

CHAPTER 20 CONSULTATIONS AND DISPUTE SETTLEMENT

SECTION A Introductory Provisions

Article 20.1 Objectives

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

Article 20.2 Definitions

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

- (a) **Complaining Party** means the Party that requests consultations under Article 20.6 (Consultations);
- (b) **dispute arising under this Agreement** means a complaint made by the Complaining Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations⁴⁰ under this Agreement; and
- (c) **Responding Party** means the Party to which the request for consultations is made under Article 20.6 (Consultations).

Article 20.3 Scope

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 14 (Competition Policy), Chapter 15 (Electronic Commerce), and Chapter 16 (Economic and Technical Cooperation).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

⁴⁰ A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

3. Subject to Article 20.5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

Article 20.4 General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

Article 20.5 Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

3. This Article does not apply where the Parties agree in writing that this Article shall not apply to a particular dispute.

SECTION B Consultation Provisions

Article 20.6 Consultations

1. Either Party may request consultations with respect to any dispute arising under this Agreement or if any benefit that could have reasonably been expected to accrue to it under Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin) or Chapter 8 (Trade in Services), is being nullified or impaired as a result of the

application of any measure that is not inconsistent with this Agreement. The Responding Party shall accord due consideration to a request for consultations made by the Complaining Party and shall accord adequate opportunity for such consultations.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. The Responding Party shall immediately acknowledge receipt of the request, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

- (a) 10 days after the date of receipt of the request in cases of urgency, including perishable goods; or
- (b) 30 days after the date of receipt of the request for all other matters.

5. The Parties shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties shall:

- (a) provide sufficient information to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;
- (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
- (c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

Article 20.7 **Good Offices, Conciliation, Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or reconvened under this Chapter.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

SECTION C

Adjudication Provisions

Article 20.8

Referral to the FTA Joint Commission

If consultations undertaken pursuant to Article 20.6 (Consultations) fail to resolve a nullification or impairment complaint under the timeframes and circumstances set out in subparagraphs 1(a)-(b) of Article 20.9 (Request for Establishment of Arbitral Tribunals), the Complaining Party shall, by delivery of written notification to the other Party, refer the complaint to the FTA Joint Commission in accordance with subparagraph 3(b) of Article 19.1 (Free Trade Agreement Joint Commission) of Chapter 19 (Institutional Provisions) for its consideration.

Article 20.9

Request for Establishment of Arbitral Tribunals

1. The Complaining Party may request the establishment of an arbitral tribunal to consider a dispute arising under this Agreement if:
 - (a) the Responding Party does not enter into consultations in accordance with paragraph 4 of Article 20.6 (Consultations); or
 - (b) the consultations fail to resolve a dispute within:
 - (i) 20 days after the date of receipt of the request for consultations in cases of urgency, including perishable goods;
 - (ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or
 - (iii) such other period as the Parties may agree.
2. A request made pursuant to paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.
3. The Responding Party shall immediately acknowledge receipt of the request, indicating the date on which the request was received.
4. Where a request is made pursuant to paragraph 1, an arbitral tribunal shall be established in accordance with Article 20.10 (Establishment and Reconvening of Arbitral Tribunals).

Article 20.10
Establishment and Reconvening of Arbitral Tribunals

1. An arbitral tribunal requested pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.
2. Unless the Parties otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in paragraphs 9 and 10.
3. Within five days of the date of the receipt of a request under Article 20.9 (Request for Establishment of Arbitral Tribunals), the Parties shall enter into consultations with a view to reaching agreement on the procedures for composing the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties may agree to use any of the optional procedures specified in this Chapter's Annex on Rules of Procedure for Arbitral Tribunal Proceedings (Rules of Procedure Annex). Any procedures for composing the arbitral tribunal which are agreed under this paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of paragraphs 12 and 13.
4. If the Parties are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in paragraph 3, either Party may, at any time thereafter, notify the other Party that it wishes to use the procedures set forth in paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in accordance with paragraphs 5 to 7.
5. The Complaining Party shall appoint one arbitrator within 10 days of the date of the receipt of the notification referred to in paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in paragraph 4.
6. Following the appointment of the arbitrators in accordance with paragraph 5, the Parties shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each Party may provide to the other Party a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.
7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in paragraph 4, either Party may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.

8. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;
- (c) be independent of, and not be affiliated with or take instructions from, either Party;
- (d) not have dealt with the matter in any capacity; and
- (e) disclose to the Parties, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties otherwise agree, arbitrators shall not be nationals of a Party. In addition, the chair of the arbitral tribunal shall not have his or her usual place of residence in the territory of a Party.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. The Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

12. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

13. Where an arbitral tribunal is reconvened under Article 20.15 (Compliance Review) or Article 20.16 (Compensation and Suspension of Concessions or other Obligations) the reconvened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

Article 20.11
Functions of Arbitral Tribunals

1. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

- (a) the facts of the case;
- (b) the applicability of the provisions of this Agreement cited by the Parties; and
- (c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties agree otherwise within 20 days from the date of the establishment of an arbitral tribunal:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement.”

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal shall set out in its report:

- (a) a descriptive section summarising the arguments of the Parties;
- (b) its findings on the facts of the case and on the applicability of the provisions of this Agreement; and
- (c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; or
- (d) its reasons for its findings in subparagraphs (b) and (c).

4. In addition to paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

7. The arbitral tribunal shall consult the Parties regularly and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

8. An arbitral tribunal reconvened under this Chapter shall also carry out functions with regard to compliance review under Article 20.15 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 20.16 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal reconvened under Article 20.15 (Compliance Review) and Article 20.16 (Compensation and Suspension of Concessions or other Obligations).

9. An arbitral tribunal shall make its findings by consensus. Where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

Article 20.12

Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in this Chapter's Rules of Procedure Annex unless the Parties agree otherwise. On the request of a Party, or on its own initiative, the arbitral tribunal may, after consulting the Parties, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal reconvened under Article 20.15 (Compliance Review) or Article 20.16 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties agree otherwise.

4. Similarly, a Compliance Review Tribunal reconvened pursuant to Article 20.15 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after reconvening, fix the timetable for the compliance review process taking into account the time periods specified in Article 20.15 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties agree otherwise. All presentations and statements made at hearings shall be made in the presence of the Parties. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties. Neither Party shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by the other Party. The Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the arbitral tribunal which that Party has designated as confidential. A Party shall upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

11. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties. Where the Parties agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties an interim report, meeting the requirements specified in paragraph 3 of Article 20.11 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. A Party may, seven days after the final report of the arbitral tribunal is presented to the Parties or at any time thereafter, make the report publicly available subject to the protection of any confidential information contained in the report.

Article 20.13

Suspension and Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of either Party. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

SECTION D

Implementation Provisions

Article 20.14

Implementation

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties, the Responding Party shall notify the Complaining Party:

- (a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in paragraph 1;
- (b) whether such implementation can take place immediately; and
- (c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, whenever possible, be mutually agreed by the Parties. Where the Parties are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the arbitral tribunal's final report to the Parties either Party may request that the chair of the arbitral tribunal determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties.

5. Where a request is made pursuant to paragraph 4, the chair of the arbitral tribunal shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral tribunal's final report to the Parties. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

Article 20.15

Compliance Review

1. Where the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in paragraph 1 of Article 20.14 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal reconvened for this purpose (Compliance Review Tribunal)⁴¹. Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of either Party.

2. Such request may only be made after the earlier of:

- (a) the expiry of the reasonable period of time; or
- (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).

⁴¹ Consultations under Article 20.6 (Consultations) are not required for these procedures.

