

CHAPTER 13

CONSULTATIONS AND DISPUTE SETTLEMENT

SECTION A

Introductory Provisions

Article 1

Definitions

For the purposes of this Chapter, unless the context otherwise requires:

- (a) **Complaining Party** means any Party that requests consultations under Article 6 (Consultations);
- (b) **dispute arising under this Agreement** means a complaint made by a Complaining Party concerning any measure affecting the operation, implementation, or application of this Agreement whereby any benefit accruing to such Party under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations¹⁷ under this Agreement¹⁸;

¹⁷ A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

¹⁸ Non-violation complaints are not permitted under this Agreement.

- (c) **Parties to the dispute** means the Complaining Party and the Responding Party;
- (d) **Responding Party** means any Party to which the request for consultations is made under Article 6 (Consultations); and
- (e) **Third Party** means any Party that has notified its substantial interest in the matter before an arbitral tribunal pursuant to Article 10 (Third Party).

Article 2

Objective

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

Article 3

Scope and Coverage

1. Unless otherwise provided in this Agreement, this Chapter shall apply to the settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 7 (Trade Remedies), Chapter 9 (Economic and Technical Co-operation), and Chapter 10 (Intellectual Property).
2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.
3. Subject to Article 5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to

have recourse to dispute settlement procedures available under other international agreements to which it is a party.

Article 4

General Provisions

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

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

3. The Parties to the dispute are encouraged at every stage of the dispute to make every effort to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be notified to all other Parties.

4. Unless otherwise specified, any time period provided in this Chapter may be modified by mutual agreement of the Parties to the dispute provided that any such modification shall not prejudice the rights of a Third Party pursuant to Article 10 (Third Party).

Article 5

Choice of Forum

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

to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of an Arbitral Tribunal) or requested the establishment of, or referred a matter to, a dispute settlement panel under another international agreement.

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

SECTION B

Consultation Provisions

Article 6

Consultations

1. A Party may request consultations with any other Party with respect to any dispute arising under this Agreement. A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.

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

3. The Complaining Party shall simultaneously provide a copy of such request to all other Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all the Parties, indicating the date on which the request was received.

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

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

5. If the Responding Party does not enter into consultations within the periods specified in paragraph 4, or a period otherwise mutually agreed, the Complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of an Arbitral Tribunal).

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

- (a) provide sufficient information to enable a full examination of the matter, including how the measure at issue might affect the implementation or application of this Agreement;

- (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
- (c) upon request by a Party to the dispute, endeavour to make available for the consultations personnel of their government agencies or other regulatory bodies who have responsibility for or expertise in the matter under consultation.

7. Consultations shall be confidential and without prejudice to the rights of the Parties to the dispute in any further or other proceedings.

8. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute, within seven days after the date of the notification of the request for consultations, of its desire to be joined in the consultations. Such notification shall be simultaneously provided to all other Parties. Such Party shall be joined in the consultations if the Parties to the dispute agree.

Article 7

Good Offices, Conciliation, Mediation

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

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue

while the matter is being examined by an arbitral tribunal established or re-convened under this Chapter.

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

SECTION C

Adjudication Provisions

Article 8

Request for Establishment of an Arbitral Tribunal

1. The Complaining Party may request the establishment of an arbitral tribunal to consider the dispute arising under this Agreement if:

- (a) the Responding Party does not enter into consultations in accordance with paragraph 4 of Article 6 (Consultations); or
- (b) the consultations fail to resolve a dispute within:
 - (i) 20 days after the date of receipt of the request for consultations in cases of urgency, including those concerning perishable goods;
 - (ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

(iii) any other period as the Parties to the dispute may agree.

2. A request made pursuant to paragraph 1 shall identify the specific measure at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. The Complaining Party shall simultaneously provide a copy of such request to all other Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all the Parties, indicating the date on which the request was received.

4. Where a request is made pursuant to paragraph 1, an arbitral tribunal shall be established in accordance with Article 11 (Establishment and Re-convening of an Arbitral Tribunal).

Article 9

Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal shall be established to examine these complaints if all the Parties to the disputes agree. The Parties to the disputes should seek to establish a single arbitral tribunal whenever feasible.

2. The single arbitral tribunal shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would

have enjoyed had separate arbitral tribunals examined the complaints are in no way impaired.

3. If more than one arbitral tribunal is established to examine the complaints related to the same matter, the Parties to the disputes shall endeavour to ensure that the same persons serve as arbitrators for each arbitral tribunal. The arbitral tribunals shall consult each other to ensure, to the greatest extent possible, that the timetables for the arbitral tribunal processes are harmonised.

