

(a) internal procurement by a government from its own bodies where no other supplier has been asked to tender. If, however, tenders are called or invited, the provisions of this Part shall apply whether or not a government body submits a tender;

(b) the procurement of proprietary items required to ensure machinery or equipment integrity, but only as they may relate to biased specifications. Where such items are available from a number of sources and/or tenders are called or invited, all provisions of this Part apply other than as they relate to biased specifications;

(c) the urgent procurement of goods and related services in the event of emergencies, such as natural disasters, or to meet the urgent requirements of United Nations peacekeeping or humanitarian operations;

(d) procurement of proprietary equipment of a work, health or safety nature specified in industrial agreements but only as they may relate to biased specifications. Where such items are available from a number of sources and/or tenders are called or invited, all provisions of this Part apply other than as they relate to biased specifications;

(e) defence procurement of a strategic nature and other procurement where national security is a consideration;

(f) procurement under development assistance programmes.

4. Either Party may seek to have additional classes of procurement exempted from this Part. Such exemptions shall be permitted only with the agreement of the other Party.

#### *Article 56*

#### Administration and Review

1. The designated bodies shall report jointly to the Ministers responsible for procurement on the implementation of this Part in preparation for the reviews provided for in Article 68.

2. A committee of senior officials responsible for government procurement policy of each Party may meet as appropriate to discuss policy issues, technical or other cooperation, and the reviews referred to in paragraph 1.

### **PART 9**

#### Intellectual Property

#### *Article 57*

#### Intellectual Property

The Parties agree that the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights shall govern and apply to all intellectual property issues arising from this Agreement.

Page 33

### **PART 10**

#### Dispute Settlement

#### *Article 58*

#### Scope and Coverage

1. The rules and procedures of this Part shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement, but are without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

2. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the general principles of international law and consistently with the objectives set out in Article 1.

#### *Article 59*

##### Consultations

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.

2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as a result of failure of the other Party to carry out its obligations under this Agreement or the existence of any other situation may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.

3. If a request for consultation is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

#### *Article 60*

##### Good Offices, Conciliation or Mediation

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

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 61.

#### *Article 61*

##### Appointment of Arbitral Tribunals

1. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal. The request shall include a statement of the claim and the grounds on which it is based.

2. The arbitral tribunal shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who shall chair the tribunal. The latter shall not be a national of either of the Parties, nor have his or her usual place of residence in the territory of one of the Parties, nor be employed by either of them, nor have dealt with the case in any capacity.

3. If the chair of the tribunal has not been designated within 30 days of the appointment of the second arbitrator, the Director-General of the WTO shall at the request of either Party appoint the chair of the arbitral tribunal within a further one month's period.

4. If one of the Parties does not appoint an arbitrator within 30 days of the receipt of the request, the other Party may inform the Director-General of the WTO who shall appoint the chair of the

arbitral tribunal within a further 30 days and the chair shall, upon appointment, request the Party which has not appointed an arbitrator to do so within 14 days. If after such period that Party has still not appointed an arbitrator, the chair shall inform the Director-General of the WTO who shall make this appointment within a further 30 days.

5. For the purposes of paragraphs 1, 2, 3 and 4, any person appointed as a member or chair of the arbitral tribunal by either Party or by the Director-General of the WTO must be a well-qualified governmental or non-governmental individual, and can include persons who have served on or presented a case to a WTO panel, served in the Secretariat of the WTO, taught or published on international trade law or policy, or served as a senior trade policy official of a Member of the WTO. The Parties recognise that the arbitral tribunal should be composed of individuals of relevant technical or legal expertise.

#### *Article 62*

##### Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it as it thinks fit. The findings and rulings of the arbitral tribunal shall be binding on the Parties.

2. The arbitral tribunal shall, apart from the matters set out in Article 63, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

Page 35

#### *Article 63*

##### Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it. The reports of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

2. The arbitral tribunal shall have the right to seek information and technical advice from any individual or body which it deems appropriate. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions and its initial submission to the public. A Party shall treat as confidential information submitted by another Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of a Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its point of view.

6. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to take the floor first to be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 7 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

9. The arbitral tribunal shall release to the Parties its findings and rulings in a report on the dispute referred to it within 60 days of its formation. In exceptional cases, the arbitral tribunal may take an additional 10 days to release its report containing its findings and rulings. Within this time period, the arbitral tribunal shall accord adequate opportunity to the Parties to review the report before its release.

#### *Article 64*

##### Termination of Proceedings

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.

Page 36

#### *Article 65*

##### Implementation

1. The Party concerned shall comply with the arbitral tribunal's rulings or findings within a reasonable time period. The reasonable period of time shall be mutually determined by the Parties and shall not exceed 12 months from the date of the arbitral tribunal's report, unless the Party concerned advises the other Party that primary legislation shall be required, in which case the reasonable period of time shall not exceed 15 months from such date.

2. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the arbitral tribunal's report within the reasonable period of time, that Party shall, if so requested, and not later than the expiry of the reasonable period of time, enter into negotiations with the Party having invoked the dispute settlement procedures with a view to reaching a mutually satisfactory resolution.

3. If no mutually satisfactory resolution has been reached within 20 days, the Party which has invoked the dispute settlement procedures may suspend the application of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

4. In considering what benefits to suspend pursuant to paragraph 3:

(i) the Party which has invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and

(ii) the Party which has invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

#### *Article 66*

##### Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

### **PART 11**

#### General Provisions

#### *Article 67*

##### Application

1. Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, and, in respect of trade in services under Part 5, by non-governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.