

CHAPTER THREE

DISPUTE SETTLEMENT

SECTION A

Resolution of Disputes between Investors and Parties

Article 3.1

Scope and Definitions

1. This Section shall apply to a dispute between a claimant of one Party and the other Party concerning treatment¹ alleged to breach the provisions of Chapter Two (Investment Protection) which breach allegedly causes loss or damage to the claimant or its locally established company.
2. For the purposes of this Section, unless otherwise specified:
 - (a) “disputing parties” means the claimant and the respondent;
 - (b) “claimant” means an investor of a Party which seeks to submit or has submitted a claim pursuant to this Section, either:
 - (i) acting on its own behalf; or
 - (ii) acting on behalf of a locally established company, as defined in subparagraph (c), which it owns or controls²;
 - (c) “locally established company” means a juridical person owned or controlled³ by an investor of one Party, established in the territory of the other Party;
 - (d) “non-disputing Party” means either Singapore, in the case where the Union or a Member State of the Union is the respondent; or the Union, in the case where Singapore is the respondent;
 - (e) “respondent” means either Singapore; or in the case of the EU Party, either the Union or the Member State of the Union as notified pursuant to Article 3.5 (Notice of Intent); and
 - (f) “third party funding” means any funding provided by a natural or juridical person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a

¹ The Parties understand that the term “treatment” may include failures to act.

² For the avoidance of doubt, subparagraph 2(b) shall constitute the Parties’ agreement to treat a locally established company as a national of another Contracting State for the purposes of subparagraph 2(b) of Article 25 of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* of 18 March 1965.

³ A juridical person is:

- (a) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party;
- (b) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

share or other interest in the proceeds or potential proceeds of the proceedings to which the disputing party may become entitled, or in the form of a donation or grant.

Article 3.2

Amicable Resolution

Any dispute should as far as possible be resolved amicably through negotiations and, where possible, before the submission of a request for consultations pursuant to Article 3.3 (Consultations). An amicable resolution may be agreed at any time, including after dispute settlement proceedings under this Section have been commenced.

Article 3.3

Consultations

1. Where a dispute cannot be resolved as provided for under Article 3.2 (Amicable Resolution), a claimant of a Party alleging a breach of the provisions of Chapter Two (Investment Protection) may submit a request for consultations to the other Party.
2. The request for consultations shall contain the following information:
 - (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address, and place of incorporation of the locally established company;
 - (b) the provisions of Chapter Two (Investment Protection) alleged to have been breached;
 - (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Chapter Two (Investment Protection); and
 - (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.
3. The request for consultations shall be submitted:
 - (a) within 30 months of the date on which the claimant or, as applicable, the locally established company, first acquired, or should have first acquired, knowledge of the treatment alleged to breach the provisions of Chapter Two (Investment Protection); or
 - (b) in the event that local remedies are being pursued when the time period referred to in subparagraph (a) elapses, within one year of the date on which the claimant or, as applicable, the locally established company, ceases to pursue those local remedies; and, in any event, no later than 10 years after the date on which the claimant or, as applicable, its locally established company, first acquired, or should have first acquired, knowledge of the treatment alleged to breach the provisions of Chapter Two (Investment Protection).
4. In the event that the claimant has not submitted a claim pursuant to Article 3.6 (Submission of Claim to Tribunal) within eighteen months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations, any notice of intent and to have waived its rights to bring such a claim. This period may be extended by agreement between the parties involved in the consultations.

5. The time periods referred to in paragraphs 3 and 4 shall not render a claim inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim, as the case may be, is due to the claimant's inability to act as a result of actions deliberately taken by the other Party, provided that the claimant acts as soon as it is reasonably able to act.
6. In the event that the request for consultations concerns an alleged breach of this Agreement by the Union, or by any Member State of the Union, it shall be sent to the Union.
7. The disputing parties may hold the consultations through videoconference or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise.

Article 3.4

Mediation and Alternative Dispute Resolution

1. The disputing parties may at any time, including prior to the delivery of a notice of intent, agree to have recourse to mediation.
2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.
3. Recourse to mediation may be governed by the rules set out in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) or such other rules as the disputing parties may agree. Any time limit mentioned in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) may be modified by mutual agreement between the disputing parties.
4. The mediator shall be appointed by agreement of the disputing parties or in accordance with Article 3 (Selection of the Mediator) of Annex 6 (Mediation Mechanism for Disputes between Investors and Parties). Mediators shall comply with Annex 7 (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators).
5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator.
6. Once the disputing parties agree to have recourse to mediation, paragraphs 3 and 4 of Article 3.3 (Consultations) shall not apply between the date on which it was agreed to have recourse to mediation, and thirty days after the date on which either party to the dispute decides to put an end to the mediation, by way of a letter to the mediator and the other disputing party.
7. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.

Article 3.5

Notice of Intent

1. If the dispute cannot be settled within three months of the submission of the request for consultations, the claimant may deliver a notice of intent which shall specify in writing the claimant's intention to submit the claim to dispute settlement, and contain the following information:

- (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address, and place of incorporation of the locally established company;
- (b) the provisions of Chapter Two (Investment Protection) alleged to have been breached;
- (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Chapter Two (Investment Protection); and
- (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.

