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European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2019) 141 final - ANNEX
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Subject:	ANNEX to the Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership as regards the adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators
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Delegations will find attached document COM(2019) 141 final - ANNEX.

Encl.: COM(2019) 141 final - ANNEX



EUROPEAN
COMMISSION

Brussels, 15.3.2019
COM(2019) 141 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership as regards the adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators

DRAFT

**DECISION No .../2019 OF THE JOINT COMMITTEE
UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN
FOR AN ECONOMIC PARTNERSHIP**

of ...

**on the adoption of the Rules of Procedure of the Joint Committee, the Rules of
Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators**

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership, signed in Tokyo on 17 July 2018, and in particular Articles 21.6 (2), 21.30 and 22.1(1), (2) and (4) thereof,

HAS ADOPTED THIS DECISION:

1. The Rules of Procedure of the Joint Committee are established as set out in Annex I.
2. The the Rules of Procedure of a Panel are established as set out in Annex II.
3. The Mediation Procedure is established as set out in Annex III.
4. The Code of Conduct for Arbitrators is established as set out in Annex IV.

This Decision shall enter into force on the date of its adoption.

Done at ... on ...

For the Joint Committee

Minister for Foreign Affairs of Japan

EU representative

ANNEX I

RULES OF PROCEDURE OF THE JOINT COMMITTEE

UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN

FOR AN ECONOMIC PARTNERSHIP

ARTICLE 1

Composition and Chair

1. The Joint Committee that is established by Article 22.1(1) of the Agreement between the European Union and Japan for an Economic Partnership (hereinafter referred to as “the Agreement”) will perform its duties as provided in Article 22.1 of the Agreement and will take responsibility for the general implementation and operation of the Agreement.
2. The Joint Committee will be composed of representatives of the European Union and Japan and, in accordance with paragraph 3 of Article 22.1 of the Agreement, will be co-chaired by the Member of the European Commission responsible for Trade and the Minister for Foreign Affairs of Japan.
3. The co-chairs may be represented by their respective delegates as provided in paragraph 3 of Article 22.1 of the Agreement. Any subsequent references in these Rules of Procedure to members and co-chairs of the Joint Committee will be understood to include their delegates.
4. The co-chairs may be accompanied by officials. The lists of the officials attending the meeting for each Party will be exchanged through the Contact Points prior to the meeting.
5. The Parties may decide by mutual consent to invite observers or independent experts on an ad hoc basis.

ARTICLE 2

Contact Points

1. The Contact Points designated pursuant to paragraph 1 of Article 22.6 of the Agreement (hereinafter referred to as “the Contact Points”) coordinate the preparation and organisation of the meetings of the Joint Committee.
2. All exchange of correspondence and communications between the Parties relating to the work of the Joint Committee and its meetings will be carried out through the Contact Points in accordance with sub-paragraph 2(c) of Article 22.6 of the Agreement.
3. The Contact Points will be in charge of coordinating the preparations of the provisional agenda, draft decisions and draft recommendations of the Joint Committee, as well as the correspondence and communication between the Joint Committee and the specialised committees, working groups and other bodies established under the Agreement.

ARTICLE 3

Agenda

1. A provisional agenda for each meeting will be drawn up jointly by the Contact Points and forwarded, together with the relevant documents, to the participants of the Joint Committee no later than 7 calendar days before the date of the meeting.
2. Either Party may propose items for the agenda no later than 14 calendar days before the date of the meeting.
3. The Parties may, by mutual consent, reduce the time periods referred to in paragraphs 1 and 2 to take account of the requirements of a particular case.
4. The agenda will be adopted by the Joint Committee at the beginning of its meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so decide.

ARTICLE 4

Working Language

Unless otherwise decided by the Parties, all the correspondence and communication between the Parties relating to the work of the Joint Committee, as well as the preparation of and deliberations on decisions and recommendations will be carried out in English.

ARTICLE 5

Decisions and recommendations

1. Decisions and recommendations of the Joint Committee, in accordance with Article 22.2 of the Agreement, will be taken by consensus. They may be adopted by written procedure through an exchange of notes between the Co-Chairs of the Committee.
2. All decisions and recommendations of the Joint Committee will be assigned a serial number, the date of adoption and a title referring to their subject matter.

ARTICLE 6

Joint Minutes

1. The draft joint minutes will include, as a general rule, the final agenda and a summary of the discussions under each agenda point.
2. Draft joint minutes of each meeting will be drawn up by the Contact Points, as soon as possible but no later than 60 days from the date of the meeting.

