

CHAPTER TWENTY-ONE

DISPUTE SETTLEMENT

Article 2101: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2102: Scope and Coverage

1. Except for the matters covered in Chapters Sixteen (Labour) and Seventeen (Environment) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

- (a) an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

第二十一章

争端解决

第2101条：合作

缔约方应始终努力就本协定的解释和适用达成一致，并应通过合作与磋商尽一切努力，就可能影响其运作的任何事项达成双方满意的解决方案。

第2102条：范围和覆盖

1. 除第十六章（劳工）和第十七章（环境）所涵盖的事项及本协定另有规定外，本章的争端解决条款应适用于解决缔约方之间关于本协定解释或适用的所有争端，或在缔约方认为以下情形时适用：

- (a) 另一方的实际或拟议措施与本协定的义务不一致或将会不一致；
- (b) 另一方未能履行其在本协定项下的义务；或

(c) any benefit that the Party could reasonably have expected to accrue to it under any provision of:

(i) Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures and Trade Facilitation) or Fourteen (Government Procurement), or

(ii) Chapter Nine (Cross-Border Trade in Services),

is being nullified or impaired as a result of the application of any measure of the other Party that is not inconsistent with this Agreement.

2. In any dispute in respect of subparagraph 1(c), a panel established under this Chapter shall take into consideration the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994 and Article XXIII(3) of GATS. A Party may not invoke subparagraph 1(c)(i) with respect to any measure subject to an exception under Article 2201 (Exceptions - General Exceptions) nor invoke subparagraph 1(c) with respect to any measure subject to the exception under Article 2205 (Exceptions - Cultural Industries).

Article 2103: Choice of Forum

1. Subject to paragraph 2, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any other free trade agreement to which both Parties are party, or any successor agreement thereto, may be settled in either forum at the discretion of the complaining Party.

(c) 缔约方根据以下任何条款合理预期可获得的任何利益：

(i) 第二章（货物的国民待遇和市场准入）、第三章（原产地规则）、第四章（原产地程序和贸易便利化）或第十四章（政府采购），或

(ii) 第九章（跨境服务贸易），

因另一方实施的与本协定不冲突的任何措施而正在被抵消或减损。

2. 在涉及第1款(c)项的任何争端中，根据本章设立的专家组应考虑解释1994年关税与贸易总协定第二十三条第一款(b)项和服务贸易总协定第二十三条第三款的判例法。缔约方不得就受第二千二百零一条（例外——一般例外）例外约束的任何措施援引第1款(c)(i)项，也不得就受第二千二百零五条（例外——文化产业）例外约束的任何措施援引第1款(c)项。

第二千一百零三条：选择争端解决场所

1. 在第2款的约束下，对于同时涉及本协定和世界贸易组织协定或双方均为缔约方的任何其他自由贸易协定（或其后续协定）的任何事项所产生的争端，可由申诉方自行选择任一争端解决机构进行处理。

2. In any dispute referred to in paragraph 1 where the Party complained against claims that its measures are subject to Article 103 (Initial Provisions and General Definitions - Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.

3. Where the complaining Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other, unless the Party complained against makes a request pursuant to paragraph 2.

Article 2104: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 2102.

2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including the identification of the measure or other matter at issue under Article 2102 and an indication of the legal basis for the complaint.

3. The other Party shall respond in writing and, subject to paragraph 4, the Parties shall, unless they otherwise agree, enter into consultations within 30 days of the date of receipt of the request by the other Party.

4. In cases of urgency, including those concerning perishable goods or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods or services, consultations shall commence within 15 days of the date of receipt of the request by the other Party.

2. 对于第1款所述争端，若被诉方主张其措施受第103条（初始条款和一般定义-与环境及保护协定的关系）约束，并以书面形式要求根据本协定审议该事项，则申诉方就该事项仅可援引本协定规定的争端解决程序。

3. 如申诉方根据第1款所述协定请求设立争端解决专家组，则应使用选定的论坛并排除另一论坛，除非被诉方根据第2款提出请求。

第2104条：磋商

1. 一缔约方可就第2102条所述任何事项书面请求与另一方进行磋商。

2. 请求方应向另一方提交请求，并说明请求理由，包括指明第2102条项下争议措施或其他事项，以及申诉的法律依据。

3. 另一方应以书面形式答复，且在遵守第4款的前提下，除非缔约方另有约定，否则应于另一方收到请求后30天内进入磋商程序。

4. 在紧急情况下，包括涉及易腐货物或其他贸易价值迅速丧失的货物或服务（如某些季节性货物或服务）时，磋商应于另一方收到请求之日起15日内开始。

5. The requesting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

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

- (a) provide sufficient information to enable a full examination of the measure or other matter at issue; and
- (b) treat any confidential or proprietary information received in the course of consultations on the same basis as the Party providing the information.