Article 10

Third Party

1. Any Party having a substantial interest in a matter before an arbitral tribunal may notify the Parties to the dispute of its interest no later than 10 days after the date of receipt by the Responding Party of the request for the establishment of the arbitral tribunal or the date of a request for a Compliance Review Tribunal pursuant to Article 16 (Compliance Review). The Party shall simultaneously provide such notification to all other Parties. The Party notifying its substantial interest shall have the rights and obligations of a Third Party.

2. A Third Party shall receive the submissions of the Parties to the dispute to the first substantive meeting of the arbitral tribunal with the Parties to the dispute under Rule 10 of Annex 13-1 (Rules of Procedure for Arbitral Tribunal Proceedings).

3. A Third Party shall have an opportunity to make at least one written submission to the arbitral tribunal and shall have an opportunity to be heard by the arbitral tribunal at its first substantive meeting with the

Parties to the dispute. The Third Party shall simultaneously provide any submission or other document submitted by it to the Parties to the dispute and all other Third Parties.

4. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding participation in arbitral tribunal proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose conditions. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall not grant any additional or supplemental rights to Third Parties regarding participation in arbitral tribunal proceedings.

5. If a Third Party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs benefits accruing to it under this Agreement, such Party may have recourse to dispute settlement procedures under this Chapter.

Article 11

Establishment and Re-convening of an Arbitral Tribunal

1. An arbitral tribunal requested pursuant to Article 8 (Request for Establishment of an Arbitral Tribunal) shall be established in accordance with this Article.

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in paragraphs 7 and 8.

3. The Parties to the dispute shall each appoint one arbitrator within 20 days after the date of receipt by the Responding Party of a request under paragraph 3 of Article 8 (Request for Establishment of an Arbitral Tribunal). Where there is more than one Complaining Party, they shall jointly appoint an arbitrator.

4. Following the appointment of the arbitrators in accordance with paragraph 3, the Parties to the dispute shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each of the Parties to the dispute may provide to the other Party or Parties to the dispute a list of up to three nominees for appointment as the chair of the arbitral tribunal. Where there is more than one Complaining Party, the list of up to three nominees shall be jointly provided by the Complaining Parties. If the Parties to the dispute fail to agree on the chair of the arbitral tribunal within 15 days after the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

5. If any of the three arbitrators has not been appointed within 45 days after the date of the receipt of a request under paragraph 3 of Article 8 (Request for Establishment of an Arbitral Tribunal), any Party to the dispute may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 4 shall also be provided to the Director-General of the WTO and may be used in making the required appointments. In the event that the Director-General of the WTO is a national¹⁹ of any

¹⁹ For the purposes of this paragraph and paragraph 8 only, in the case of Hong Kong, China, “national” means a permanent resident of the Hong Kong Special Administrative Region.

Party to the dispute, the Deputy Director-General of the WTO or the officer next in seniority who is not a national of any Party to the dispute shall be requested to make the necessary appointments.

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

7. All arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;
- (c) be independent of, and not be affiliated with or take any instruction from, any Party to the dispute or Third Party;
- (d) not have dealt with the matter under dispute in any capacity;
- (e) disclose to the Parties to the dispute information which may give rise to justifiable doubts as to their independence or impartiality;
- (f) serve in their individual capacities, and not as government representatives or representatives of any organisation; and
- (g) comply with the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*

adopted by the WTO Dispute Settlement Body on 11 December 1996.

8. Unless the Parties to the dispute otherwise agree, arbitrators shall not be nationals of any Party to the dispute. In addition, the chair of an arbitral tribunal shall not have his or her usual place of residence in any Party to the dispute.

9. All Parties shall not give arbitrators instructions or seek to influence them as individuals with regard to matters before an arbitral tribunal.

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

11. Where an arbitral tribunal is re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations), the re-convened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, any replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and shall have all the powers and duties of the original arbitrator.

Article 12

Functions of an Arbitral Tribunal

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

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

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

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 8 (Request for Establishment of an Arbitral Tribunal), and to make such findings and if applicable, recommendations provided for in this Agreement.”

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

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

- (a) a descriptive section summarising the submissions and arguments of the Parties to the dispute and, if applicable, Third Parties;
- (b) its findings on the facts of the case and on the applicability of the relevant provisions of this Agreement;
- (c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement, and its recommendations, if any, for the resolution of the matter; and
- (d) its reasons for its findings in subparagraphs (b) and (c).

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

5. Unless the Parties to the dispute otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement, the submissions and arguments of the Parties to the dispute and, if applicable, Third Parties and any other information provided to the arbitral tribunal pursuant to paragraph 8 of Article 13 (Arbitral Tribunal Procedures). The submissions of Third Parties shall be reflected in the report of the arbitral tribunal.

