 28.7; and

Party complained against means the Party that receives the request for the establishment of a panel under Article 28.7.

Article 28.2: Cooperation

The Parties shall endeavour to come to an understanding on the interpretation and application of this Agreement, and attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that may affect its operation.

Article 28.3: Scope and Coverage

1. Except for matters arising under Chapters 6 (Sanitary and Phytosanitary Measures), 12 (Intellectual Property), 16 (Trade-Related Cooperation), 9 (Competition Policy) and 10 (Designated Monopolies and State-Owned Enterprises) and as

otherwise provided under this Agreement, the provisions of this Chapter apply with respect to the settlement of disputes between the Parties regarding the interpretation or application of this Agreement, including whenever a Party considers that:

- (a) an actual or proposed measure of the other Party is or would be inconsistent with one of its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out one of its obligations under this Agreement; or
- (c) there is nullification or impairment within the meaning of Annex 28-A (Nullification or Impairment).

2. Annex 28-B (Dispute Settlement for Anti-Corruption) applies to a dispute arising under Section B of Chapter 15 (Transparency, Anti-Corruption and Responsible Business Conduct). Except as set out in the Annex 28-B (Dispute Settlement for Anti-Corruption), Articles 28.4 through 28.14 do not apply to that dispute.

Article 28.4: Choice of Forum

1. Subject to paragraph 2, a dispute regarding a matter arising under both this Agreement and the WTO Agreement or any other free trade agreement to which both Parties are party may be settled in a forum designated under the terms of one of these agreements at the discretion of the complaining Party.

2. If the complaining Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other.

Article 28.5: Consultations

1. A Party may request, in writing, consultations with the other Party regarding a matter referred to in Article 28.3.

2. The Party requesting consultations shall deliver the request to the other Party, setting out the reasons for the request,

identifying the measure or matter at issue under Article 28.3 and indicating the legal basis for the complaint.

3. Subject to paragraph 4, the Parties, unless they otherwise decide, shall enter into consultations within 30 days of the date of receipt of the request by the other Party.

4. In urgent cases, including those involving a good or service that rapidly loses its trade value, such as perishable goods, consultations shall commence within 15 days of the date of receipt of the request by the other Party.

5. The requesting Party may request that the other Party make available personnel of its governmental agencies or other regulatory bodies with expertise in the subject matter of the consultations.

6. The Parties shall attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article. To this end, each Party shall:

- (a) provide sufficient information for a full examination of the measure or matter at issue; and
- (b) treat as confidential any information, including proprietary information, received in the course of consultations that is designated as confidential by the Party providing the information.

7. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

8. Consultations may be held in person or by another means that the Parties decide.

Article 28.6: Good Offices, Conciliation, and Mediation

1. The Parties, at any time, may decide to undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. The Parties shall conduct alternative methods of dispute resolution according to procedures on which they decide.

3. Either Party, at any time, may begin, suspend or terminate proceedings established under this Article.

4. Proceedings involving good offices, conciliation and mediation are confidential and without prejudice to the rights of the Parties in other proceedings.

Article 28.7: Establishment of a Panel

1. Unless the Parties decide otherwise, the complaining Party may refer the matter to a dispute settlement panel if a matter referred to in Article 28.5 has not been resolved:

- (a) within 45 days of the date of receipt of the request for consultations; or
- (b) within 25 days of the date of receipt of the request for consultations for matters referred to in Article 28.5(4).

2. The complaining Party shall deliver the written request for panel establishment to the Party complained against, indicating the reason for the request, identifying the specific measure or other matter at issue, and providing a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

Article 28.8: Panel Selection

1. The panel shall consist of three panellists.

2. Within 30 days of receiving the request to establish a panel, each Party shall notify the other Party of its appointment of a panellist, and propose up to four candidates to serve as the chair of the panel. If a Party fails to appoint a panellist within this time, the panellist shall be selected by the other Party from the candidates proposed for the chair.