The notice of intent shall be sent to the Union or to Singapore, as the case may be.

2. Where a notice of intent has been sent to the Union, the Union shall make a determination of the respondent within two months from the date of receipt of the notice. The Union shall inform the claimant of this determination immediately, on the basis of which the claimant may submit a claim pursuant to Article 3.6 (Submission of Claim to Tribunal).
3. Where no determination of the respondent has been made pursuant to paragraph 2, the following shall apply:
 - (a) in the event that the notice of intent exclusively identifies treatment by a Member State of the Union, that Member State shall act as respondent;
 - (b) in the event that the notice of intent identifies any treatment by an institution, body or agency of the Union, the Union shall act as respondent.
4. Where either the Union or a Member State acts as respondent, neither the Union nor the Member State concerned shall assert the inadmissibility of a claim, or otherwise assert that a claim or award is unfounded or invalid, on the ground that the proper respondent should be or should have been the Union rather than the Member State or *vice versa*.
5. For greater certainty, nothing in this Agreement or the applicable dispute settlement rules shall prevent the exchange, between the Union and the Member State concerned, of all information relating to a dispute.

Article 3.6

Submission of Claim to Tribunal

1. No earlier than three months from the date of the notice of intent delivered pursuant to Article 3.5 (Notice of Intent), the claimant may submit the claim to the Tribunal under one of the following dispute settlement rules⁴:
 - (a) the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* of 18 March 1965 (hereinafter referred to as the “ICSID

⁴ For greater certainty:

- (a) the rules of the relevant dispute settlement mechanisms shall apply subject to the specific rules set out in this Section, and supplemented by decisions adopted pursuant to subparagraph 4(g) of Article 4.1 (Committee); and
- (b) claims where a representative submits a claim in the name of a class composed of an undetermined number of unidentified claimants and intends to conduct the proceedings by representing the interests of such claimants and making all decisions relating to the conduct of the claim on their behalf shall not be admissible.

- Convention”) provided that both the respondent and the State of the claimant are parties to the ICSID Convention;
- (b) the ICSID Convention in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (hereinafter referred to as “ICSID Additional Facility Rules”), provided that either the respondent or the State of the claimant is a party to the ICSID Convention;⁵
 - (c) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - (d) any other rules if the disputing parties so agree.
2. Paragraph 1 of this Article shall constitute the consent of the respondent to the submission of a claim under this Section. The consent under paragraph 1 and the submission of a claim under this Section shall be deemed to satisfy the requirements of:
- (a) Chapter II of the ICSID Convention, and the ICSID Additional Facility Rules, for written consent of the disputing parties; and
 - (b) Article II of the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958 (hereinafter referred to as “New York Convention”) for an “agreement in writing”.

Article 3.7

Conditions to the Submission of Claim

1. A claim may be submitted under this Section only if:
- (a) the submission of the claim is accompanied by the claimant’s consent in writing to dispute settlement in accordance with the procedures set out in this Section and the claimant’s designation of one of the fora rules referred to in paragraph 1 of Article 3.6 (Submission of Claim to Tribunal) as the rules for dispute settlement;
 - (b) at least six months have elapsed since the submission of the request for consultations under Article 3.3 (Consultations) and at least three months have elapsed from the submission of the notice of intent under Article 3.5 (Notice of Intent);
 - (c) the request for consultations and the notice of intent submitted by the claimant fulfilled the requirements set out in paragraph 2 of Article 3.3 (Consultations) and paragraph 1 of Article 3.5 (Notice of Intent) respectively;
 - (d) the legal and factual basis of the dispute was subject to prior consultation pursuant to Article 3.3 (Consultations);
 - (e) all the claims identified in the submission of the claim made pursuant to Article 3.6 (Submission of Claim to Tribunal) are based on treatment identified in the notice of intent made pursuant to Article 3.5 (Notice of Intent);
 - (f) the claimant:
 - (i) withdraws any pending claim submitted to the Tribunal, or to any other domestic or international court or tribunal under domestic or international

⁵ For the purpose of subparagraphs (a) and (b), the term “State” is deemed to include the Union, if the Union accedes to the ICSID Convention.

law, concerning the same treatment as alleged to breach the provisions of Chapter Two (Investment Protection);

- (ii) declares that it will not submit such a claim in the future; and
 - (iii) declares that it will not enforce any award rendered pursuant to this Section before such award has become final, and will not seek to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this Section.
2. For the purposes of subparagraph 1(f), the term “claimant” refers to the investor and, where applicable, to the locally established company. In addition, for the purposes of subparagraph 1(f)(i) the term “claimant” includes all persons who directly or indirectly have an ownership interest in, or who are controlled by the investor or, where applicable, the locally established company.
3. Upon request of the respondent, the Tribunal shall decline jurisdiction where the claimant fails to respect any of the requirements or declarations referred to in paragraphs 1 and 2.
4. Subparagraph 1(f) shall not prevent the claimant from seeking interim measures of protection before the courts or administrative tribunals of the respondent prior to the institution or during the pendency of proceedings before any of the dispute settlement *fora* referred to in Article 3.6 (Submission of Claim to Tribunal). For the purposes of this Article, interim measures of protection shall be for the sole purpose of preservation of the claimant’s rights and interests and shall not involve the payment of damages or the resolution of the substance of the matter in dispute.
5. For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was very likely to arise, at the time when the claimant acquired ownership or control of the investment subject to the dispute, and the Tribunal determines based on the facts that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. This is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

Article 3.8

Third Party Funding

1. Any disputing party benefiting from third party funding shall notify the other disputing party and the Tribunal of the name and address of the third party funder.
2. Such notification shall be made at the time of submission of a claim, or without delay as soon as the third party funding is agreed, donated or granted, as applicable.