3. The draft joint minutes will be approved in writing by the Parties as soon as possible but no later than 70 days from the date of the meeting. Once approved, two copies of the minutes will be signed by the Contact Points and each Party will receive one original copy of these documents. The Parties may decide that signing and exchanging electronic copies satisfies this requirement.

ARTICLE 7

Publicity and Confidentiality

1. Unless otherwise specified by the Agreement or decided by the Parties, the meetings of the Joint Committee will not be open to the public.

2. When a Party submits information considered as confidential or protected from disclosure under its laws and regulations to the Joint Committee or to any specialised committee, working group or other body established under the Agreement, the other Party will treat that information as confidential as provided in Article 1.6 of the Agreement.

3. Each Party may make public in any appropriate medium the agenda finalised between the Parties before the meeting of the Joint Committee, the approved joint minutes drawn up in accordance with Article 6 and the decisions and recommendations adopted by the Joint Committee, subject to the application of paragraph 2 above.

ARTICLE 8

Expenses

Each Party will meet any expenses it incurs as a result of the meetings of the Joint Committee. Expenses in relation to the organisation of the meetings will be borne by the Party that hosts the meeting. In case a meeting takes place outside the European Union or Japan, the Parties will decide by mutual consent on the responsibilities for the expenses incurred in the organisation of the meeting.

ANNEX II
RULES OF PROCEDURE
OF A PANEL

In panel procedures under Section C of Chapter 21 (Dispute Settlement) of the Agreement, the following rules apply:

I. Definitions

1. In these Rules of Procedure:
 - (a) “administrative staff”, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;
 - (b) “adviser” means a person retained by a Party to advise or assist that Party for the purposes of the panel procedure, other than representatives of that Party;
 - (c) “Agreement” means the Agreement between the European Union and Japan for an Economic Partnership;
 - (d) “arbitrator” means a member of a panel;
 - (e) “assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
 - (f) “Code of Conduct” means the Code of Conduct for Arbitrators referred to in Article 21.30 of the Agreement;
 - (g) “complaining Party” means the Party that requests the establishment of a panel pursuant to Article 21.7 of the Agreement;
 - (h) “days” means calendar days;
 - (i) “panel” means a panel established pursuant to Article 21.7 of the Agreement;
 - (j) “Party complained against” means the Party against which a dispute has been brought before a panel pursuant to Article 21.7 of the Agreement;
 - (k) “proceedings” means the proceedings of the panel; and
 - (l) “representative” with respect to a Party means an official or any other person of a government department or agency or any other public entity of a Party and other personnel, that the Party nominates as its representative for the purpose of the panel proceedings.

II. Appointment of arbitrators

2. The office designated by the complaining Party pursuant to paragraph 1 of Article 21.25 of the Agreement shall be responsible for the organisation of the lot referred to in paragraphs 3, 4 and 5 of Article 21.8 of the Agreement, and shall inform the co-

chairs of the Joint Committee, with due anticipation, about the date, time and venue of the lot. The co-chair from the Party complained against may be present or be represented by another person when the lots are drawn. Representatives of both Parties may also be present. In any event, the lot shall be carried out with the Party or Parties that are present.

3. The Parties shall inform in writing each individual who has been appointed to serve as an arbitrator pursuant to Article 21.8 of the Agreement of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days of the date on which he or she was informed of his or her appointment.

III. Organisational meeting

4. Unless the Parties agree otherwise, the Parties shall meet with the panel within seven days of the date of the establishment of the panel in order to determine those matters that the Parties or the panel deem appropriate, including:
 - (a) the remuneration and expenses to be paid to the arbitrators which shall be in accordance with WTO standards and criteria;
 - (b) the remuneration to be paid to the assistants. The total amount of remuneration for each arbitrator's assistant or assistants shall not exceed 50% of the remuneration of that arbitrator, unless the Parties agree otherwise; and
 - (c) the timetable for the proceedings, which shall be established based on the time zone of the Party complained against.

Only the arbitrators and the representatives of the Parties who are officials or other persons of a government department or agency or any other public entity, may take part in this meeting in person or via telephone or video conference.

IV. Notifications

5. Any request, notice, written submission or other document transmitted by:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party to the panel shall be copied to the other Party at the same time; and
 - (c) a Party to the other Party shall be copied to the panel at the same time, as appropriate.

Any document referred to in this paragraph shall also be copied at the same time to the external body referred to in paragraph 2 of Article 21.25 of the Agreement, where relevant.