3. The Parties, within 45 days of the date of receipt of the request for panel establishment, shall endeavour to select a panellist who will serve as a chair from among the candidates proposed. If the Parties fail to select a chair within this time period, within a further 7 days the chair shall be selected randomly from the candidates proposed.

4. If a panellist appointed by a Party withdraws, is removed, or becomes unable to serve, a replacement shall be appointed by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2.

5. If the chair of the panel withdraws, is removed, or becomes unable to serve, the Parties shall endeavour to decide on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3.

6. If an appointment pursuant to paragraph 4 or 5 requires selecting from the list of candidates proposed for chair and there are no remaining candidates, each Party shall propose up to 3 additional candidates within 30 days and, within 7 days of that deadline, the panellist or the chair, as the case may be, shall be selected randomly from the candidates proposed.

7. A time limit applicable to the proceeding is suspended as of the date the panellist withdraws, is removed, or becomes unable to serve, and resumes on the date that the replacement is selected.

Article 28.9: Qualifications of Panellists

1. Each panellist shall:

- (a) have expertise or experience in law, international trade or other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, either Party;
- (d) not be a national of a Party, nor have their usual place of residence in the territory of a Party, nor be employed by either of them;

- (e) comply with a Code of Conduct that the Joint Commission shall approve; and
- (f) not have been involved in an alternative dispute settlement proceeding referred to in Article 28.6 regarding the same dispute.

2. For a dispute arising under Chapter 14 (Labour) or Chapter 13 (Environment), each Party shall select a panellist in accordance with the following requirements, in addition to those requirements set out in paragraph 1:

- (a) in a dispute arising under Chapter 14 (Labour), panellists other than the chair shall have expertise or experience in labour law or practice; and
- (b) in a dispute arising under Chapter 13 (Environment), panellists other than the chair shall have expertise or experience in environmental law or practice.

Article 28.10: Rules of Procedure

1. A panel shall follow the provisions of this Chapter, including Annex 28-C (Rules of Procedure). A panel, in consultation with the Parties, may establish supplementary rules of procedure that do not conflict with the provisions of this Chapter.

2. Unless the Parties decide otherwise, the rules of procedure shall ensure that:

- (a) each Party has the opportunity to provide initial and rebuttal written submissions;
- (b) the Parties have the right to at least one hearing before the panel; subject to subparagraph (g) these hearings shall be open to the public;
- (c) the Parties have the right to present and receive written submissions and oral arguments in any of the Parties' official languages;
- (d) all submissions and comments made to the panel are available to the other Party;

- (e) a Party makes available to the public either Party's written submissions, transcripts of oral statements, and written responses to requests or questions from the panel, subject to subparagraph (g);
- (f) the panel allows a non-governmental person of a Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties; and
- (g) information designated by either Party for confidential treatment is protected.

3. Unless the Parties decide otherwise, within 15 days of the date of receipt of the request for panel establishment, the terms of reference of the panel shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of the panel and to make findings, determinations and recommendations as provided in Article 28.11."

4. If the complaining Party claims that a benefit has been nullified or impaired within the meaning of Annex 28-A (Nullification or Impairment), the terms of reference shall so indicate.

5. If a Party so requests, the terms of reference of a panel shall include determining the degree of adverse trade effects on a Party of a measure found:

- (a) to be inconsistent with an obligation in the Agreement; or
- (b) to have caused nullification or impairment within the meaning of Annex 28-A (Nullification or Impairment).

6. At the request of a Party, or on its own initiative, the panel may seek information and technical advice from a person or body it deems appropriate, subject to those terms and conditions that the Parties may decide upon.

7. The panel may rule on its own jurisdiction.

8. The panel may delegate to the chair authority to make administrative and procedural decisions.

9. The panel, in consultation with the Parties, may modify a time period applicable in the panel proceedings and make other procedural or administrative adjustments required for the fairness or efficiency of the proceeding.

10. Findings, determinations and recommendations of the panel under Article 28.11 shall be made by a majority of its members.