Article 3.9

Tribunal of First Instance

1. A Tribunal of First Instance (“Tribunal”) is hereby established to hear claims submitted pursuant to Article 3.6 (Submission of Claim to Tribunal).
2. The Committee shall, upon the entry into force of this Agreement, appoint six Members to the Tribunal. For the purposes of this appointment:
 - (a) The EU Party shall nominate two Members;

- (b) Singapore shall nominate two Members; and
 - (c) The EU Party and Singapore shall jointly nominate two Members, who shall not be nationals of any Member State of the Union or of Singapore.
3. The Committee may decide to increase or to decrease the number of the Members by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
 4. The Members shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have specialised knowledge of, or experience in, public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law, or the resolution of disputes arising under international investment or international trade agreements.
 5. The Members shall be appointed for an eight-year term. However, the inaugural terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to twelve years. A Member's term of appointment may be renewed by decision of the Committee upon expiry. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorisation of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Tribunal.
 6. There shall be a President and Vice-President of the Tribunal who shall be responsible for organisational issues. They will be appointed for a four-year term and shall be drawn by lot from among the Members who have been appointed pursuant to paragraph 2(c). They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee. The Vice-President shall replace the President when the President is unavailable.
 7. The Tribunal shall hear cases in divisions consisting of three Members, of whom one each shall have been appointed pursuant to paragraphs 2(a), 2(b), and 2(c), respectively. The division shall be chaired by the Member who had been appointed pursuant to paragraph 2(c).
 8. Within 90 days of the submission of a claim pursuant to Article 3.6 (Submission of Claim to Tribunal), the President of the Tribunal shall appoint the Members composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.
 9. Notwithstanding paragraph 7, the disputing parties may agree that a case be heard by a sole Member. This Member shall be selected by the President of the Tribunal from amongst those Members who had been appointed pursuant to paragraph 2(c). The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 3.6 (Submission of Claim to Tribunal).
 10. The Tribunal shall draw up its own working procedures.
 11. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out in this Section.

12. In order to ensure their availability, the Members shall be paid a monthly retainer fee to be fixed by decision of the Committee. The President of the Tribunal and, where applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 3.10(11) (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.
13. The retainer fee and the daily fees for the President or Vice-President of the Tribunal when working in fulfilling the functions of President of the Tribunal pursuant to this Section shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fees, the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.
14. Unless the Committee adopts a decision pursuant to paragraph 15, the amount of the other fees and expenses of the Members on a division of the Tribunal shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 3.21 (Costs).
15. Upon a decision by the Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In such an event, the Members shall serve on a full-time basis and the Committee shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.
16. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with Article 3.21 (Costs).

Article 3.10

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals from provisional awards issued by the Tribunal.
2. The Committee shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. For the purposes of this appointment:
 - (a) The EU Party shall nominate two Members;
 - (b) Singapore shall nominate two Members; and
 - (c) The EU Party and Singapore shall jointly nominate two Members, who shall not be nationals of any Member State of the Union or of Singapore.
3. The Committee may decide to increase or to decrease the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Appeal Tribunal Members shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognised competence. They shall have specialised knowledge of, or expertise in, public international law. It is desirable that they have expertise, in particular, in

international investment law, international trade law, or the resolution of disputes arising under international investment or international trade agreements.

5. The Appeal Tribunal Members shall be appointed for an eight-year term. However, the inaugural terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to twelve years. A Member's term of appointment may be renewed by decision of the Committee upon expiry. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Appeal Tribunal when his or her term expires may, with the authorisation of the President of the Appeal Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.
6. There shall be a President and Vice-President of the Appeal Tribunal who shall be responsible for organisational issues. They will be appointed for a four-year term and shall be drawn by a lot from among the Appeal Tribunal Members who have been appointed pursuant to paragraph 2(c). They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee. The Vice-President shall replace the President when the President is unavailable.
7. The Appeal Tribunal shall hear cases in divisions consisting of three Members, of whom one each shall have been appointed pursuant to paragraphs 2(a), 2(b), and 2(c), respectively. The division shall be chaired by the Member who had been appointed pursuant to paragraph 2(c).
8. The President of the Appeal Tribunal shall appoint the Members composing the division of the Appeal Tribunal hearing the appeal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.
9. The Appeal Tribunal shall draw up its own working procedures.
10. The Appeal Tribunal Members shall ensure that they are available and able to perform the functions set out in this Section.
11. In order to ensure their availability, the Members shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the Committee. The President of the Appeal Tribunal and, where applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.
12. The retainer fee and the daily fees for the President or Vice-President of the Appeal Tribunal when working in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fees, the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.
13. Upon a decision by the Committee, the retainer fee and the daily fees may be permanently transformed into a regular salary. In such an event, the Appeal Tribunal Members shall serve on a full-time basis and the Committee shall fix their remuneration and related organisational matters. In that event, the Appeal Tribunal Members shall not

be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.

14. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with Article 3.21 (Costs).

Article 3.11

Ethics

1. The Members of the Tribunal and of the Appeal Tribunal shall be chosen from amongst persons whose independence is beyond doubt. They shall not be affiliated with any government,⁶ and in particular, shall not take instructions from any government or organisation with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with Annex 7 (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel, party-appointed expert or party-appointed witness in any pending or new investment protection dispute under this or any other agreement or domestic law.
2. If a disputing party considers that a Member has conflict of interest, it shall send a notice of challenge of that Member's appointment to the President of the Tribunal or to the President of the Appeal Tribunal, respectively. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.
3. If, within 15 days from the date of the notice of challenge, the challenged Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, respectively, shall, after hearing the disputing parties and after providing the Member an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and forthwith notify the disputing parties and other Members of the division.
4. Challenges against the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and vice-versa.
5. Upon a reasoned recommendation from the President of the Appeal Tribunal, the Parties, by decision of the Committee, may decide to remove a Member from the Tribunal or from the Appeal Tribunal where his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal then the President of the Tribunal of First Instance shall submit the reasoned recommendation. Articles 3.9(5) (Tribunal of First Instance) and 3.10(4) (Appeal Tribunal) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

⁶ For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has family relationship with a person who receives an income from the government, does not in itself render that person ineligible.

Article 3.12

Multilateral Dispute Settlement Mechanism

The Parties shall pursue with each other and other interested trading partners, the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of international investment disputes. Upon establishment of such a multilateral mechanism, the Committee shall consider adopting a decision to provide that investment disputes under this Section will be resolved pursuant to that multilateral mechanism, and to make appropriate transitional arrangements.

Article 3.13

Applicable Law and Rules of Interpretation

1. The Tribunal shall decide whether the treatment that is the subject of the claim is in breach of an obligation under Chapter Two (Investment Protection).
2. Subject to paragraph 3, the Tribunal shall apply this Agreement interpreted in accordance with the *Vienna Convention on the Law of Treaties* and other rules and principles of international law applicable between the Parties.⁷
3. Where serious concerns arise as regards issues of interpretation which may affect matters relating to this Agreement, the Committee, pursuant to subparagraph 4(f) of Article 4.1 (Committee), may adopt interpretations of provisions of this Agreement. An interpretation adopted by the Committee shall be binding on the Tribunal and the Appeal Tribunal and any award shall be consistent with that decision. The Committee may decide that an interpretation shall have binding effect from a specific date.

Article 3.14

Claims Manifestly Without Legal Merit

1. The respondent may, no later than thirty days after the constitution of a division of the Tribunal pursuant to Article 3.9 (Tribunal of First Instance) and in any event before the first session of the division of the Tribunal, file an objection that a claim is manifestly without legal merit.
2. The respondent shall specify as precisely as possible the basis for the objection.
3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first session of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection.
4. This procedure and any decision of the Tribunal shall be without prejudice to the right of a respondent to object, pursuant to Article 3.15 (Claims Unfounded as a Matter of Law) or in the course of the proceedings, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

⁷ For greater certainty, the domestic law of the Parties shall not be part of the applicable law. Where the Tribunal is required to ascertain the meaning of a provision of the domestic law of one of the Parties as a matter of fact, it shall follow the prevailing interpretation of that provision made by the courts or authorities of that Party, and any meaning given to the relevant domestic law made by the Tribunal shall not be binding upon the courts or the authorities of either Party. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party.

Article 3.15

Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 3.6 (Submission of Claim to Tribunal), even if the facts alleged were assumed to be true. The Tribunal may also consider any other relevant facts not in dispute.
2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence or, in the case of an amendment to the claim, the date the Tribunal fixes for the respondent to submit its response to the amendment. An objection may not be submitted under paragraph 1 as long as proceedings under Article 3.14 (Claims Manifestly without Legal Merit) are pending, unless the Tribunal grants leave to file an objection under this Article, after having taken due account of the circumstances of the case.
3. Upon receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or provisional award on the objection, stating the grounds therefor.

Article 3.16

Transparency of Proceedings

Annex 8 (Rules on Public Access to Documents, Hearings and the Possibility of Third Persons to Make Submissions) shall apply to disputes under this Section.

Article 3.17

The Non-disputing Party to the Agreement

1. The Tribunal shall accept or, after consultation with the disputing parties, may invite oral or written submissions on issues of treaty interpretation from the non-disputing Party to the Agreement.
2. The Tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraph 1.
3. The Tribunal shall ensure that any submission does not disrupt or unduly burden the proceedings, or unfairly prejudice any disputing party.
4. The Tribunal shall also ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party to the Agreement.

