

CHAPTER FIFTEEN

DISPUTE SETTLEMENT

Article 15.1: Objective

The objective of this Chapter is to establish an effective and efficient mechanism for settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

Article 15.2: Cooperation

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

Article 15.3: Scope of Application

1. Except as provided in Articles 15.3.2 and 15.3.3, this Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation or application of this Agreement (hereinafter referred to as “covered provisions”), wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
- (b) the other Party otherwise failed to carry out its obligations under this Agreement.

2. This Chapter shall not cover non-violation complaints and other situation complaints.

3. The Parties agree that neither Party shall have recourse to dispute settlement under this Chapter for any matter arising under the following Chapters of this Agreement: Chapter Five (Sanitary and Phytosanitary Measures), Chapter Twelve (Cooperation on Investment Facilitation), Chapter Thirteen (Economic Cooperation), and Chapter Fourteen (Small and Medium-sized Enterprises).

Article 15.4: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Article 15.5: Request for Information

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Article 15.6 or 15.7 respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

Article 15.6: Consultations

1. The Parties shall endeavor to resolve any dispute referred to in Article 15.3 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 delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual basis and the legal basis specifying the covered provisions that it considers applicable.
3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. Consultations shall be held within 30 days of the date of receipt of the request. The consultations shall be deemed to be concluded within 60 days of the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations on matters of urgency including those which concern perishable goods or where appropriate, seasonal goods or seasonal services, shall be held within 15 days of the date of receipt of the request. The consultations shall

be deemed to be concluded within those 15 days unless the Parties agree otherwise.

5. During consultations each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure is affecting the operation and application of this Agreement.

6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

7. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.

8. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in Article 15.6.3 or 15.6.4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 15.8.

Article 15.7: Good Offices, Conciliation, or Mediation

1. The Parties may at any time agree to enter into procedures for good offices, conciliation, or mediation. They may begin at any time, and be terminated by either Party at any time.

2. Proceedings involving good offices, conciliation, or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the panel procedures proceed.

Article 15.8: Establishment of a Panel

1. The complaining Party may request the establishment of a panel if:
 - (a) the respondent Party does not reply to the request for consultations in accordance with the time frames referred in Article 15.6; or
 - (b) the consultations referred to in Article 15.6.8 of this Agreement are not held within 30 days or 15 days in relation to urgent matters including those which concern perishable goods or where appropriate, seasonal goods or seasonal services, if the Parties agree not to have consultations, or fail to settle a dispute within 60 days of the date of the receipt of the request for consultations by the respondent Party.
2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the factual basis of the complaint and the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent with those provisions.
3. When a request is made by the complaining Party in accordance with paragraph 1, a panel shall be established.

Article 15.9: Composition of a Panel

1. Unless the Parties agree otherwise, a panel shall consist of three panelists.
2. Within 20 days of the request for the establishment of a panel is made in accordance with Article 15.8.2, each Party shall appoint a panelist. The Parties shall, by common agreement, appoint the third panelist, who shall serve as the chairperson of the panel, within 40 days of the establishment of a panel in accordance with Article 15.8.3.
3. If either Party fails to appoint a panelist within the period established in paragraph 2, the other Party, within a period of 20 days, may request the Director-General of the WTO to appoint the unappointed panelists within 20 days of that request.
4. If the Director-General of the WTO notifies the Parties to the dispute that he or she is unavailable or does not appoint the unappointed panelist within 20 days of the date of the request made pursuant to paragraph 3, any Party to the

dispute may request the Secretary-General of the Permanent Court of Arbitration to appoint the unappointed panelist within 20 days of that request.

5. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, they shall within the next 10 days, exchange their respective lists comprising three nominees each who shall not be nationals of either Party. The chairperson shall then be appointed by draw of lot from the lists within 10 days of the expiry of the time period during which the Parties shall exchange their respective lists of nominees. The selection by lot of the chairperson of the panel shall be made by the Joint Committee.

6. If a Party fails to submit its list of three nominees within the time period established in paragraph 5, the chairperson shall be appointed by draw of lot from the list submitted by the other Party.

7. The date of composition of the panel shall be the date on which the last of the three selected panelists is appointed.

Article 15.10: Decision on Urgency

If a Party so requests, the panel shall give a preliminary ruling, within 15 days of its composition, determining whether the dispute concerns matters of urgency.

Article 15.11: Requirements for Panelists

1. Each panelist shall:
 - (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement;
 - (b) be independent of, and not be affiliated with or take instructions from, either Party;
 - (c) serve in their individual capacities and not take instructions from any organization or government with regard to matters related to the dispute;
 - (d) comply with the Code of Conduct established in Annex 15-B; and
 - (e) be chosen strictly on the basis of objectivity, reliability, and sound judgment.

2. The chairperson shall also have experience in dispute settlement procedures.

3. Persons who provided good offices, conciliation, or mediation to the Parties, pursuant to Article 15.7 in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panelists in that matter.

Article 15.12: Replacement of Panelists

If any of the panelists of the original panel becomes unable to act, withdraws, or needs to be replaced because that panelist does not comply with the requirements of the Code of Conduct, a successor panelist shall be appointed in the same manner as prescribed for the appointment of the original panelist under Article 15.9 and the work of the panel shall be suspended during the appointment of the successor panelist.