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:
 - (a) the factual aspects of any implementation action taken by the Responding Party; and
 - (b) whether the Responding Party has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).
4. The Compliance Review Tribunal shall set out in its report:
 - (a) a descriptive section summarising the arguments of the Parties;
 - (b) its findings on the factual aspects of the case; and
 - (c) its findings on whether the Responding Party has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).
5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties within 75 days of the date it reconvenes and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.
6. Where an arbitral tribunal is requested to reconvene pursuant to paragraph 1, it shall reconvene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to reconvene to the submission of its final report shall not exceed 120 days, unless paragraph 12 of Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) applies or the Parties otherwise agree.

Article 20.16

Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under paragraph 1 of Article 20.14 (Implementation). However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under paragraph 1 of Article 20.14 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.
2. Where either of the following circumstances exists:
 - (a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in paragraph 1 of Article 20.14 (Implementation); or

- (b) a failure to comply with the obligation in paragraph 1 of Article 20.14 (Implementation) has been established in accordance with Article 20.15 (Compliance Review)

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under paragraph 2, the Complaining Party may at any time thereafter notify the Responding Party that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification and impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised where:

- (a) a review is being undertaken pursuant to paragraph 8; or
- (b) a mutually agreed solution has been reached.

5. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

- (a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and
- (b) the Complaining Party may suspend concessions or other obligations in other sectors if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in paragraph 6 have not been followed, the Responding Party may request the arbitral tribunal to reconvene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties within 30 days of the date it reconvenes. Where an arbitral tribunal is requested to reconvene pursuant to this paragraph, it shall reconvene within 15 days of the date of the request, unless paragraph 12 of Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in paragraph 1 of Article 20.14 (Implementation) has been complied with or a mutually satisfactory solution is reached.

10. Where the right to suspend concessions or other obligations has been exercised under this Article, if the Responding Party considers that:

- (a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or
- (b) it has complied with the obligation in paragraph 1 of Article 20.14 (Implementation),

it may request the arbitral tribunal to reconvene to examine the matter⁴².

11. Where the arbitral tribunal reconvenes pursuant to subparagraph 10(a), paragraph 8 shall apply. Where the arbitral tribunal reconvenes pursuant to subparagraph 10(b), paragraphs 3 to 5 of Article 20.15 (Compliance Review) shall apply.

SECTION E

Final Provisions

Article 20.17

Expenses

1. Unless the Parties otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

Article 20.18

Contact Points

1. Each Party shall designate a contact point for this Chapter and shall notify the other Party of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Party of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party through its designated contact point who shall provide confirmation of receipt of such documents in writing.

⁴² Where a Compliance Review Tribunal determines that measures taken to comply are inconsistent with this Agreement, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

Article 20.19
Language

1. All proceedings pursuant to this Chapter shall be conducted in the English language.
2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

ANNEX ON RULES OF PROCEDURE FOR ARBITRAL TRIBUNAL PROCEEDINGS

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 20 (Consultations and Dispute Settlement).

Timetable

2. After consulting the Parties, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties, an arbitral tribunal may, in consultation with the Parties, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Operation of Arbitral Tribunals

7. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions.

8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties.

11. The arbitral tribunal's deliberations shall be confidential. The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

Written Submissions and Other Documents

13. Each Party shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, the Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

14. Each Party shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Party.

15. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party may deliver a copy of the document(s) to the other Party by facsimile, email or other means of electronic transmission.

16. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral tribunal proceeding by delivering a new document clearly indicating the changes.

Hearings

17. At the first substantive hearing with the Parties, each Party shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

18. The Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

Availability of Information

19. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties. Neither Party shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by the other Party. The Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party shall, upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Information Gathering

20. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

21. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties. Where the Parties agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

Reports

22. The arbitral tribunal shall provide to the Parties an interim report, meeting the requirements specified in paragraph 3 of Article 20.11 (Functions of Arbitral Tribunals).

23. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

24. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

Venue

25. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

Remuneration and Payment of Expenses

26. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains pursuant to Rule 10.