Article 3.18

Award

1. Where the Tribunal decides that the treatment in dispute is in breach of an obligation under Chapter Two (Investment Protection), the Tribunal may award, separately or in combination, only:⁸
 - (a) monetary damages and any applicable interest; and
 - (b) restitution of property, provided that the respondent may pay monetary damages and any applicable interest, as determined by the Tribunal in accordance with Chapter Two (Investment Protection), in lieu of restitution.
2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, its locally established company, as a result of the breach of the relevant provisions of Chapter Two (Investment Protection), reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal shall not award punitive damages.
3. Where a claim is submitted on behalf of a locally established company, the award shall be made to the locally established company.
4. As a general rule, the Tribunal shall issue a provisional award within 18 months of the date of submission of the claim. When the Tribunal considers that it cannot issue its provisional award within 18 months, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its provisional award. A provisional award shall become final if 90 days have elapsed after it has been issued and neither disputing party has appealed the award to the Appeal Tribunal.

Article 3.19

Appeal Procedure

1. Either disputing party may appeal before the Appeal Tribunal a provisional award, within 90 days of its issuance. The grounds for appeal are:
 - (a) that the Tribunal has erred in the interpretation or application of the applicable law;
 - (b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or,
 - (c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by (a) and (b).
2. If the Appeal Tribunal dismisses the appeal, the provisional award shall become final. The Appeal Tribunal may also dismiss the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded, in which case the provisional award shall become final.
3. If the appeal is well founded, the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or in part. The Appeal Tribunal shall refer the matter back to the Tribunal, specifying precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal. The Tribunal shall be bound by the findings and conclusions of the Appeal Tribunal and shall, after hearing the disputing parties if appropriate, revise its provisional award

⁸ For greater certainty, an award shall be made on the basis of a request from the claimant and shall be made after considering any comments of the disputing parties.

accordingly. The Tribunal shall seek to issue its revised award within 90 days after the referral of the matter back to it.

4. As a general rule, the appeal proceedings shall not exceed 180 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.
5. A disputing party lodging an appeal shall provide security for the costs of appeal. The disputing party shall also provide any other security as may be ordered by the Appeal Tribunal.
6. The provisions of Articles 3.8 (Third-Party Funding), Annex 8 (Rules on Public Access to Documents, Hearings and the Possibility of Third Persons to Make Submissions), 3.17 (The Non-disputing Party to the Agreement) and Article 3.21 (Costs) shall apply *mutatis mutandis* in respect of the appeal procedure.

Article 3.20

Indemnification or Other Compensation

The respondent may not assert, and the Tribunal shall not accept, as a defence, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation, pursuant to an insurance or guarantee contract, for all or part of the damages sought in a dispute initiated under this Section.

Article 3.21

Costs

1. The Tribunal shall order that the costs of the proceedings shall be borne by the unsuccessful disputing party. In exceptional circumstances the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case.
2. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful party, unless the Tribunal determines that such apportionment of costs is not appropriate in the circumstances of the case.
3. Where only some parts of the claims have been successful, the costs awarded shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.
4. Where a claim or parts of a claim are dismissed on application of Article 3.14 (Claims Manifestly without Legal Merits) or Article 3.15 (Claims Unfounded as a Matter of Law), the Tribunal shall order that all costs relating to such a claim or parts thereof, including the costs of the proceedings and other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party.
5. The Committee shall consider adopting supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties. Such supplemental rules shall take into account the financial resources of a claimant which is a natural person or a small or medium-sized enterprise. The Committee shall endeavour

to adopt such supplemental rules no later one year after the entry into force of this Agreement.

Article 3.22

Enforcement of Awards

1. An award rendered pursuant to this section shall not be enforceable until it has become final pursuant to Articles 3.18(4) (Award), 3.19(2) (Appeal Procedure), or 3.19(3) (Appeal Procedure). Final awards issued pursuant to this Section by the Tribunal shall be binding between the disputing parties and shall not be subject to appeal, review, set aside, annulment or any other remedy.⁹
2. Each Party shall recognise an award rendered pursuant to this Agreement as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.
3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.
4. For greater certainty, Article 4.11 (No Direct Effect) of Chapter Four (Institutional, General and Final Provisions) shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.
5. For the purposes of Article I of the New York Convention, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise out of a commercial relationship or transaction.
6. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 3.6(1)(a) (Submission of Claim to Tribunal), a final award issued pursuant to this Section shall qualify as an award under Section 6 of Chapter IV of the ICSID Convention.

Article 3.23

Role of the Parties to the Agreement

1. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to dispute settlement under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.
2. For greater certainty, paragraph 1 shall not exclude the possibility of a Party having recourse to dispute settlement procedures under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties) in respect of a measure of general application even if that measure is alleged to have breached the Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 3.6 (Submission of Claim to Tribunal) and is without prejudice to Article 3.17 (The Non-disputing Party to the Agreement).

⁹ For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise, correct, or interpret an award, such as pursuant to Articles 50 and 51 ICSID Convention or Articles 37 and 38 of the UNCITRAL Arbitration Rules, or equivalent provisions of other rules, as applicable to the proceedings in question.