6. The interests of the Parties to the dispute and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings.

7. The findings and recommendations of the arbitral tribunal referred to in paragraph 2 cannot add to or diminish the rights and obligations provided in this Agreement.

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

9. An arbitral tribunal re-convened under this Chapter shall also carry out functions with regard to compliance review under Article 16 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 17 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal re-convened under Article 16 (Compliance Review) and Article 17 (Compensation and Suspension of Concessions or other Obligations).

10. An arbitral tribunal shall make its decisions by consensus. If an arbitral tribunal is unable to reach consensus, it may make its decisions by majority vote. The arbitral tribunal shall indicate the different opinions of the arbitrators on matters not unanimously agreed in its report, not disclosing which arbitrator is associated with majority or minority opinions.

Article 13

Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of an Arbitral Tribunal) shall adhere to this Chapter. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall apply the rules of procedure set out in

Annex 13-1 (Rules of Procedure for Arbitral Tribunal Proceedings). On the request of a Party to the dispute, or on its own initiative, the arbitral tribunal may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with Annex 13-1 (Rules of Procedure for Arbitral Tribunal Proceedings).

2. An arbitral tribunal re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) may, in consultation with the Parties to the dispute, establish its own procedures which do not conflict with this Chapter or Annex 13-1 (Rules of Procedure for Arbitral Tribunal Proceedings), drawing as it deems appropriate from this Chapter or Annex 13-1 (Rules of Procedure for Arbitral Tribunal Proceedings).

Timetable

3. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed a period of 150 days, unless the Parties to the dispute otherwise agree.

4. Similarly, a Compliance Review Tribunal re-convened pursuant to Article 16 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after re-convening, fix the timetable for the compliance review process taking into account the time periods specified in Article 16 (Compliance Review).

Arbitral Tribunal Proceedings

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

Confidentiality

6. The deliberations of an arbitral tribunal shall be confidential.

Additional Information and Technical Advice

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

8. An arbitral tribunal may, after consulting the Parties to the dispute, seek information and technical advice from any individual or body which it deems appropriate. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments. For greater certainty, where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties to the dispute on the information or technical advice.

Reports

9. The arbitral tribunal shall provide an interim report to the Parties to the dispute that meets the requirements specified in paragraph 3 of Article 12 (Functions of an Arbitral Tribunal).

10. The arbitral tribunal shall present its interim report to the Parties to the dispute within 90 days after the date of establishment of the arbitral tribunal or in cases of urgency, including those concerning perishable goods, within 60 days after the date of establishment of the arbitral tribunal. In exceptional cases, if the arbitral tribunal considers it cannot present its interim report within 90 days, or within 60 days in cases of urgency, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Unless the Parties to the dispute otherwise agree, any delay shall not exceed a further period of 30 days.

11. A Party to the dispute may submit written comments on the interim report to the arbitral tribunal within 10 days after receiving the interim report or within such period as the Parties to the dispute may agree.

12. After considering any written comments by the Parties to the dispute and making any further examination it considers necessary, the arbitral tribunal shall present its final report to the Parties to the dispute within 30 days after presentation of the interim report, unless the Parties to the dispute otherwise agree. The final report shall set out any further arguments made by the Parties to the dispute on the interim report.

13. The interim and final reports of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed by individual arbitrators in the reports of the arbitral tribunal shall be anonymous.

14. The arbitral tribunal shall provide its final report to all other Parties seven days after the report is

presented to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the report publicly available subject to the protection of any confidential information contained in the report.

Article 14

Suspension and Termination of Proceedings

1. The Parties to the dispute may agree that the arbitral tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In such event, the Parties to the dispute shall jointly notify the chair of the arbitral tribunal. Within this period, the suspended arbitral proceedings shall resume upon the request of any Party to the dispute. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for the establishment of the arbitral tribunal shall lapse unless the Parties to the dispute otherwise agree.

2. The Parties to the dispute may agree to terminate the proceedings of an arbitral tribunal by jointly notifying the chair of the arbitral tribunal at any time, in the event that a mutually satisfactory solution to the dispute has been found before the presentation of the final report to the Parties to the dispute.

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

4. The Parties to the dispute shall notify all other Parties that the arbitral tribunal has been suspended or its authority has lapsed pursuant to paragraph 1 or has been terminated pursuant to paragraph 2.

SECTION D

Implementation Provisions

Article 15

Implementation

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

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

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

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

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

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

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

Article 16

Compliance Review

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in paragraph 1 of Article 15 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal re-convened for this purpose ("Compliance

Review Tribunal”).²⁰ Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of any Party to the dispute.