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

8. Consultations may be held in person or by any other means agreed to by the Parties.

Article 2105: Good Offices, Conciliation and Mediation

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

2. Such alternative methods of dispute resolution shall be conducted according to procedures agreed to by the Parties.

5. 请求方可要求另一方提供其政府机构或其他监管机构中具备相关事项专业知识的专业人员参与磋商。

6. 缔约方应尽一切努力，通过本条款项下的磋商就任何事项达成双方满意的解决方案。为此，每一缔约方应：

- (a) 提供充分信息以便全面审查争议措施或其他事项；以及 (b) 对磋商过程中收到的任何机密或专有信息，按提供信息的缔约方同等的保密标准予以对待。

7. 磋商应保密，且不影响缔约方在本章节程序中的权利。

8. 磋商可当面进行，或通过缔约方商定的任何其他方式进行。

第2105条：斡旋、调解与调停

1. 缔约方可随时同意采用替代性争端解决方法，如斡旋、调解或调停。

2. 此类替代性争端解决方法应按照缔约方商定的程序进行。

3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by either Party.

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

Article 2106: Establishment of a Panel

1. Unless the Parties agree otherwise, and subject to paragraph 3, if a matter referred to in Article 2104 has not been resolved within:

- (a) 45 days after the date of receipt of the request for consultations; or
- (b) 25 days after the date of receipt of the request for consultations for matters referred to in paragraph 4 of Article 2104;

the complaining Party may refer the matter to a dispute settlement panel.

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

3. A dispute settlement panel may not be established to review a proposed measure.

3. 根据本条款设立的程序可随时启动，并可由任何一方随时中止或终止。

4. 涉及斡旋、调解和调停的程序应保密，且不得损害缔约方在任何其他程序中的权利。

第2106条：专家组的设立

1. 除非缔约方另有约定，并在遵守第3款的前提下，若第2104条所述事项未能在以下期限内解决：

- (a) 自收到磋商请求之日起45天内；或 (b) 对于第2104条第4款所述事项，自收到磋商请求之日起25天内；

申诉方可将该事项提交争端解决专家组。

2. 申诉方应向另一方提交设立专家组的书面请求，说明请求理由，指明争议的具体措施或其他事项，并提供足以清晰阐述问题的申诉法律依据简要摘要。

3. 不得设立争端解决专家组来审查拟议措施。

Article 2107: Qualifications of Panelists

1. Each panelist shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;
 - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
 - (c) be independent of and not be affiliated with or take instructions from, either Party;
 - (d) not be a national of either Party, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either of them; and
 - (e) comply with a Code of Conduct that the Commission shall establish at its first session following the entry into force of this Agreement.

2. Individuals who have been involved in any of the possible alternative dispute settlement proceedings referred to in Article 2105 may not serve as panelists in the same dispute.

第2107条：专家组成员的资格

1. 每位专家组成员应：
 - (a) 在法律、国际贸易、本协定涵盖的其他事项或国际贸易协定下产生的争端解决方面具有专业知识或经验；(b) 严格基于客观性、可靠性和合理判断进行遴选；(c) 独立于任何一方，不与任何一方有关联或接受其指示；(d) 不是任何一方的国民，通常居住地不在任何一方的领土内，也不受雇于任何一方；以及(e) 遵守委员会在本协定生效后第一次会议上制定的行为准则。

2. 曾参与第2105条所述任何可能的替代性争端解决程序的个人，不得在同一争端中担任专家组成员。

Article 2108: Panel Selection

1. The panel shall comprise three panelists.
2. Each Party shall, within 30 days after the date of receipt of the request for panel establishment, appoint a panelist, propose up to four candidates to serve as the chair of the panel and notify the other Party in writing of the appointment and its proposed candidates to serve as the chair. If a Party fails to appoint a panelist within this time, the panelist shall be selected by the other Party from the candidates proposed for the chair.
3. The Parties shall, within 30 days after the date of receipt of the request for panel establishment, endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties fail to agree on the chair within this time period, within a further seven days the chair shall be selected by lot from the candidates proposed.
4. If a panelist appointed by a Party withdraws, is removed, or becomes unable to serve, a replacement shall be appointed by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2. If the chair of the panel withdraws, is removed, or becomes unable to serve, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates within a further 30 days and the panelist or chair shall be selected by lot within seven days thereafter from among the candidates proposed. In any case, any time period applicable to the proceeding shall be suspended beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is selected.