Article 3.24

Consolidation

1. Where two or more claims that have been submitted separately under Article 3.6 (Submission of Claim to Tribunal) have a question of law or fact in common and arise out of the same events or circumstances, a disputing party may seek the establishment of a separate division of the Tribunal (“consolidating division”) and request that such division issue a consolidation order in accordance with:
 - (a) the agreement of all the disputing parties sought to be covered by the order, in which case the disputing parties shall submit a joint request in accordance with paragraph 3; or
 - (b) paragraphs 2 through 12, provided that only one respondent is sought to be covered by the order.
2. A disputing party seeking a consolidation order shall first deliver a notice to the other disputing parties sought to be covered by the order. This notice shall specify:
 - (a) the names and addresses of all the disputing parties sought to be covered by the order;
 - (b) the claims, or parts thereof, sought to be covered by the order; and
 - (c) the grounds for the order sought.

The disputing parties shall endeavor to agree on the consolidation order sought and on the applicable dispute settlement rules.
3. Where the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the notice, a disputing party may make a request for a consolidation order under paragraphs 3 through 7. The request shall be delivered, in writing, to the President of the Tribunal and all the disputing parties sought to be covered by the order. Such a request shall specify:
 - (a) the names and addresses of all the disputing parties sought to be covered by the order;
 - (b) the claims, or parts thereof, sought to be covered by the order; and
 - (c) the grounds for the order sought.

Where the disputing parties have reached an agreement on consolidation of the claims, they shall submit a joint request to the President of the Tribunal in accordance with this paragraph.
4. Unless the President of the Tribunal finds within thirty days after receiving a request under paragraph 3 that the request is manifestly unfounded, a consolidating division of the Tribunal shall be established in accordance with Article 3.9(8) (Tribunal of First Instance).
5. The consolidating division of the Tribunal shall conduct its proceedings in the following manner:
 - (a) unless all disputing parties otherwise agree, where all the claims for which a consolidation order is sought have been submitted under the same dispute settlement rules, the consolidating division shall proceed under the same dispute settlement rules;

- (b) where the claims for which a consolidation order is sought have not been submitted under the same dispute settlement rules:
 - (i) the disputing parties may agree on the applicable dispute settlement rules available under Article 3.6 (Submission of Claim to Tribunal) which shall apply to the consolidation proceedings; or
 - (ii) if the disputing parties cannot agree on the same dispute settlement rules within thirty days from the request made pursuant to paragraph 3, the UNCITRAL arbitration rules shall apply to the consolidation proceedings.
- 6. Where the consolidating division is satisfied that two or more claims that have been submitted under Article 3.6 (Submission of Claim to Tribunal) have a question of law or fact in common, and arise out of the same events or circumstances, the consolidating division may, in the interest of fair and efficient resolution of the claims, including the consistency of awards, and after hearing the disputing parties, by order:
 - (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.
- 7. Where a consolidating division has been established, a claimant that has submitted a claim under Article 3.6 (Submission of Claim to Tribunal) and that has not been named in a request made under paragraph 3 may make a written request to the consolidating division that it be included in any order made under paragraph 6. Such request shall comply with the requirements set out in paragraph 3.
- 8. On application of a disputing party, the consolidating division, pending its decision under paragraph 6, may order that the proceedings of a division established under Article 3.9 (Tribunal of First Instance) be stayed, unless the latter division has already adjourned its proceedings.
- 9. A division of the Tribunal established under Article 3.9 (Tribunal of First Instance) shall cease to have jurisdiction to decide a claim, or parts of a claim, over which a consolidating division has assumed jurisdiction, and the proceedings of a division established under Article 3.9 (Tribunal of First Instance) shall be stayed or adjourned accordingly.
- 10. The award of the consolidating division in relation to claims, or parts of claims, over which it has assumed jurisdiction, shall be binding on the divisions established under Article 3.9 (Tribunal of First Instance) in respect of these claims, as of the date the award becomes final pursuant to Articles 3.18(4) (Award), 3.19(2) (Appeal Procedure), or 3.19(3) (Appeal Procedure).
- 11. A claimant may withdraw its claim or part thereof subject to consolidation from dispute settlement proceedings under this Article, provided that such claim or part thereof may not thereafter be resubmitted under Article 3.6 (Submission of Claim to Tribunal).
- 12. At the request of one of the disputing parties, the consolidating division may take such measures as it sees fit in order to preserve the confidentiality of protected information of that disputing party vis-à-vis other disputing parties. Such measures may include allowing the submission of redacted versions of documents containing protected information to the other disputing parties or arrangements to hold parts of the hearing in private.

SECTION B

Resolution of Disputes between Parties

Article 3.25

Scope

This Section shall apply with respect to any difference concerning the interpretation and application of the provisions of this Agreement, except as otherwise expressly provided.