2. The request for re-convening an arbitral tribunal under paragraph 1 may only be made after the earlier of:

- (a) the expiry of the reasonable period of time as determined under Article 15 (Implementation); or
- (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in paragraph 1 of Article 15 (Implementation), including a description of how the Responding Party has complied with such obligation.

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

- (a) the factual aspects of any implementation action taken by the Responding Party; and
- (b) whether the Responding Party has complied with the obligation in paragraph 1 of Article 15 (Implementation).

4. The Compliance Review Tribunal shall set out in its report:

²⁰ Consultations under Article 6 (Consultations) are not required for these procedures.

- (a) a descriptive section summarising the arguments of the Parties to the dispute and, if applicable, Third Parties;
- (b) its findings on the factual aspects of the case; and
- (c) its findings on whether the Responding Party has complied with the obligation in paragraph 1 of Article 15 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its report to the Parties to the dispute within 60 days from the date it re-convenes. When the Compliance Review Tribunal considers that it cannot provide its report within the 60-day period, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will submit the report. Unless the Parties to the dispute otherwise agree, it may extend the 60-day period for a maximum of 30 days.

6. Where an arbitral tribunal is requested to re-convene pursuant to paragraph 1, it shall re-convene within 15 days from the date of the request, unless paragraph 10 of Article 11 (Establishment and Re-convening of an Arbitral Tribunal) applies.

Article 17

Compensation and Suspension of Concessions or other Obligations

1. Compensation and suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under paragraph 1 of Article 15 (Implementation). However, neither compensation nor

suspension of concessions or other obligations is preferred to compliance with the obligation under paragraph 1 of Article 15 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

- (a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in paragraph 1 of Article 15 (Implementation); or
- (b) a failure to comply with the obligation in paragraph 1 of Article 15 (Implementation) has been established in accordance with Article 16 (Compliance Review),

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

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

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

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

5. In considering what concessions or other obligations to suspend pursuant to paragraph 3, the Complaining Party shall apply the following principles:

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

6. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter or Chapters and sector or sectors which the concessions or other obligations are related to. In the case where the Complaining Party suspends concessions or other obligations in other sectors pursuant to subparagraph 5 (b), the notification shall also indicate the reasons for which the suspension is based.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment. For the avoidance of doubt, any suspension of concessions or other obligations shall be restricted to those accruing to the Responding Party under this Agreement.

8. Within 30 days from the date of receipt of a notification made under paragraph 3, if the Responding Party objects to the level of concessions or other obligations proposed for suspension or considers that the principles set forth in paragraph 5 have not been followed, the Responding Party may request the arbitral tribunal to re-convene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties to the dispute within 30 days from the date it re-convenes. Where an arbitral tribunal is requested to re-convene pursuant to this paragraph, it shall re-convene within 15 days from the date of the request, unless paragraph 10 of Article 11 (Establishment and Re-convening of an Arbitral Tribunal) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in paragraph 1 of Article 15 (Implementation) has been complied with or a mutually satisfactory solution is reached.

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

- (a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or
- (b) it has complied with the obligation in paragraph 1 of Article 15 (Implementation),

it may request the arbitral tribunal to re-convene to examine the matter.²¹

11. Where the arbitral tribunal re-convenes pursuant to subparagraph 10 (a), paragraph 8 shall apply, *mutatis mutandis*. Where the arbitral tribunal re-convenes pursuant to subparagraph 10 (b), paragraphs 3 to 5 of Article 16 (Compliance Review) shall apply.

SECTION E

Final Provisions

Article 18

Special and Differential Treatment Involving Newer ASEAN Member States

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving newer ASEAN Member States, particular sympathetic consideration shall be given to the special situation of newer ASEAN Member States. In this regard, all Parties shall exercise due restraint in raising matters under these procedures involving a least-developed country Party. If nullification or impairment is found to result from a measure taken by a least-developed country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 17 (Compensation and Suspension of Concessions or other Obligations) or other obligations pursuant to these procedures.

²¹ Where a Compliance Review Tribunal determines that measures taken by the Responding Party do not comply with the obligation in paragraph 1 of Article 15 (Implementation), it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

2. Where one or more of the Parties to a dispute is a newer ASEAN Member State, the arbitral tribunal's reports shall explicitly indicate how it has taken account of relevant provisions on special and differential treatment for a newer ASEAN Member State that form part of this Agreement and have been raised by the newer ASEAN Member State in the course of the dispute settlement procedures.

Article 19

Expenses

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

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

Article 20

Contact Point

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

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party or Parties through their designated contact points who

shall provide confirmation of receipt of such document in writing.

Article 21

Language

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