11. Panellists may furnish separate opinions on matters not unanimously agreed. A panel may not disclose which panellists are associated with majority or minority opinions.

12. Unless the Parties decide otherwise, the expenses of the panel, including the remuneration of the panellists, shall be borne in equal shares by the Parties.

Article 28.11: Panel Reports

1. Unless the Parties decide otherwise, the panel shall issue reports in accordance with the provisions of this Chapter.

2. The panel shall base its reports on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and arguments of the Parties and information and technical advice before it under the provisions of this Chapter.

3. The panel shall issue an initial report to the Parties within 120 days of the selection of the last panellist. This report shall contain:

- (a) findings of fact;
- (b) a determination as to whether the Party complained against has conformed with its obligations under this Agreement and any other finding or determination requested in the terms of reference; and
- (c) a recommendation for resolution of the dispute, if requested by a Party.

4. Notwithstanding Article 28.10, the initial report of the panel shall be confidential.

5. A Party may submit written comments to the panel on its initial report, subject to time limits that may be set by the panel. After considering those comments, the panel, on its own initiative or on the request of a Party, may:

- (a) request the views of a Party;
- (b) reconsider its report; or
- (c) carry out a further examination that it considers appropriate.

6. The panel shall present to the Parties a final report within 30 days of presentation of the initial report.

7. Unless the Parties decide otherwise, the final report of the panel may be published by either Party 15 days after it is presented to the Parties, subject to Article 28.10(2)(g).

Article 28.12: Implementation of the Final Report

1. On receipt of the final report of a panel, the Parties shall decide on the resolution of the dispute. Unless the Parties decide otherwise, the resolution shall conform with a determination or recommendation made by the panel.

2. Whenever possible, the resolution shall be the removal of a measure not conforming to this Agreement or removal of the nullification or impairment within the meaning of Annex 28-A (Nullification or Impairment).

3. If the Parties are unable to reach a resolution within 30 days of presentation of the final report, or within another period of time as decided by the Parties, the Party complained against, if so requested by the complaining Party, shall enter into negotiations with a view to determining compensation.

Article 28.13: Non-Implementation – Suspension of Benefits

1. The complaining Party, subject to paragraph 4 and following notice to the Party complained against, may suspend the application to the Party complained against of benefits of equivalent effect if:

- (a) in its final report a panel determines that a measure is inconsistent with the obligations of this Agreement or that there is nullification or impairment within the meaning of Annex 28-A (Nullification or Impairment);
- (b) the Parties have not been able to resolve the dispute to their mutual satisfaction within 30 days of receiving the final report; or
- (c) the Parties fail to decide on compensation within 30 days of the complaining Party's request, if a request was made.

2. The notice referred to in paragraph 1 shall specify the level of benefits that the complaining Party proposes to suspend.

3. In considering which benefits to suspend under paragraph 1:

- (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector affected by the measure or other matter that the panel has found to be inconsistent with an obligation under this Agreement or to have caused nullification or impairment within the meaning of Annex 28-A (Nullification or Impairment); and
- (b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector may suspend benefits in another sector.

4. A Party may only suspend benefits temporarily, and only until the other Party has brought the inconsistent measure or other matter into conformity with this Agreement, including as a result of the panel process described in Article 28.14, or until the time when the Parties arrive at a resolution of the dispute.

5. For the purposes of paragraph 4, "inconsistent measure or other matter" means a measure or other matter found by a panel to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits within the meaning of Annex 28-A (Nullification or Impairment).

Article 28.14: Review of Compliance and Suspension of Benefits

1. A Party may, by written notice to the other Party, request that a panel be reconvened to make a determination regarding:

- (a) whether the level of benefits suspended by a Party under Article 28.13(1) is manifestly excessive; or
- (b) any disagreement as to the existence or consistency with this Agreement of a measure taken to comply with the determinations or recommendations of the previously established panel.