6. The notification to a Party of any document referred to in paragraph 5 shall be addressed to the office designated by that Party pursuant to paragraph 1 of Article 21.25 of the Agreement.

7. Any notification referred to under paragraph 5 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 received on the date of its sending.
8. 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.
9. If the last day for delivery of a document falls on a legal holiday of Japan or of the European Union or on any other day on which the offices of the Government of a Party are officially or by *force majeure* closed, the document shall be deemed received on the next working day. At the organisational meeting referred to in paragraph 4, each Party shall submit a list of its legal holidays and any other days on which its offices are officially closed. Each Party shall keep its list updated during the panel procedure.

V. Written submissions

10. 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 counter-submission no later than 20 days after the date of receipt of the written submission of the complaining Party.

VI. Operation of the panel

11. The chairperson of the panel shall preside at all of its meetings. A panel may delegate to the chairperson authority to make administrative and procedural decisions.
12. Unless otherwise provided for in Chapter 21 of the Agreement or in these Rules, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
13. Where a procedural question arises that is not covered by Chapter 21 of the Agreement, these Rules or the Code of Conduct for Arbitrators referred to in Article 21.30, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
14. The panel may modify any time period other than the time period set out in Chapter 21 of the Agreement and make any other procedural or administrative adjustment in the proceedings after consulting with the Parties. When the panel consults with the Parties, it shall inform the Parties in writing of the proposed modification or adjustment and the reason therefor.

VII. Hearings

15. Based upon the timetable determined pursuant to paragraph 4, after consulting with the Parties and the other arbitrators, the chairperson of the panel shall determine the date and time of the hearing.
16. Unless the Parties agree otherwise, the Party in which the hearing takes place in accordance with paragraph 2 of Article 21.15 of the Agreement shall:
 - (a) determine the venue of the hearing and inform the chairperson of the panel thereof; and
 - (b) be in charge of the logistical administration of the hearing.
17. Unless the Parties agree otherwise, and without prejudice to paragraph 46, the Parties shall share the expenses derived from the logistical administration of the hearing.
18. The chairperson of the panel shall notify in due course the Parties, and where relevant the external body referred to in paragraph 2 of Article 21.25 of the Agreement, in writing, of the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place or, where relevant, by the external body referred to in paragraph 2 of Article 21.25 of the Agreement, unless the hearing is closed to the public.
19. As a general rule there should be only one hearing. If the dispute involves issues of exceptional complexity, the panel may convene additional hearings on its own initiative or, upon request of either Party, after consulting the Parties. For each of the additional hearings, paragraphs 15 to 18 apply *mutatis mutandis*.
20. All arbitrators shall be present during the entirety of the hearing.
21. The following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:
 - (a) representatives of the Parties;
 - (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 21.17 of the Agreement.
22. No later than five days before the date of a hearing, each Party shall deliver to the panel 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.
23. 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; and
- (b) argument of the Party complained against.

Rebuttal Argument

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

- 24. The panel may direct questions to either Party at any time during the hearing.
- 25. 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.
- 26. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

VIII. Deliberations

- 27. Only the arbitrators may take part in the deliberations of the panel. Notwithstanding the previous sentence, the panel may permit assistants to be present during its deliberations.

IX. Questions in writing

- 28. 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.
- 29. Each Party shall provide the other Party with a copy of its response to the questions submitted by the panel. A Party shall be given an opportunity to provide comments in writing on the other Party's response within five days of the receipt of such copy.

X. Replacement of arbitrators

- 30. For the replacement of an arbitrator in accordance with Article 21.11 of the Agreement, Article 21.8 applies *mutatis mutandis*.
- 31. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct 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 arbitrator's failure to comply with the requirements of the Code of Conduct.

32. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new arbitrator in accordance with paragraph 30.

If the Parties fail to agree on the need to replace the arbitrator, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final.

If, pursuant to this request, the chairperson finds that the arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with paragraph 30.

33. Where a Party considers that the chairperson of the 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 paragraph 30.

If the Parties fail to agree on the need to replace the chairperson, either Party may request that the matter be referred to the two remaining arbitrators. The arbitrators shall decide, no later than 10 days after the date of delivery of the request, whether there is a need to replace the chairperson of the panel. The decision by the arbitrators on the need to replace the chairperson shall be final.

If the arbitrators decide that the chairperson does not comply with the requirements of the Code of Conduct, a new chairperson shall be selected in accordance with paragraph 30.