第2108条：专家组遴选

1. 专家组应由三名专家组成员组成。
2. 每一缔约方应在收到设立专家组的请求之日起**30**天内，任命一名专家组成员，提出最多四名候选人担任专家组主席，并以书面形式通知另一方其任命及提议的主席候选人。若一缔约方未能在此时限内任命专家组成员，则该成员应由另一方从提议的主席候选人中选定。
3. 缔约双方应在收到设立专家组的请求之日起**30**天内，尽力协商并从提议的候选人中任命主席。若缔约双方未能在此时限内就主席人选达成一致，则应在随后的七天内通过抽签从提议的候选人中选定主席。
4. 若某缔约方任命的专家组成员退出、被撤换或无法履职，该缔约方应在**30**天内任命替代人选；若未按期任命，则应根据第2款第二句任命替代人选。若专家组主席退出、被撤换或无法履职，各缔约方应在**30**天内就替代人选达成一致；若未按期达成一致，则应根据第3款第二句任命替代人选。若无剩余候选人，各缔约方应在随后**30**天内额外提出最多三名候选人，并在之后七日内通过抽签选定专家组成员或主席。在任何情况下，程序所涉时限均应自专家组成员或主席退出、被撤换或无法履职之日起中止，至替代人选选定之日恢复。

Article 2109: Rules of Procedure

1. Within six months following the date of entry into force of this Agreement, the Commission shall approve Model Rules of Procedure.

2. Any panel established under this Chapter shall follow the Model Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

3. Unless the Parties agree otherwise, the rules of procedure shall ensure:
 - (a) the opportunity for each Party to provide initial and rebuttal written submissions;
 - (b) the right to at least one hearing before the panel, and that subject to subparagraph (g), hearings shall be open to the public;
 - (c) that the Parties have the right to present and receive written submissions and present and hear oral arguments in any of the Parties’ official languages;
 - (d) subject to subparagraph (g), that each Party’s written submissions, written versions of its oral statements and written responses to requests or questions from the panel may be made public;
 - (e) that the panel allow non-governmental entities in the Parties’ territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;

第2109条：程序规则

1. 在本协定生效后六个月内，委员会应核准示范程序规则。

2. 根据本章节成立的任何专家组均应遵循示范程序规则。专家组可与缔约方协商制定不违反本章节规定的补充程序规则。

3. 除非缔约方另有约定，程序规则应确保：
 - (a) 各缔约方有机会提供初始书面陈述及反驳书面陈述；(b) 至少有权在专家组面前举行一次听证会，且根据(g)项规定，听证会应向公众开放；(c) 缔约方有权以任何缔约方官方语言提交和接收书面陈述，并进行和听取口头辩论；(d) 根据(g)项规定，各缔约方的书面陈述、口头声明的书面版本以及对专家组请求或问题的书面答复可予以公开；(e) 专家组应允许缔约方境内的非政府实体领土提供关于争端的书面意见，可能有助于专家组评估缔约方的提交材料和论点；

- (f) all submissions and comments made to the panel shall be available to the other Party; and
- (g) the protection of information designated by either Party for confidential treatment.

4. Unless the Parties otherwise agree within 15 days after the date of the establishment of the panel, the terms of reference shall be:

“To examine, objectively and in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of the panel and to make findings, determinations and recommendations as provided in Article 2110.”

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, in the sense of subparagraph 1(c) of Article 2102, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure determined:

- (a) to be inconsistent with the obligations of the Agreement; or
- (b) to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102,

the terms of reference shall so indicate.

7. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body it deems appropriate in accordance with the Model Rules of Procedure.