2. In the written notice of the request referred to in paragraph 1, the Party shall identify the specific measure or matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The panel shall be reconvened when the other Party receives written notice of the request referred to in paragraph 1. In the event that a panellist is unable to serve on the reconvened panel, they shall be replaced under Article 28.8(4).

4. The provisions of Articles 28.10 and 28.11 apply to procedures adopted and a report issued by a panel reconvened under this Article, with the exception that, subject to Article 28.10(9), the panel shall present an initial report within 60 days of being reconvened if the request concerns only paragraph 1(a), and otherwise within 90 days.

5. A panel reconvened under this Article may include in its report a recommendation, if appropriate, that a suspension of benefits be terminated or that the amount of benefits suspended be modified.

Article 28.15: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Joint Commission shall endeavour to decide on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any interpretation of the Joint Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Joint Commission is unable to decide on the interpretation, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Section B - Other Dispute Settlement

Article 28.16: Private Rights

A Party may not provide a right of action under its law against the other Party on the ground that an act or omission of that Party is inconsistent with this Agreement.

Article 28.17: Alternative Dispute Resolution

1. Each Party shall encourage and facilitate the use of arbitration and other means of alternative dispute resolution to the extent possible in order to settle international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of awards in those disputes.

3. A Party is deemed to comply with paragraph 2 if it is a party to and complies with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958.

Annex 28-A: Nullification or Impairment

1. If a Party considers that a benefit it could reasonably have expected to accrue to it under a provision of:

- (a) Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter

4 (Trade Facilitation), Chapter 5 (Trade Remedies) or Chapter 11 (Government Procurement); or

- (b) Chapter 8 (Digital Trade)

is being nullified or impaired as a result of the application of a measure of the other Party that is not inconsistent with this Agreement, in the sense of Article XXIII:1(b) of the GATT 1994 or Article XX(2)(b) of the GPA 2012, the Party may have recourse to dispute settlement under this Chapter. A panel established under this Chapter shall take into account relevant case law interpreting Article XXIII:1(b) of the GATT 1994 and Article XX(2)(b) of the GPA 2012.

2. A Party may not invoke paragraph 1(a) or (b) with respect to a measure subject to an exception under Article 29.2 (General Exceptions).

3. A Party may not invoke paragraph 1 with respect to a measure subject to the exception under Article 29.7 (Cultural Industries).

Annex 28-B: Dispute Settlement for Transparency, Anti-Corruption, and Responsible Business Conduct

Consultations

1. A Party may request consultations with the other Party regarding a matter related to Section B of Chapter 15 (Transparency, Anti-Corruption and Responsible Business Conduct) by delivering a request in writing to the Agreement Coordinator of the other Party. The Agreement Coordinators shall consult as soon as possible to discuss the matter.

2. If the Parties fail to resolve the matter within 60 days of delivery of the request for consultations referred to in paragraph 1, and the matter relates to an obligation under Section B of Chapter 15 (Transparency, Anti-Corruption and Responsible Business Conduct), a Party may request cabinet-level consultations. The Parties shall conduct cabinet-level

consultations as soon as possible after the request for those consultations is made.

Review Panel

3. If the Parties fail to resolve the matter within 120 days of delivery of the request for cabinet-level consultations referred to in paragraph 2, the requesting Party may request establishment of a Review Panel by delivering a request in writing to the other Party.

4. Unless the Parties decide otherwise, the terms of reference of the Review Panel shall be:

"To examine, in the light of the relevant provisions of Section B of Chapter 15 of the Agreement, the matter referred by (name of the complaining Party) as set out in the request for the establishment of the Review Panel and to make determinations and recommendations as provided in paragraph 14."

5. Unless the Parties decide otherwise, the Review Panel shall conduct its proceedings in accordance with Annex 28-C (Rules of Procedure). A Review Panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Annex.

6. If the Review Panel determines that there has been a violation of an obligation under Section B of Chapter 15 (Transparency, Anti-Corruption and Responsible Business Conduct), the Parties may decide on a mutually satisfactory action plan to implement the Panel's recommendations. Any action plan agreed upon by the Parties may be made publically available by either Party.

