



29 April 2019

(19-2930)

Page: 1/8

Original: English

CANADA - MEASURES GOVERNING THE SALE OF WINE

COMMUNICATION FROM THE PANEL

The following communication, dated 24 April 2019, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body.

Paragraph 2(5) of the Working Procedures for the Panel proceedings in the dispute *Canada – Measures Governing the Sale of Wine (DS537)* provides:

The Panel shall circulate its Working Procedures and timetable, and any amendments thereto, to WTO Members through the DS document series for this dispute.

Accordingly, please find enclosed the Working Procedures adopted by the Panel on 15 April 2019.

I would be grateful if you would circulate this document to the DSB.

WORKING PROCEDURES OF THE PANEL

Adopted on 15 April 2019

General

1. (1) In this proceeding, the Panel shall follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). In addition, the following Working Procedures apply.

(2) The Panel reserves the right to modify these procedures, as well as any additional working procedures, as necessary, after consultation with the parties.

Confidentiality

2. (1) The deliberations of the Panel and the documents submitted to it shall be kept confidential. The parties and third parties shall treat as confidential information that is submitted to the Panel which the submitting party has designated as confidential.

(2) Nothing in the DSU or in these Working Procedures shall preclude a party or third party from disclosing statements of its own positions to the public.

(3) If a party submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

(4) Upon request, the Panel may adopt appropriate additional procedures for the treatment and handling of confidential information after consultation with the parties.

(5) The Panel shall circulate its Working Procedures and timetable, and any amendments thereto, to WTO Members through the DS document series for this dispute.

Submissions

3. (1) Before the first substantive meeting of the Panel with the parties, each party shall submit a written submission in which it presents the facts of the case and its arguments, in accordance with the timetable adopted by the Panel.

(2) Each party shall also submit to the Panel, before the second substantive meeting of the Panel, a written rebuttal, in accordance with the timetable adopted by the Panel.

(3) Each third party that chooses to make a written submission before the first substantive meeting of the Panel with the parties shall do so in accordance with the timetable adopted by the Panel.

(4) The Panel may invite the parties or third parties to make additional submissions during the proceeding, including with respect to requests for preliminary rulings in accordance with paragraph 4 below.

Preliminary rulings

4. (1) If Canada considers that the Panel should make a ruling before the issuance of the Report that certain measures or claims in the panel request or Australia's first written submission are not properly before the Panel, the following procedure applies. Exceptions to this procedure shall be granted upon a showing of good cause.
 - a. Canada shall submit any such request for a preliminary ruling at the earliest possible opportunity and in any event no later than in its first written submission to the Panel.

Australia shall submit its response to the request before the first substantive meeting of the Panel, at a time to be determined by the Panel in light of the request.

- b. The Panel may issue a preliminary ruling on the issues raised in such a preliminary ruling request before, during or after the first substantive meeting, or the Panel may defer a ruling on the issues raised by a preliminary ruling request until it issues its Report to the parties. The Panel shall inform the parties of the time at which it intends to issue a preliminary ruling. Any preliminary ruling issued prior to the issuance of the Report shall become an integral part of the Report.
- c. If the Panel finds it appropriate to issue a preliminary ruling before the issuance of its Report, the Panel may provide reasons for the ruling at the time that the ruling is made, or subsequently in its Report.
- d. Any request for such a preliminary ruling by Canada before the first meeting, and any subsequent submissions of the parties in relation thereto before the first meeting, shall be served on all third parties. The Panel may provide all third parties with an opportunity to provide comments on any such request, either in their submissions as provided for in the timetable or separately. Any preliminary ruling issued by the Panel before the first substantive meeting on whether certain measures or claims are properly before the Panel shall be communicated to all third parties.

(2) This procedure is without prejudice to the parties' right to request other types of preliminary or procedural rulings during the proceeding, and to the procedures that the Panel may follow with respect to such requests.

Evidence

- 5. (1) Each party shall submit all evidence to the Panel no later than during the first substantive meeting, except evidence necessary for purposes of rebuttal, or evidence necessary for answers to questions or comments on answers provided by the other party. Additional exceptions may be granted upon a showing of good cause.

(2) If any new evidence has been admitted upon a showing of good cause, the Panel shall accord the other party an appropriate period of time to comment on the new evidence submitted.
- 6. (1) If the original language of an exhibit or portion thereof is not a WTO working language, the submitting party or third party shall simultaneously submit a translation of the exhibit or relevant portion into the WTO working language of the submission. The Panel may grant reasonable extensions of time for the translation of exhibits upon a showing of good cause.