(f) 向专家组提交的所有提交材料和评论应向另一方提供；以及 (g) 保护任何一方指定为保密处理的信息。

4. 除非缔约方在专家组设立之日起15日内另有约定，否则职权范围应为：

“根据协定相关规定，客观审查设立专家组请求中提及的事项，并依照第2110条作出调查结果、裁定及建议。”

5. 若申诉方主张某事项导致第2102条第1款(c)项所述利益丧失或减损，则职权范围中应予以列明。

6. 若缔约方要求专家组就下列措施对该缔约方造成的不利贸易影响程度作出调查结果：

- (a) 被认定不符合协定义务；或 (b) 导致第2102条第1款(c)项所述利益丧失或减损，

则职权范围中应予以列明。

7. 应一缔约方请求或主动提议，专家组可根据《示范程序规则》向其认为适当的任何个人或机构寻求信息和技术建议。

8. The panel may rule on its own jurisdiction.
9. The panel may delegate to the chair authority to make administrative and procedural decisions.
10. The panel may, in consultation with the Parties, modify any time-period applicable in the panel proceedings and make other procedural or administrative adjustments as may be required for the fairness or efficiency of the proceeding.
11. Findings, determinations and recommendations of the panel in the sense of Article 2110 shall be made by a majority of its members.
12. Panelists may furnish separate opinions on matters not unanimously agreed. No panel may disclose which panelists are associated with majority or minority opinions.
13. The Parties shall bear the expenses of a panel, including the remuneration of the panelists, in accordance with the Model Rules of Procedure.

Article 2110: Panel Reports

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Chapter.
2. The panel shall base its reports on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and arguments of the Parties and on any information and technical advice put before it pursuant to the provisions of this Chapter.

8. 专家组可对自身管辖权作出裁决。
9. 专家组可授权主席作出行政和程序性决定。
10. 专家组可在与缔约方协商后，修改专家组程序中适用的任何时限，并根据程序公平性或效率要求作出其他程序性或行政性调整。
11. 专家组根据第2110条作出的调查结果、裁定和建议应以其成员的多数意见为准。
12. 专家组成员可就未达成一致同意的事项提出单独意见。任何专家组均不得披露哪些成员支持多数意见或少数意见。
13. 缔约方应按照示范程序规则承担专家组费用，包括专家组成员的报酬。

第2110条：专家组报告

1. 除非缔约方另有约定，专家组应按照本章节的规定出具报告。
2. 专家组应基于本协定的规定，按照国际公法的解释规则进行适用和解释，并基于缔约方的提交材料和论点，以及根据本章节规定提交的任何信息和技术建议，编写其报告。

3. The panel shall present to the Parties an initial report within 90 days after the last panelist is selected. The report shall contain:

- (a) findings of fact;
- (b) determinations as to whether or not a Party has conformed with its obligations under this Agreement and any other finding or determination requested in the terms of reference; and
- (c) recommendations for resolution of the dispute, if requested by a Party.

4. Notwithstanding the provisions of Article 2109, the initial report of the panel shall be confidential.

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

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

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

7. Unless the Parties decide otherwise, the final report of the panel may be published by either Party 15 days after it is transmitted to the Parties, subject to subparagraph 3(g) of Article 2109.

3. 专家组应在最后一名专家组成员选定后90天内向缔约方提交一份初步报告。该报告应包含：

- (a) 事实认定；(b) 关于一缔约方是否遵守其在本协定下义务的裁定，以及职权范围中要求的任何其他调查结果或裁定；及(c) 争端解决建议（如缔约方提出请求）。

4. 尽管有第2109条的规定，专家组的初步报告应保密。

5. 缔约方可就专家组初步报告向其提交书面意见，但须遵守专家组可能设定的时限。专家组在考虑此类意见后，可主动或应缔约方请求：

- (a) 征求缔约方意见；(b) 重新审议其报告；或(c) 进行其认为适当的进一步审查。

6. 专家组应在提交初步报告后30天内向缔约方提交最终报告。

7. 除非缔约方另有决定，专家组的最终报告可在转交缔约方15天后由任何一方公布，但须遵守第2109条第3(g)项的规定。

Article 2111: Request for Clarification of the Report

1. Within 10 days after the presentation of the final report, a Party may submit a written request to the panel for clarification of any determinations or recommendations in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days after the presentation of such request.
2. The submission of a request pursuant to paragraph 1 shall affect the time periods referred to in paragraph 3 of Article 2113 and paragraph 1 of Article 2114, unless the panel decides otherwise.

Article 2112: Suspension and Termination of Proceedings

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel shall lapse, unless the Parties agree otherwise. If the authority of the panel lapses and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting a new proceeding regarding the same matter.
2. The Parties may agree to terminate the proceeding before a panel at any time by jointly notifying the chair of the panel.