Article 3.26

Consultations

1. The Parties shall endeavour to resolve any difference regarding the interpretation and application of the provisions referred to in Article 3.25 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations, by means of a written request to the other Party copied to the Committee, and shall give the reasons for the request, including identification of the measures at issue, the applicable provisions referred to in Article 3.25 (Scope), and the reasons for the applicability of such provisions.
3. Consultations shall be held within thirty days of the date of receipt of the request and take place, unless the Parties agree otherwise, on the territory of the Party complained against. The consultations shall be deemed concluded within sixty days of the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
4. Consultations on matters of urgency shall be held within fifteen days of the date of receipt of the request, and shall be deemed concluded within thirty days of the date of receipt of the request, unless the Parties agree otherwise.
5. If the Party to which the request is made does not respond to the request for consultations within ten days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 3.28 (Initiation of Arbitration Procedure).

Article 3.27

Mediation

Any Party may request the other Party to enter into a mediation procedure with respect to any measure adversely affecting investment between the Parties pursuant to Annex 10 (Mediation Procedure for Disputes between Parties).

Article 3.28

Initiation of Arbitration Procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3.26 (Consultations), the complaining Party may request the establishment of an arbitration panel in accordance with this Article.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Committee. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 3.25 (Scope) in a manner sufficient to present the legal basis for the complaint clearly.

Article 3.29

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within five days of the date of receipt by the Party complained against of the request referred to in paragraph 1 of Article 3.28 (Initiation of Arbitration Procedure), the Parties shall enter into consultations in order to agree on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree, within ten days of entering into the consultations referred to in paragraph 2, on the chairperson of the arbitration panel, the chair of the Committee, or the chair's delegate, shall, within twenty days of entering into consultations referred to in paragraph 2, select one arbitrator who will serve as a chairperson by lot from the list referred to under paragraph 1 of Article 3.44 (Lists of Arbitrators).
4. In the event that the Parties are unable to agree, within ten days of entering into the consultations referred to in paragraph 2, on the arbitrators:
 - (a) each Party may select one arbitrator, who will not act as a chairperson, from the individuals on the list established under paragraph 2 of Article 3.44 (Lists of Arbitrators), within fifteen days of entering into the consultations referred to in paragraph 2; and
 - (b) if either Party fails to select an arbitrator under subparagraph 4(a), the chair of the Committee, or the chair's delegate, shall select any remaining arbitrator by lot from among the individuals proposed by the Party pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), within twenty days of entering into consultations referred to in paragraph 2.
5. Should the list provided for in paragraph 2 of Article 3.44 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 4:
 - (a) where both Parties have proposed individuals pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within fifteen days of entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chair of the Committee, or the chair's delegate, shall select the arbitrator by lot from among the individuals proposed by the Party which failed to select its arbitrator; or
 - (b) where only one Party has proposed individuals pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within fifteen days of

entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chair of the Committee, or the chair's delegate, shall select the arbitrator by lot from among the individuals proposed.

6. Should the list provided for in paragraph 1 of Article 3.44 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 3, the chairperson shall be selected by lot from among former Members of the WTO Appellate Body, who shall not be a person of either Party.
7. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.
8. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in Rules 19 to 25 of Annex 9 (Rules of Procedure for Arbitration).

Article 3.30

Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.

Article 3.31

Interim Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations, not later than ninety days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the arbitration panel issue its interim report later than 120 days after the date of its establishment.
2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within thirty days of its notification.
3. In cases of urgency the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2.
4. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The findings of the final panel ruling shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the written comments of the two Parties.

Article 3.32

Arbitration Panel Ruling

1. The arbitration panel shall issue its ruling to the Parties and to the Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the

Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its ruling. Under no circumstances should the arbitration panel issue its ruling later than 180 days after the date of its establishment.

2. In cases of urgency the arbitration panel shall make every effort to issue its ruling within seventy-five days from the date of its establishment. Under no circumstances should the arbitration panel issue its ruling later than ninety days after the date of its establishment.

Article 3.33

Compliance with the Arbitration Panel Ruling

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

Article 3.34

Reasonable Period of Time for Compliance

1. No later than thirty days after the receipt of the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Committee of the time it will require for compliance (hereinafter referred to as “reasonable period of time”), if immediate compliance is not possible.
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within twenty days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the Committee. The original arbitration panel shall issue its ruling to the Parties and notify the Committee within twenty days from the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be thirty-five days from the date of the submission of the request referred to in paragraph 2.
4. The Party complained against shall inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.
5. The reasonable period of time may be extended by mutual agreement of the Parties.

Article 3.35

Review of Any Measure Taken to Comply with the Arbitration Panel Ruling

1. The Party complained against shall notify the complaining Party and the Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions referred to in Article 3.25 (Scope), the complaining Party may request in writing the original

arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and the provisions referred to in Article 3.25 (Scope) with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly, and it shall explain how such measure is inconsistent with the provisions referred to in Article 3.25 (Scope). The original arbitration panel shall notify its ruling within forty-five days of the date of the submission of the request.