(2) Any objection as to the accuracy of a translation should be raised promptly in writing, preferably no later than the next submission or meeting (whichever occurs earlier) following the submission which contains the translation in question. Any objection shall be accompanied by an explanation of the grounds for the objection and an alternative translation.
- 7. (1) To facilitate the maintenance of the record of the dispute and maximize the clarity of submissions, each party and third party shall sequentially number its exhibits throughout the course of the dispute, indicating the submitting Member and the number of each exhibit on its cover page. Exhibits submitted by Australia should be numbered AUS-1, AUS-2, etc. Exhibits submitted by Canada should be numbered CAN-1, CAN-2, etc. If the last exhibit in connection with the first submission was numbered AUS-5 or CAN-5, the first exhibit in connection with the next submission thus would be numbered AUS-6 or CAN-6.

(2) Each party shall provide an updated list of exhibits (in Word or Excel format) together with each of its submissions, oral statements, and responses to questions.

(3) If a party submits a document that has already been submitted as an exhibit by the other party, it should explain why it is submitting that document again.

- (4) If a party includes a hyperlink to the content of a website in a submission and intends that the cited content form part of the official record, the cited content of the website shall be provided in the form of an exhibit.

Editorial Guide

8. In order to facilitate the work of the Panel, each party and third party is invited to make its submissions in accordance with the WTO Editorial Guide for Panel Submissions (electronic copy provided).

Questions

9. The Panel may pose questions to the parties and third parties at any time, including:
- a. Before any meeting, the Panel may send written questions, or a list of topics it intends to pursue orally during a meeting. The Panel may ask different or additional questions at the meeting.
 - b. The Panel may put questions to the parties and third parties orally during a meeting, and in writing following the meeting, as provided for in paragraphs 15 and 24 below.

Substantive meetings

10. (1) The Panel shall meet in closed session. The Panel may, however, open its substantive meetings with the parties to the public, subject to appropriate procedures to be adopted by the Panel after consulting with the parties.
11. The parties shall be present at the meetings only when invited by the Panel to appear before it.
12. (1) Each party has the right to determine the composition of its own delegation when meeting with the Panel.
- (2) Each party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures.
13. Each party shall provide to the Panel the list of members of its delegation no later than 5.00 p.m. (Geneva time) three working days before the first day of each meeting with the Panel.
14. To allow sufficient time to ensure availability of interpreters, a request for interpretation by any party should be made to the Panel preferably at the organizational stage or, at the latest, one month prior to the meeting.
15. The first substantive meeting of the Panel with the parties shall be conducted as follows:
- a. The Panel shall invite Australia to make an opening statement to present its case first. Subsequently, the Panel shall invite Canada to present its point of view. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its statement. If interpretation is needed, each party shall provide additional copies for the interpreters.
 - b. Each party should avoid lengthy repetition of the arguments in its submissions. Each party is invited to limit the duration of its opening statement to not more than 60 minutes. If either party considers that it requires more time for its opening statement, it should inform the Panel and the other party at least 10 days prior to the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to the other party.
 - c. After the conclusion of the opening statements, the Panel shall give each party the opportunity to make comments or ask the other party questions.

- d. The Panel may subsequently pose questions to the parties.
- e. Once the questioning has concluded, the Panel shall afford each party an opportunity to present a brief closing statement, with Australia presenting its statement first. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its closing statement, if available.
- f. Following the meeting:
 - i. Each party shall submit a final written version of its opening statement no later than 5.00 p.m. (Geneva time) on the first working day following the meeting. At the same time, each party should also submit a final written version of any prepared closing statement that it delivered at the meeting.
 - ii. Each party shall send in writing, within the timeframe established by the Panel before the end of the meeting, any questions to the other party to which it wishes to receive a response in writing.
 - iii. The Panel shall send in writing, within the timeframe established by the Panel before the end of the meeting, any questions to the parties to which it wishes to receive a response in writing.
 - iv. Each party shall respond in writing to the questions from the Panel, and to any questions posed by the other party, within the time-frame established by the Panel before the end of the meeting.

16. The second substantive meeting of the Panel with the parties shall be conducted in the same manner as the first substantive meeting with the Panel, except that Canada shall be given the opportunity to present its oral statement first. If Canada chooses not to avail itself of that right, it shall inform the Panel and the other party no later than 5.00 p.m. (Geneva time) three working days before the meeting. In that case, Australia shall present its opening statement first, followed by Canada. The party that presented its opening statement first shall present its closing statement first.