第2111条：报告澄清请求

1. 在最终报告提交后的10天内，缔约方可向专家组提交书面请求，要求澄清报告中其认为含糊不清的任何裁定或建议。专家组应在收到该请求后的10天内作出回应。
2. 根据第1款提交请求将影响第2113条第3款和第2114条第1款所述的时限，除非专家组另有决定。

第2112条：程序的暂停和终止

1. 缔约方可随时协定暂停专家组的工作，暂停期限自该协定之日起不超过12个月。若专家组工作暂停超过12个月，则专家组的权限将失效，除非缔约方另有协定。若专家组权限失效且缔约方未就争端解决达成协议，本条款中的任何规定均不妨碍一缔约方就同一事项请求启动新程序。
2. 缔约方可随时通过共同通知专家组主席的方式，同意在专家组作出裁定前终止程序。

Article 2113: Implementation of the Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which shall be in conformity with the determinations and the recommendations, if any, of the panel, unless otherwise agreed by the Parties.
2. Wherever possible, the resolution shall be removal of any measure not conforming to this Agreement or removal of the nullification or impairment in the sense of subparagraph 1(c) of Article 2102.
3. If the Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period as the Parties may agree, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with a view to agreeing to compensation.

Article 2114: Non-Implementation – Suspension of Benefits

1. If no agreement on compensation has been reached pursuant to paragraph 3 of Article 2113 within 20 days after the date of the complaining Party’s request, or if 30 days have passed following the presentation of the final report where compensation is not requested pursuant to paragraph 3 of Article 2113, or the Parties have agreed on the resolution of the dispute or on a compensation, and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may suspend the application to the other Party of benefits of equivalent effect, following notice to the other Party, until such time as they have reached agreement on a resolution of the dispute. The notice shall specify the level of benefits that the complaining Party proposes to suspend.

第2113条：最终报告的实施

1. 在收到专家组的最终报告后，缔约方应就争端解决达成一致，该解决方式应符合专家组的裁定和建议（如有），除非缔约方另有约定。
2. 在可能的情况下，解决方式应为撤销任何不符合本协定的措施，或撤销第2102条第1款(c)项意义上的利益丧失或减损。
3. 若缔约方未能在最终报告提交后30天内或双方商定的其他期限内就解决方案达成一致，被诉方应在申诉方提出请求时，就补偿事宜展开谈判以期达成协议。

第2114条：未实施—利益中止

1. 若申诉方根据第2113条第3款提出请求后20天内未能就补偿达成协议，或根据第2113条第3款未要求补偿且最终报告提交后已过30天，或缔约方已就争端解决或补偿达成一致但申诉方认为另一方未遵守协定条款时，申诉方可在通知另一方后，中止对另一方适用等效利益，直至双方就争端解决达成协议。通知中应列明申诉方拟中止的利益水平。

2. In considering which benefits to suspend pursuant to paragraph 1:
- (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102; and
 - (b) a complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits in the sense of subparagraph 1(c) of Article 2102 has been brought into conformity with this Agreement, including as a result of the panel process described in Article 2115, or until such time as the Parties have otherwise reached agreement on a resolution of the dispute.

2. 在考虑根据第1款中止哪些利益时：
- (a) 申诉方应首先寻求中止专家组已认定不符合本协议义务或导致第2102条第1款(c)项意义上利益丧失或减损的措施或其他事项所影响的相同部门或部门的利益或其他义务；及
 - (b) 申诉方如认为中止相同部门或部门的利益或其他义务不可行或无效，可中止其他部门的利益。

3. 中止利益应是临时的，且申诉方仅可在以下情况下实施中止：被认定不符合本协议义务或以其他方式使第2102条第1款(c)项意义上的利益丧失或减损的措施已符合本协议（包括通过第2115条所述的专家组程序达成），或缔约方已就争端解决另行达成协议。

Article 2115: Review of Compliance and Suspension of Benefits

1. A Party may, by written notice to the other Party, request that a panel established pursuant to Article 2106 be reconvened to make a determination with respect to:

- (a) whether the level of benefits suspended by a Party pursuant to paragraph 1 of Article 2114 is manifestly excessive; or
- (b) any disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of the previously established panel.¹

2. In the written notice of the request, the Party shall identify the specific measures or matters at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The panel shall be reconvened upon receipt by the other Party of the written notice of the request. In the event that any original panelist is unable to serve on the panel the provisions of Article 2108 shall apply *mutatis mutandis*.