34. The proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 30 to 33.

XI. Confidentiality

35. Where a Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other Party, provide, within 20 days of the date of the request, a non-confidential version of the submissions that could be disclosed to the public. Nothing in these rules precludes a Party from disclosing its own submissions to the public to the extent that it does not disclose any information designated by the other Party as confidential. The panel shall meet in closed session if the submissions and arguments of a Party contain confidential information. The panel and the Parties shall maintain the confidentiality of the hearing of the panel where the hearing is held in closed session.

XII. *Ex parte* contacts

36. The panel shall not meet or communicate with a Party in the absence of the other Party.
37. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

XIII. *Amicus curiae* submissions

38. Unless the Parties agree otherwise within three days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from persons referred to in paragraph 3 of Article 21.17 of the Agreement and who are independent from the governments of the Parties, provided that the submissions are received within 10 days of the date of the establishment of the panel.
39. The submissions shall be concise and in no case longer than 15 pages at double space, and shall be directly relevant to a factual or a legal issue under consideration by the panel. The submissions shall contain a description of the person providing the submissions including:
- (a) for a natural person, his or her nationality; and
 - (b) for a legal person, its place of establishment, the nature of its activities, its legal status, its general objectives and the source of its financing.

Any person shall specify in its submissions the interest that it has in the proceedings. The submissions shall be drafted in the languages chosen by the Parties in accordance with paragraphs 42 and 43 of these Rules of Procedure.

40. The panel shall list in its report all the submissions it has received pursuant to paragraphs 38 and 39. The panel is not obliged to address in its report the arguments made in such submissions. Those submissions shall be provided to the Parties for their comments. The comments of the Parties which have been submitted to the panel within 10 days shall be taken into consideration by the panel.

XIV. Urgent cases

41. In cases of urgency referred to in Chapter 21 of the Agreement, the panel shall, after consulting the Parties, adjust the time periods referred to in these Rules, as appropriate. The panel shall notify the Parties of such adjustments.

XV. Language and translation

42. During the consultations referred to in Article 21.5 of the Agreement, and no later than the time of the organisational meeting referred to in paragraph 4, the Parties shall endeavour to agree on a common working language for the proceedings before the panel. Each Party shall notify the other Party, no later than 90 days after the adoption of these Rules of Procedure by the Joint Committee in accordance with subparagraph 4(f) of Article 22.1 of the Agreement, a list of languages for which it has a preference. The list shall include at least one working language of the WTO.
43. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language, providing at the same time a translation into one of the working languages of the WTO notified by the other Party in accordance with paragraph 42, where appropriate. The Party responsible for

organising the oral hearing shall arrange for the interpretation of oral submissions into the same working language of the WTO, where appropriate.

44. The interim and final report of the panel shall be issued in the common working language. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in the working languages of the WTO referred to in paragraph 43.
45. A Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these rules.
46. In case a translation or interpretation of written and oral submissions of a Party in the relevant working language of the WTO is necessary, that Party shall bear the costs thereof.

ANNEX III
MEDIATION PROCEDURE

I. Objective

1. The objective of the mediation procedure under Article 21.6 of the Agreement, as provided for in this document, is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

II. Definitions

2. For the purposes of this document:
 - (a) “Agreement” means the Agreement between the European Union and Japan for an Economic Partnership;
 - (b) “Code of Conduct” means the Code of Conduct for Arbitrators referred to in Article 21.30 of the Agreement;
 - (c) “days” means calendar days;
 - (d) “Joint Committee” means the Joint Committee established pursuant to Article 22.1 of the Agreement;
 - (e) “requested Party” means the Party to which the request to enter into a mediation procedure is addressed pursuant to Article 21.6 of the Agreement;
 - (f) “requesting Party” means the Party that requests to enter into a mediation procedure pursuant to Article 21.6 of the Agreement; and
 - (g) “Rules of Procedure” means the Rules of Procedure of a Panel referred to in Article 21.30 of the Agreement.

III. Initiation of the mediation procedure

3. 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 so as for the other Party to understand clearly the concerns of the Party requesting the mediation procedure. The requesting Party shall in its request describe the matter at issue by:
 - (a) identifying the specific measure;
 - (b) providing 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) explaining the causal link between the measure and the adverse effects on trade and investment between the Parties.

4. A Party is normally expected to avail itself of any relevant cooperation or consultation provisions of the Agreement before addressing to the other Party a written request pursuant to paragraph 3. For greater certainty, consultations under Article 21.5 of the Agreement are not required before initiating the mediation procedure.
5. The mediation procedure may only begin by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator. The requested Party shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within 10 days of its receipt. If the requested Party does not reply within this timeframe, the request shall be regarded as rejected. The date of receipt by the requesting Party of the requested Party's reply of acceptance shall be considered as the date of initiation of the mediation procedure.