3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

Article 3.36

Temporary Remedies in Case of Non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under paragraph 1 of Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) is inconsistent with that Party's obligations under the provisions referred to in Article 3.25 (Scope), the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable agreement on compensation.
2. If no agreement on compensation is reached within thirty days after the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 3.25 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Committee, to take appropriate measures at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify such measures. The complaining Party may take such measures at any moment after the expiry of ten days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.
3. If the Party complained against considers that the measures taken by the complaining Party are not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Committee before the expiry of the ten-day period referred to in paragraph 2. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the Committee within thirty days of the date of the submission of the request. Measures shall not be taken until the original arbitration panel has notified its ruling, and any measure shall be consistent with the arbitration panel ruling.
4. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The period for issuing the ruling shall be forty-five days from the date of the submission of the request referred to in paragraph 3.
5. The measures foreseen in this Article shall be temporary and shall not be applied after:

- (a) the Parties have reached a mutually agreed solution pursuant to Article 3.39 (Mutually Agreed Solution); or
- (b) the Parties have reached an agreement on whether the measure notified under paragraph 1 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance) brings the Party complained against into conformity with the provisions referred to in Article 3.25 (Scope); or
- (c) any measure found to be inconsistent with the provisions referred to in Article 3.25 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 2 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance).

Article 3.37

Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for the termination of the measures applied by the complaining Party.
2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 3.25 (Scope) within thirty days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Committee. The arbitration panel ruling shall be notified to the Parties and to the Committee within forty-five days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 3.25 (Scope), the measures referred to in Article 3.36 (Temporary Remedies in Case of Non-compliance) shall be terminated.

Article 3.38

Suspension and Termination of Arbitration Procedures

1. The arbitration panel shall, at the written request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding twelve months and shall resume its work at the end of this agreed period at the written request of the complaining Party, or before the end of this agreed period at the written request of both Parties. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Section shall be deemed terminated. Subject to Article 3.45 (Relation with WTO Obligations), the suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings.
2. The Parties may, at any time, agree in writing to terminate the dispute settlement procedures initiated pursuant to this Section.

Article 3.39

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Section at any time. They shall notify the Committee and the arbitration panel, if any, of such a solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedures initiated pursuant to this Section shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the procedure shall be terminated.

Article 3.40

Rules of Procedure

1. Dispute settlement procedures under this Section shall be governed by Annex 9 (Rules of Procedure for Arbitration).
2. Any meeting of the arbitration panel shall be open to the public in accordance with Annex 9 (Rules of Procedure for Arbitration).

Article 3.41

Submission of Information

1. At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceedings. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.
2. Interested natural or legal persons of the Parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with Annex 9 (Rules of Procedure for Arbitration).

Article 3.42

Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 3.25 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties*. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall take into account any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as “DSB”). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 3.25 (Scope).

Article 3.43

Arbitration Panel Decisions and Rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 3.25 (Scope) and the rationale behind any findings and conclusions that it makes. The Committee shall make the arbitration panel ruling publicly available in its entirety, unless it decides not to do so in order to ensure the confidentiality of any information designated by either Party as confidential.

Article 3.44

Lists of Arbitrators

1. The Parties shall establish, upon the entry into force of this Agreement, a list of five individuals who are willing and able to serve as the chairperson of an arbitration panel referred to in Article 3.29 (Establishment of the Arbitration Panel).
2. The Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least ten individuals who are willing and able to serve as arbitrators. Each of the Parties shall propose upon the entry into force of this Agreement at least five individuals to serve as arbitrators.
3. The Committee will ensure that the list of individuals to serve as chairpersons or arbitrators, established pursuant to paragraphs 1 and 2 respectively, are maintained.
4. Arbitrators shall have specialised knowledge of or experience in law and international trade or investment, or in the settlement of disputes arising under international trade agreements. They shall be independent, serve in their individual capacities and not be affiliated with the government of either of the Parties, and shall comply with Annex 11 (Code of Conduct for Arbitrators and Mediators).

Article 3.45

Relation with WTO Obligations

1. Recourse to the dispute settlement provisions of this Section shall be without prejudice to any action in the WTO framework, including dispute settlement proceedings.
2. Notwithstanding paragraph 1, where a Party has, with regard to a particular measure, initiated dispute settlement proceedings, either under this Section or under the WTO Agreement, it may not institute dispute settlement proceedings regarding the same measure in the other forum until the first proceedings have ended. Moreover, a Party shall not initiate dispute settlement proceedings under this Section and under the WTO Agreement, unless substantially different obligations under both agreements are in dispute, or unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation, provided that the failure of the forum is not the result of a failure of a disputing Party to act diligently.
3. For the purposes of paragraph 2,
 - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*

contained in Annex 2 of the WTO Agreement (hereinafter referred to as "DSU") and are deemed to be ended when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17(14) of the DSU; and

- (b) dispute settlement proceedings under this Section are deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 3.28 (Initiation of Arbitration Procedure) and are deemed to be ended when the arbitration panel issues its ruling to the Parties and to the Committee under paragraph 2 of Article 3.32 (Arbitration Panel Ruling) or when the parties have reached a mutually agreed solution under Article 3.39 (Mutually Agreed Solution).
4. Nothing in this Section shall preclude a Party from implementing the suspension of obligations authorised by the DSB. Neither the WTO Agreement nor the EUSFTA shall be invoked to preclude a Party from taking appropriate measures under Article 3.36 (Temporary Remedies in Case of Non-compliance) of this Section.

Article 3.46

Time Limits

- 1. All time limits laid down in this Section, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer, unless otherwise specified.
- 2. Any time limit referred to in this Section may be modified by mutual agreement of the Parties.