4. The provisions of Articles 2109 and 2110 apply *mutatis mutandis* to procedures adopted and reports issued by a panel reconvened under this Article, with the exception that, subject to paragraph 10 of Article 2109, the panel shall present an initial report within 60 days of being reconvened where the request concerns paragraph 1(a) only, and otherwise within 90 days.

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

¹ In interpreting the terms “the existence or consistency with” and “measures taken to comply”, a compliance panel established under this paragraph shall take into account relevant jurisprudence under the Dispute Settlement Understanding.

第2115条： 合规审查与利益中止

1. 一缔约方可书面通知另一方，要求根据第2106条成立的专家组重新召开会议，以便就以下事项作出裁定：

- (a) 缔约方根据第2114条第1款中止的利益水平是否明显过高；或
- (b) 对于为遵守先前成立的专家组裁定或建议而采取的措施是否存在或与其与本协议一致性的任何分歧。¹

2. 在请求的书面通知中，缔约方应指明争议的具体措施或事项，并提供申诉法律依据的简要概述，以清晰呈现问题。

3. 专家组应在另一方收到请求的书面通知后重新召集。若任何原专家组成员无法履职，则应比照适用第2108条的规定。

4. 第2109条和第2110条的规定经必要修改后适用于根据本条重新召集的专家组所采纳的程序和发布的报告，但例外情况是，在请求仅涉及第1款(a)项时，专家组应于重新召集后60天内提交初步报告，其他情况下则应在90天内提交，且须遵守第2109条第10款的规定。

5. 根据本条款重新召集的专家组可在其报告中酌情建议终止任何利益的中止或修改所中止利益的数量。

¹ 在解释“存在或符合性”及“采取的合规措施”等术语时，根据本款设立的合规专家组应考虑《争端解决谅解》下的相关判例法。

Article 2116: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2117: Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 2118: Alternative Dispute Resolution

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

第2116条：司法或行政程序事项的转介

1. 如果在本协定解释或适用方面的问题出现在任何一方的国内司法或行政程序中，且该方认为值得其干预，或者如果法院或行政机构征求一方的意见，则该方应通知另一方。委员会应尽快努力就适当的回应达成一致。
2. 法院或行政机关所在领土的缔约方应根据该论坛的规则，将委员会的任何商定解释提交给法院或行政机关。
3. 如委员会无法达成一致，各缔约方可依据该论坛的规则，向法院或行政机关提交其各自的意见。

第2117条：私人权利

任何缔约方不得以其国内法规定，因另一方措施与本协定不一致而对另一方提起诉讼的权利。

第2118条：替代性争议解决

1. 各缔约方应在最大程度上鼓励并便利采用仲裁及其他替代性争议解决方式，以解决自由贸易区内私人缔约方之间的国际商业争议。

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

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

2. 为此，各缔约方应提供适当程序以确保遵守仲裁协议，并对此类争议中的裁决予以承认与执行。

3. 若一缔约方已加入并遵守1958年6月10日在纽约签订的《承认及执行外国仲裁裁决公约》，则应视为该缔约方符合第2款之规定。

Annex 2109
Model Rules of Procedure

Application

1. The following rules of procedure apply to dispute settlement proceedings under Chapter 21 unless the Parties otherwise agree.

Definitions

2. For the purposes of this Annex:

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

complaining Party means a Party that requests the establishment of a panel under Article 2106;

court reporter means a designated note-taker.

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

panel means a panel established under Article 2106; and

representative means an employee of a government department or agency or of any other government entity of a Party;

附件2109
示范程序规则

适用范围

1. 除非缔约方另有约定，以下程序规则适用于第21章项下的争端解决程序。

定义

2. 就本附件而言：

顾问指缔约方聘请的、就该缔约方参与专家组程序提供咨询或协助的人员；

申诉方指根据第2106条请求设立专家组的缔约方；

法庭记录员指指定的笔录员。

法定假日指每周六、周日及缔约方为本规则目的指定的任何其他假日；

专家组指根据第2106条设立的专家组；

代表指一缔约方的政府部门或机构或其他政府实体的雇员；

3. Any reference made in these rules of procedure to an Article is a reference to the appropriate Article in Chapter 21.

Written Submissions and Other Documents

4. Each Party shall deliver the original and no less than four copies of any written submission to the panel and one copy to the Embassy of the other Party. Delivery of submissions and any other document related to the panel proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. Where a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall deliver at the same time an electronic version of such submissions or other document.