Panel selection

7. A Review Panel shall be composed of three panellists.

8. Panellists shall:

- (a) be chosen on the basis of expertise in anti-corruption matters or other appropriate disciplines, objectivity, reliability and sound judgment;

- (b) be independent of, and not be affiliated with or take instructions from, either Party;
- (c) not have an interest in the review directly, nor be affiliated with a person or organization that has an interest in the review; and
- (d) comply with the Code of Conduct referred to in Article 28.9(1)(e).

Panel selection procedures

9. Each Party shall, within 20 days of delivery of the request referred to in paragraph 3, appoint a panellist, propose up to four candidates that are not nationals of either Party to serve as the chair of the Review Panel, and notify the other Party in writing of the appointment and its proposed candidates to serve as chair.

10. If a Party fails to appoint a panellist within this time, the other Party shall select the panellist from among qualified individuals who are nationals of the Party that has failed to select its panellist.

11. The Parties shall, within 30 days after the date of receipt of the request for panel establishment, endeavour to decide on and appoint a chair. If the Parties fail to decide on the chair within this time, within a further seven days the chair shall be selected by lot from among the candidates proposed.

12. If either Party believes that a panellist is in violation of the Code of Conduct referred to in Article 28.9(1)(e), the Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with the procedures set out in paragraphs 9 to 11. The time limits for that selection will run from the date the Parties agree to remove the panellist.

Review Panel Process

Initial Report

13. The Review Panel shall present to the Parties an initial report within 120 days of the selection of the last panellist.

14. The report shall contain:

- (a) findings of fact;
- (b) the Review Panel's determination as to whether there has been a violation of an obligation; and
- (c) if a violation has been found, the Review Panel's recommendations for the resolution of the matter.

Final Report

15. The Parties may provide comments on the initial report within 60 days of its presentation to the Parties.

16. The Review Panel shall present the final report to the Parties within 90 days of providing the initial report.

17. A Party may publish the final report 60 days after it is presented to the Parties.

18. The Parties may decide to modify any time limits set out in this Annex.

19. The Parties shall determine a separate budget for each set of panel proceedings pursuant to this Annex. If the Parties do not decide on a budget, the expenses of the Review Panel will be shared by the Parties equally.

Annex 28-C: Rules of Procedure

Application

1. The following rules of procedure apply to a dispute settlement proceeding under this Chapter, unless the Parties decide otherwise.

Definitions

2. For the purposes of this Annex:

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

legal holiday means every Saturday and Sunday and any other day designated by a Party as a holiday for the purposes of these rules; and

representative means an employee of a government department or agency or of another government entity of a Party.

Written Submissions and Other Documents

3. Each Party shall deliver the original and a minimum of three copies of any written submission to the panel and one copy to the Embassy of the other Party. Delivery of submissions and any other document related to the panel proceeding may be made by e-mail or other means of electronic transmission if the Parties so decide. When a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall also deliver an electronic version of the submissions or other documents.

4. The complaining Party shall deliver an initial written submission no later than 10 days after the date on which the last panellist is appointed. The Party complained against, in turn, shall deliver a written counter-submission no later than 20 days after the date on which the initial written submission of the complaining Party is due.

5. The panel, in consultation with the Parties, shall establish dates for the delivery of the subsequent written rebuttal submissions of the Parties and any other written submissions that the panel and the Parties determine are appropriate.

6. At any time a Party may correct minor errors of a clerical nature in any written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on a legal holiday observed by either Party or on another day on which the government offices of either Party are closed by order of the government or by force majeure, the document may be delivered on the next business day.

Burden of Proof

8. A complaining Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing that inconsistency. If the Party complained against asserts that a measure is subject to an exception or exemption under this Agreement, it shall have the burden of establishing that the exception or exemption applies.