IV. Selection of the mediator

6. The Parties shall endeavour to agree on a mediator no later than 15 days after the date of the initiation of the mediation procedure.
7. If the Parties do not reach an agreement on the mediator within the time period provided for in paragraph 6, upon request of either Party, the co-chair of the Joint Committee from the requesting Party, or its designee, shall select by lot, within five days of the request, the mediator from the sub-list of chairpersons established pursuant to paragraph 1 of Article 21.9 of the Agreement. The request shall be copied to the other Party.
8. The office designated by the requesting Party pursuant to paragraph 1 of Article 21.25 of the Agreement shall be responsible for the organisation of the lot, and shall inform the co-chairs of the Joint Committee, with due anticipation, about the date, time and venue of the lot. The co-chair from the requested Party may be present or be represented by another person when the lots are drawn. Representatives of both Parties may also be present. In any event, the lot shall be carried out with the Party or Parties that are present.
9. Unless the Parties agree otherwise, the mediator shall not be a national of either Party nor be employed by either Party.
10. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the matter at issue, including the possible effects of the specific measure on trade or investment, and in reaching a mutually agreed solution.
11. The Code of Conduct for Arbitrators adopted by the Joint Committee pursuant to Article 21.30 of the Agreement, shall apply to the mediator *mutatis mutandis*.

V. Rules of the mediation procedure

12. Within 10 days of the date on which the mediator was agreed upon pursuant to paragraph 6 or selected pursuant to paragraph 7, the requesting Party shall submit, in writing, to the mediator and to the requested Party a detailed description of the matter

at issue, including how the specific measure is or would be applied and how it affects trade or investment. Within 20 days of the date of delivery of this submission, the requested Party may provide, in writing, its comments to the description. Each Party may include in its description or comments any information that it deems relevant.

13. The mediator may decide on the most appropriate way of bringing clarity to the matter at issue, including the possible effects of the specific measure on trade or investment. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, and provide any additional support requested by the Parties. The mediator may also seek the assistance of, or consult with, relevant experts and stakeholders after consultations with the Parties.
14. The mediator shall endeavour to offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution or may agree on a different solution. The mediator shall not give advice or comments on the consistency of the specific measure with the Agreement.
15. The procedure shall take place in the requested Party, unless the Parties agree otherwise.
16. Within 60 days of the date on which the mediator was agreed upon pursuant to paragraph 6 or selected pursuant to paragraph 7, the Parties shall endeavour to reach a mutually agreed solution. If so requested by a Party, the mutually agreed solution shall be adopted by means of a decision of the Joint Committee. The mutually agreed solutions shall be made publicly available, unless the Parties agree otherwise. The version disclosed to the public may not contain any information that a Party has designated as confidential. Pending a final mutually agreed solution, the Parties may consider possible interim solutions.
17. Upon request of either Party, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the matter at issue, including the possible effects of the specific measure on trade or investment;
 - (b) the procedures followed;
 - (c) the views expressed by the Parties, experts and stakeholders, where relevant; and
 - (d) if applicable, any mutually agreed solution and interim solutions.within 15 days of the request for this report.

The Parties may comment on the draft factual report within 15 days of its issuance. After considering the comments submitted by the Parties, the mediator shall submit, in writing, the final factual report to the Parties within 30 days of the issuance of the draft factual report. The factual report shall not include any interpretation of the Agreement by the mediator.

18. The mediation procedure shall be terminated:
 - (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption;

- (b) 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;
- (c) by a mutual agreement of the Parties at any stage of the procedure, on the date of that agreement; or
- (d) by a written and substantiated declaration of a Party after exploring mutually agreed solutions under the mediation procedure, on the date of that declaration.

The termination of the mediation procedure is without prejudice to paragraph 17.

19. Paragraphs 5 to 9, 15 to 26, 33, 34, and 42 to 46 of the Rules of Procedure of a Panel shall apply to the mediation procedure, *mutatis mutandis*.

VI. Confidentiality

20. Unless the Parties agree otherwise, and without prejudice to paragraph 16, all steps of the mediation procedure, including any advice or proposed solution, shall be confidential. The mediator and the Parties shall treat as confidential any information submitted to the mediator by a Party or received from any other source which has been designated as confidential. However, any Party may disclose to the public that mediation is taking place.