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

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

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

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

3. 本程序规则中对条款的任何提及均指第21章中的相应条款。

书面陈述及其他文件

4. 每一缔约方应向专家组提交书面陈述的原件及至少四份副本，并向另一方的大使馆提交一份副本。若缔约方同意，提交材料及与专家组程序相关的任何其他文件可通过传真或其他电子传输方式进行递送。当缔约方递送书面陈述或与专家组程序相关的任何其他文件的纸质副本时，该缔约方应同时递送此类提交材料或其他文件的电子版本。

5. 申诉方应在最后一名专家组成员任命之日起10日内提交初次书面提交材料。被诉方则应在申诉方初次书面提交材料截止之日起20日内提交书面答辩材料。

6. 专家组应与缔约方协商，确定后续书面反驳材料及专家组与缔约方一致认为适当的其他书面陈述的提交截止日期。

7. 缔约方可随时通过提交明确标注修改内容的新文件，更正专家组程序中任何书面陈述或其他相关文件的文书性质小错误。

8. 如果文件交付的最后一天适逢缔约方遵守的法定假日，或因政府命令或不可抗力导致该缔约方政府办公室关闭的任何其他日子，则文件可在下一个工作日交付。

Burden of Proof

9. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.

10. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Written Submission by a Non-Governmental Entity

11. A panel may, on application, grant leave to a non-governmental entity to file a written submission. In making its decision to grant leave, the panel shall consider, *inter alia*:

- (a) whether there is a public interest in the proceeding;
- (b) whether the non-governmental entity has a substantial interest in the proceeding;²
- (c) whether the written submission would assist the panel in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the Parties; and
- (d) any submissions by the Parties on the application for leave.

² An interest in the development of trade law jurisprudence, the interpretation of the Agreement, or in the subject matter of the dispute does not alone suffice in establishing the presence of a substantial interest in the proceeding by a non-governmental entity.

举证责任

9. 主张另一方措施与本协定规定不一致的缔约方，应承担证明该不一致的责任。

10. 主张某项措施适用本协定例外的缔约方，应承担证明该例外适用的责任。

非政府实体的书面陈述

11. 专家组可应申请，准许非政府实体提交书面陈述。在决定是否准许时，专家组应特别考虑：

- (a) 程序是否涉及公共利益；(b) 非政府实体是否在程序中具有实质性利益；²(c) 书面陈述是否通过提供不同于缔约方的视角、特定知识或见解，有助于专家组对程序中相关事实或法律问题的认定；及

对程序中相关事实或法律问题的认定。

- (d) 缔约方就适用范围申请提交的任何材料。

² 对贸易法判例的发展、协定解释或争议事项的兴趣，本身并不足以证明非政府实体在程序中具有实质性利益。

12. Where the panel has granted leave to a non-governmental entity to file a written submission, it shall ensure that:

- (a) the written submission does not introduce new issues to the dispute and is within the terms of reference of the dispute as defined by the Parties;
- (b) the non-governmental entity follows any rules adopted by the Commission for the filing of such written submissions;
- (c) the written submission avoids disrupting the proceeding and preserves the equality of the Parties; and
- (d) the Parties have the opportunity to respond to the written submission.

Role of Experts

13. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate subject to paragraphs 14 and 15 and such additional terms and conditions as the Parties may agree upon. The requirements set out in Article 2107 shall apply to the experts or bodies, as appropriate.

14. Before the panel seeks information or technical advice, it shall:

- (a) notify the Parties of its intention to seek information or technical advice pursuant to paragraph 13 and provide them with an adequate period of time to submit comments; and
- (b) provide the Parties with a copy of any information or technical advice received pursuant to paragraph 13 and provide them with an adequate period of time to submit comments.