17. Each party shall be given the opportunity to comment on the responses to questions provided by the other party after the second substantive meeting, in accordance with the timetable adopted by the Panel.

Third parties

18. Third parties shall receive the parties' first and second written submissions, written responses to questions and comments thereon, and related exhibits.

19. Third parties shall be invited to attend the entirety of the first and the second substantive meetings between the parties and the Panel, unless a party requests otherwise.

20. The Panel may open the third-party session of the first substantive meeting to the public for those third parties wishing to make their statements public, subject to appropriate procedures to be adopted by the Panel after consulting with the parties.

21. (1) Each third party has the right to determine the composition of its own delegation when meeting with the Panel.

(2) Each third party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures.

22. To allow sufficient time to ensure availability of interpreters, a request for interpretation by any third party should be made to the Panel preferably upon receiving the Working Procedures and timetable for the proceeding or, at the latest, one month prior to the meeting.

23. (1) Each third party may present its views orally during a session of the first substantive meeting with the parties set aside for that purpose.
- (2) Each third party shall indicate to the Panel whether it intends to make an oral statement during the third-party session of the first substantive meeting, along with the list of members of its delegation, in advance of this session and no later than 5.00 p.m. (Geneva time) three working days before the third-party session of the meeting with the Panel.
- (3) The Panel, in consultation with the parties, may grant third parties the opportunity to intervene outside the third-party session of the first substantive meeting where it considers that such interventions are appropriate and do not unduly interfere with the proceedings.
- (4) Moreover, the Panel, in consultation with the parties, may grant third parties the opportunity to intervene during the second substantive meeting where it considers that such interventions are appropriate and do not unduly interfere with the proceedings.
24. The third-party session of the first substantive meeting shall be conducted as follows:
- a. All parties and third parties may be present during the entirety of this session.
 - b. The Panel shall first hear the oral statements of the third parties. Each third party making an oral statement at the third-party session shall provide the Panel and other participants with a provisional written version of its statement before it takes the floor. If interpretation of a third party's oral statement is needed, that third party shall provide additional copies for the interpreters.
 - c. Each third party should limit the duration of its statement to 15 minutes and avoid repetition of the arguments already in its submission. If a third party considers that it requires more time for its opening statement, it should inform the Panel and the parties at least 10 days before the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to all third parties for their statements.
 - d. After the third parties have made their statements, the parties shall be given the opportunity to pose questions to any third party for clarification on any matter raised in that third party's submission or statement.
 - e. The Panel may subsequently pose questions to any third party.
 - f. Following the third-party session:
 - i. Each third party shall submit the final written version of its oral statement, no later than 5.00 p.m. (Geneva time) on the first working day following the meeting.
 - ii. Each party may send in writing, within the timeframe to be established by the Panel before the end of the meeting, any questions to a third party or parties to which it wishes to receive a response in writing.
 - iii. The Panel may send in writing, within the timeframe to be established by the Panel before the end of the meeting, any questions to a third party or parties to which it wishes to receive a response in writing.
 - iv. Each third party choosing to do so shall respond in writing to written questions from the Panel or a party, within a timeframe established by the Panel before the end of the meeting.

Descriptive part and executive summaries

25. The description of the arguments of the parties and third parties in the descriptive part of the Panel report shall consist of executive summaries provided by the parties and third parties, which shall be annexed as addenda to the report. These executive summaries shall not in any way serve

as a substitute for the submissions of the parties and third parties in the Panel's examination of the case.

26. Each party shall submit two integrated executive summaries. The first integrated executive summary shall summarize the facts and arguments as presented to the Panel in the party's first written submission, its first oral statement, and if possible, its responses to questions following the first substantive meeting. The second integrated executive summary shall summarize its second written submission, its second oral statement, and if possible, its responses to the second set of questions and comments thereon following the second substantive meeting. The timing of the submission of these two integrated executive summaries shall be indicated in the timetable adopted by the Panel.

27. Each integrated executive summary shall be limited to no more than 15 pages.

28. The Panel may request the parties and third parties to provide executive summaries of facts and arguments presented in any other submissions to the Panel for which a deadline may not be specified in the timetable.

29. Each third party shall submit an integrated executive summary of its arguments as presented in its written submission and statement in accordance with the timetable adopted by the Panel. This integrated executive summary may also include a summary of responses to questions, if relevant. The executive summary to be provided by each third party shall not exceed six pages. If a third-party submission and/or oral statement does not exceed six pages in total, this may serve as the executive summary of that third party's arguments.