Written Submission by a Non-Governmental Person

9. A panel, on application, may grant leave to a non-governmental person of a Party to file written submissions. In making its decision to grant leave, the panel shall consider, among other things:

- (a) if the subject matter of the proceeding is of public interest;
- (b) if the non-governmental person has a substantial interest in the proceeding, which requires more than an interest in the development of trade law case law, the interpretation of the Agreement or the subject matter of the dispute;
- (c) if the written submission would assist the panel in determining a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the Parties; and
- (d) submissions by the Parties on the application for leave.

10. If the panel has granted leave to a non-governmental person to file a written submission, the panel shall ensure that:

- (a) the written submission does not introduce new issues to the dispute;
- (b) the written submission is within the terms of reference of the dispute as defined by the Parties;
- (c) the written submission addresses only the issues of fact and law that the non-governmental person described in its application for leave;

- (d) the written submission avoids disrupting the proceeding and preserves the equality of the Parties; and
- (e) the Parties have the opportunity to respond to the written submission.

Role of Experts

11. On request of a Party, or on its own initiative, the panel may seek information and technical advice from a person or body that it deems appropriate, subject to paragraphs 12 and 13 and any additional terms and conditions as the Parties may decide. The requirements set out in Article 28.9 apply to the experts or bodies, as appropriate.

12. Before the panel seeks information or technical advice under paragraph 11, it shall:

- (a) notify the Parties of its intention to seek information or technical advice and provide them with an adequate period of time to submit comments; and
- (b) provide the Parties with a copy of information or technical advice received and provide them with an adequate period of time to submit comments.

13. If the panel takes into consideration the information or technical advice received under paragraph 11 for the preparation of its report, it shall also take into consideration comments or observations submitted by the Parties with respect to that information or technical advice.

14. Notwithstanding paragraph 11, in a dispute arising under Chapter 13 (Environment), the Panel shall seek information or technical advice from any environment expert or an authorized body under a relevant multilateral environmental agreement, that it deems appropriate. The requirements set out in Article 28.9 apply to experts or bodies, as appropriate. Paragraphs 12 and 13 apply to this paragraph.

Operation of Panels

15. The chair shall preside at all of the panel's meetings.

16. The panel may conduct its business by any appropriate means, including by telephone, facsimile transmission and video or computer links.

17. Only panellists may take part in the deliberations of the panel. The panel, in consultation with the Parties, may employ assistants, interpreters or translators, or stenographers to the extent they may be required for the proceeding, and may permit them to be present during the deliberations. The members of the panel and the persons employed by the panel shall maintain the confidentiality of the panel's deliberations and information that is protected under Article 28.10(2)(g).

18. A panel, in consultation with the Parties, may modify a time period applicable in the panel proceedings and make other procedural or administrative adjustments required in the proceeding.

Hearings

19. The chair shall fix the date and time of the initial hearing and any subsequent hearing in consultation with the Parties and the panellists, and then notify the Parties in writing of those dates and times.

20. Unless the Parties decide otherwise, the location of hearings shall alternate between the territories of the Parties, with the first hearing to take place in the territory of the Party complained against.

21. No later than 5 days before the date of a hearing, each Party shall deliver to the other Party and the panel a list of the names of the persons who will be present at the hearing on behalf of that Party, as well as a list of the other representatives or advisers who will be attending the hearing.

22. Each hearing shall be conducted by the panel in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies, and counter-replies.

23. Hearings shall be open to the public, except as necessary to protect information designated by either Party for confidential

treatment. The panel, in consultation with the Parties, shall adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public. Those procedures may include, among other methods, the use of live web-broadcasting or closed-circuit television.

24. The panel shall arrange the preparation of any hearing transcripts and shall deliver a copy of those transcripts to each Party as soon as possible after they are prepared.

Ex Parte Contacts

25. A Party may not communicate with the panel without notifying the other Party. The panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

26. A panellist may not discuss an aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panellists.

Remuneration and Payment of Expenses

27. Each panellist shall keep a record and render a final account to the Parties of their time and expenses, and those of any assistant. The chair of the panel shall keep a record and render a final account to the Parties of all general expenses.