VII. Relationship to other Dispute Settlement Procedures

21. The mediation procedure shall be without prejudice to the Parties' rights and obligations under Chapter 21 (Dispute Settlement) of the Agreement or under a dispute settlement procedure of any other agreement.
22. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall it be accepted that a panel takes into consideration:
- (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph 13;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the matter subject to mediation; or
 - (c) advice given or proposals made by the mediator.
23. Unless the Parties agree otherwise, a mediator may not serve as an arbitrator or panellist in other dispute settlement procedures under the Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

VIII. Time period

24. Any time period referred to in this mediation procedure may be modified by mutual agreement between the Parties.

IX. Costs

25. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
26. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be equivalent to the remuneration of the arbitrators set out in paragraph 4 of the Rules of Procedure of a Panel.

ANNEX IV

CODE OF CONDUCT FOR ARBITRATORS

I. Definitions

1. In this Code of Conduct:
 - (a) "administrative staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;
 - (b) "Agreement" means the Agreement between the European Union and Japan for an Economic Partnership;
 - (c) "arbitrator" means a member of a panel;
 - (d) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
 - (e) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 21.9 of the Agreement;
 - (f) "panel" means a panel established pursuant to Article 21.7 of the Agreement; and
 - (g) "proceedings" means the proceedings of the panel.

II. Provision of Code of Conduct

2. The Parties shall provide this Code of Conduct to each candidate at the time when his or her name is included on the list referred to in Article 21.9 of the Agreement.

III. Governing principles

3. Each candidate and arbitrator shall observe high standards of conduct, in accordance with this Code of Conduct, so that the integrity and impartiality of the dispute settlement mechanism is preserved.

IV. Disclosure obligations

4. Prior to the acceptance of his or her appointment as an arbitrator, a candidate requested to serve as an arbitrator shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, he or she shall make all reasonable efforts to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.

5. The disclosure obligation under paragraph 4 is a continuing duty and shall also apply to an arbitrator after acceptance of his or her appointment. During the course of the proceedings, an arbitrator shall disclose in writing any new information regarding the obligation under paragraph 4 to the Parties at the earliest time he or she becomes aware of it.
6. In meeting these disclosure requirements, personal privacy shall be respected.

V. Performance of duties

7. Upon acceptance of his or her appointment, an arbitrator shall be available to perform and shall perform his or her duties thoroughly and expeditiously throughout the panel procedure, and with fairness and diligence.
8. An arbitrator shall consider only those issues raised in each proceeding and necessary for a decision and shall not delegate the duty of such consideration to any other person.
9. An arbitrator shall not engage in *ex parte* contacts concerning matters under consideration by the panel in the proceedings.

VI. Independence and impartiality

10. An arbitrator shall be independent and impartial, shall avoid direct and indirect conflicts of interests, shall not be influenced by self-interest, outside pressure, political considerations, public clamour and loyalty to a Party or fear of criticism, and shall avoid creating an appearance of impropriety or bias.
11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way affect, or appear to affect, the proper performance of his or her duties.
12. An arbitrator shall not use his or her position on the panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.
13. An arbitrator shall not allow past or existing financial, business, professional, personal, family or social relationships or responsibilities to influence his or her conduct or judgement.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interests that are likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.
15. A former arbitrator shall avoid actions that may create the appearance that he or she was biased in carrying out his or her duties or derived advantage from the decision of the panel in which he or she served.

VII. Confidentiality

16. No arbitrator shall at any time disclose any non-public information concerning, or acquired during, the panel procedure for which he or she is appointed. No arbitrator shall in any case use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
17. No arbitrator shall disclose the decision of the panel or parts thereof, unless the decision is made publicly available.
18. An arbitrator shall not, at any time, disclose the deliberations of a panel or any arbitrator's view, nor make any statements on the panel procedure for which he or she is appointed or on the issues in dispute in such procedure.
19. The obligations under paragraphs 16 to 18 shall continue to apply to a former arbitrator.

VIII. Other obligations

20. A candidate or an arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to both Parties for their consideration at the earliest possible time and on a confidential basis.
21. An arbitrator shall take all reasonable and appropriate steps to ensure that his or her assistant and administrative staff is aware of and comply with the obligations incurred by arbitrators under Parts III, IV, VI and VII of this Code of Conduct.
22. Each arbitrator shall keep a record and render a final account of the time devoted to the panel procedure and of his or her expenses, as well as the time and expenses of his or her assistants.