Interim review

30. Following issuance of the interim report, each party may submit a written request to review precise aspects of the interim report and request a further meeting with the Panel, in accordance with the timetable adopted by the Panel. The right to request such a meeting shall be exercised no later than at the time the written request for review is submitted.

31. If no further meeting with the Panel is requested, each party may submit written comments on the other party's written request for review, in accordance with the timetable adopted by the Panel. Such comments shall be limited to commenting on the other party's written request for review.

Interim and Final Report

32. The interim report, as well as the final report before its official circulation, shall be kept strictly confidential and shall not be disclosed.

Service of documents

33. The following procedures regarding service of documents apply to all documents submitted by parties and third parties during the proceeding:

- a. Each party and third party shall submit all documents to the Panel by submitting them via the Digital Dispute Settlement Registry (DDSR) by 5.00 p.m. (Geneva time) on the due dates established by the Panel. The electronic version uploaded into the DDSR shall constitute the official version for the purposes of submission deadlines and the record of the dispute. Upload of a document into the DDSR shall constitute electronic service on the Panel, the other party, and the third parties.
- b. By 5.00 p.m. (Geneva time) the next working day following the electronic submission, each party and third party shall submit one paper copy of all documents it submits to the Panel, including the exhibits, with the DS Registry (office No. 2047). The DS Registrar shall stamp the documents with the date and time of the submission. If any documents are in a format that is impractical to submit as a paper copy, then the party may submit such documents by email or on a CD-ROM, DVD or USB key.

- c. The Panel shall provide the parties with the Descriptive Part of the Report, the Interim Report and the Final Report, as well as all other documents or communications issued by the Panel during the proceeding, via the DDSR.
- d. If the parties or third parties have any questions or technical difficulties relating to the DDSR, they are invited to consult the DDSR User Guide (electronic copy provided) and if necessary contact the DS Registry (DSRegistry@wto.org).
- e. If any party or third party is unable to meet the 5.00 p.m. deadline because of technical difficulties in uploading these documents into the DDSR, the party or third party concerned shall inform the DS Registry (with a copy to DDSRSupport@wto.org) without delay and provide an electronic version of all documents to be submitted to the Panel by email including any exhibits. The email shall be addressed to DSRegistry@wto.org, the Panel Secretary, the other party and, if appropriate, the third parties. The documents sent by email shall be submitted no later than 5.30 p.m. on the due date established by the Panel, together with the DDSR E-docket template. If the file size of specific exhibits makes transmission by email impossible, or it would require more than five email messages, owing to the number of exhibits to be filed, to transmit all of them by email, the specific large file size exhibits, or those that cannot be attached to the first five email messages, shall be filed with the DS Registry (office No. 2047) and provided to the other party and, if appropriate, the third parties by no later than 9.30 a.m. the next working day on a CD-ROM, DVD, or USB stick, together with the DDSR E-docket template. In that case, the party or third party concerned shall send a notification to the DS Registrar (with a copy to DDSRSupport@wto.org), copying the Panel Secretary, the other party, and the third parties, as appropriate, via email, identifying the numbers of the exhibits that cannot be transmitted by email.
- f. In case any party or third party is unable to access a document filed through the DDSR because of technical difficulties, it shall promptly, and in any case no later than 5.00 p.m. on the next working day after the due date for the filing of the document, inform the DS Registrar (with a copy to DDSRSupport@wto.org), the Panel Secretary, and the party or third party that filed the document, of the problem by email and shall, if possible, identify the relevant document(s). The DS Registrar will promptly try to identify a solution to the technical problem. In the meantime, the party or third party that filed the document(s) shall, promptly after being informed of the problem, provide an electronic version of the relevant document(s) to the affected party or third party by email, with a copy to the DS Registry (DSRegistry@wto.org) and the Panel Secretary to allow access to the document(s) while the technical problem is being addressed. The DS Registrar may provide an electronic version of the relevant document(s) by email if the affected party or third party so requests. The DS Registrar shall in that case copy the party or third party that filed the document(s) on the email message.

Correction of clerical errors in submissions

34. The Panel may grant leave to a party or third party to correct clerical errors in any of its submissions (including paragraph numbering and typographical mistakes). Any such request should identify the nature of the errors to be corrected and should be made promptly following the filing of the submission in question.