12. 如专家组已批准非政府实体提交书面陈述，则应确保：

- (a) 书面陈述未向争端引入新议题，且处于缔约方定义的争端职权范围内；(b) 非政府实体遵循委员会为此类书面陈述提交所采纳的任何规则；(c) 书面陈述避免扰乱程序并保持当事方平等；(d) 缔约方有机会对书面陈述作出回应。

专家作用

13. 应缔约方请求或主动提议，专家组可在遵守第14条和第15条及缔约方可能商定的额外条款和条件下，向其认为适当的任何个人或机构寻求信息和技术建议。第2107条所列要求应酌情适用于专家或机构。

14. 专家组在寻求信息或技术建议前，应：

- (a) 将其拟根据第13款寻求信息或技术建议的意向通知各缔约方，并为缔约方提供充分时间提交评论；以及 (b) 向缔约方提供根据第13款收到的任何信息或技术建议副本，并为缔约方提供充分时间提交评论。

15. When the panel takes into consideration the information or technical advice received pursuant to paragraph 13 for the preparation of its report, it shall also take into consideration any comments or observations submitted by the Parties with respect to such information or technical advice.

Operation of Panels

16. The chair of the panel shall preside at all of its meetings.

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

18. Only panelists may take part in the deliberations of the panel. The panel may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations. The members of the panel and the persons employed by the panel shall maintain the confidentiality of the panel's deliberations and any information that is protected pursuant to Article 2109 and Annex 2109.

19. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceedings and make other procedural or administrative adjustments as may be required in the proceeding.

Hearings

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

21. The location of hearings shall alternate between the territories of the Parties with the first hearing to take place in the territory of the Party complained against.

15. 当专家组在编写报告时考虑根据第13款收到的信息或技术建议时，还应考虑缔约方就该等信息或技术建议提交的任何评论或意见。

专家组的运作

16. 专家组主席应主持其所有会议。

17. 专家组可通过任何适当方式处理事务，包括电话、传真传输及视频或计算机链接。

18. 仅专家组成员可参与专家组的审议。专家组可在与缔约方协商后，雇用所需数量的助理、口译员或笔译员，或法庭记录员以协助程序，并允许其出席此类审议。专家组成员及受雇于专家组的人员须对专家组的审议内容及根据第2109条和附件2109受保护的任何信息予以保密。

19. 专家组可在与缔约方协商后，调整专家组程序中适用的任何时限，并根据程序需要作出其他程序性或行政性调整。

听证会

20. 专家组主席应在与缔约方和专家组成员协商后，确定首次听证会及任何后续听证会的日期和时间，并以书面形式通知缔约方这些日期和时间。

21. 听证会的地点应在缔约方领土之间轮换，首次听证会在被诉方领土举行。

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

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

24. Hearings shall be open to the public, except as necessary to protect information designated by either Party for confidential treatment. The panel shall, in consultation with the Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public. Such procedures may include, *inter alia*, the use of live web-broadcasting or of closed-circuit television.

25. The panel shall arrange the preparation of hearing transcripts, if any, and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Ex Parte Contacts

26. No Party may communicate with the panel without notifying the other Party. The panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

27. No panelist may discuss any aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panelists.

22. 每方应不迟于听证会日期前五天，向另一方和专家组提交一份名单，列明将代表该方出席听证会的人员姓名，以及其他将出席听证会的代表或顾问。

23. 每次听证会应由专家组以公平方式进行，确保申诉方与被告方在陈述论点、答复及反驳时享有同等时间。

24. 听证会应公开举行，除非有必要保护任何一方指定为保密处理的信息。专家组应与缔约方协商，采取适当后勤安排和程序，确保公众参与不会干扰听证会。此类程序可特别包括采用网络直播或闭路电视。

25. 专家组应安排听证会记录的编制（如有），并应在记录编制完成后尽快向各缔约方提供副本。

单方接触

26. 任何缔约方不得在未通知另一方的情况下与专家组沟通。专家组不得在另一方缺席或未通知另一方的情况下与某一缔约方沟通。

27. 任何专家组成员均不得在其他专家组成员缺席的情况下与缔约方讨论程序实质性问题的任何方面。

Remuneration and Payment of Expenses

28. Unless the Parties agree otherwise, the expenses of the Panel, the remuneration of the panelists and their assistants, their travel and lodging expenses, and all general expenses shall be born in equal shares between the Parties.
29. Each panelist shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and shall keep a record and render a final account of all general expenses.

报酬与费用支付

28. 除非缔约方另有约定，专家组的费用、专家组成员及其助理的报酬、差旅和住宿费用以及所有一般费用应由缔约方平均分担。
29. 每位专家组成员应记录并提交其个人及任何助手的时间和费用的最终账目，同时记录并提交所有一般费用的最终账目。