Article 15.13: Functions of the Panel

Unless the Parties otherwise agree, the panel:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity of the measure at issue with the covered provisions;
- (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and
- (c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

Article 15.14: Terms of Reference

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

“to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for

the establishment of the panel, to make findings on the conformity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to resolve the dispute, and to deliver a report in accordance with Articles 15.18 and 15.19.”

2. If the Parties agree on other terms of reference than those referred to in paragraph 1 within the timeline specified therein, they shall notify the agreed terms of reference to the panel no later than five days after their agreement.

Article 15.15: Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.
2. When appropriate, the panel may also take into account relevant interpretations in reports of panels established under this Agreement and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.
3. The rulings of the panel cannot add to or diminish the rights and obligations of the Parties provided under this Agreement.

Article 15.16: Procedures of the Panel

1. Unless the Parties otherwise agree, the panel shall follow the model Rules of Procedure set out in Annex 15-A.
2. There shall be no *ex parte* communications with the panel concerning matters under its consideration.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential.
4. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

5. The panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution.
6. The panel shall make its decisions, including its reports, by consensus, but if consensus is not possible, then by majority vote. Any member of the panel may furnish separate opinions on matters not unanimously agreed, and such separate opinions shall not be disclosed.
7. Rulings of the panel shall be binding on the Parties.

Article 15.17: Receipt of Information

1. Upon the request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.
2. Upon the request of a Party or on its own initiative, the panel may seek from any source any information it considers appropriate.
3. Upon the request of a Party, or on its own initiative, the panel may seek technical advice or expert opinion from any individual or body that it deems appropriate, and subject to any terms and conditions as the Parties agree.
4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

Article 15.18: Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days of the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties and the Joint Committee in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. Under no circumstances shall the delay exceed 30 days after the deadline. The interim report shall not be made public.
2. The interim report shall set out a descriptive part and the panel's findings and conclusions.

3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within 15 days of the date of issuance of the interim report. A Party may comment on the others Party's request within six days of the delivery of the request.

4. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

Article 15.19: Final Report

1. The panel shall deliver its final report to the Parties and Joint Committee within 135 days of the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

3. The final report shall be made public within 15 days of its delivery to the Parties unless the Parties otherwise agree to publish the final report only in parts or not to publish the final report.

Article 15.20: Implementation of the Final Report

1. Where the panel finds that the respondent Party has acted inconsistently with a covered provision pursuant to Article 15.3, the respondent Party shall take any measure necessary to comply promptly and in good faith with the Panel's ruling.

2. If it is impracticable to comply immediately, the respondent Party shall, no later than 30 days after the delivery of the final report, notify the complaining Party and the Joint Committee of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavor to agree on the reasonable period of time required for compliance with the final report.

Article 15.21: Reasonable Period of Time for Compliance

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party shall, no later than 20 days after the date of receipt of the notification made by the respondent Party in accordance with Article 15.20.2 request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent Party and the Joint Committee. The 20-day period referred to in this paragraph may be extended by mutual agreement of the Parties.
2. The original panel shall deliver its decision to the Parties and the Joint Committee within 20 days of the relevant request.
3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

Article 15.22: Compliance Review

1. The respondent Party shall deliver a written notification of its progress in complying with the final report to the complaining Party and the Joint Committee at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.
2. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party and the Joint Committee of any measure that it has taken to comply with the final report along with a description on how the measure ensures compliance sufficient to allow the complaining Party to assess the measure before the expiry of the reasonable period of time.
3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to decide on the matter before compensation can be sought or suspension of benefits can be applied in accordance with Article 15.23.1(c). Such request shall be notified simultaneously to the respondent Party and the Joint Committee.
4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of

why any measures taken by the respondent Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.

5. The panel shall deliver its decision to the Parties and the Joint Committee within 60 days of the date of submission of the request.

Article 15.23: Temporary Remedies in Case of Non-Compliance

1. If the respondent Party:

- (a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time;
- (b) notifies the complaining Party in writing that it is not possible to comply with the final report within the reasonable period of time; or
- (c) the original panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the respondent Party is inconsistent with the covered provisions;

The respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on mutually satisfactory compensation or any alternative arrangement.

2. If the Parties fail to reach a mutually satisfactory agreement within 20 days of the date of receipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application of concessions or other obligations under this Agreement.

3. The complaining Party may begin the suspension of concessions or other obligations referred to in the preceding paragraph 20 days after the date when it served notice on the respondent Party, unless the respondent Party made a request under paragraph 7.

4. The suspension of concessions or other obligations:

- (a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the respondent Party to comply with the final report; and

- (b) shall be restricted to benefits accruing to the respondent Party under this Agreement.

5. In considering what concessions or other obligations to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

- (a) the complaining Party should first seek to suspend the concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; 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(s). The communication in which it notifies such a decision shall indicate the reasons on which it is based.

6. The suspension of concessions or other obligations or the mutually satisfactory agreement foreseen in paragraph 1 shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions has been removed, or until the Parties have reached a mutually agreed solution pursuant to Article 15.28.

7. If the respondent Party considers that the suspension of concessions or other obligations does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party and to the Joint Committee. The original panel shall notify to the Parties and the Joint Committee its decision on the matter no later than 45 days after the receipt of the request from the respondent Party, or if the original panel cannot be established with its original members, from the date on which the last panelist of the newly established panel is appointed. Concessions or other obligations shall not be suspended until the panel has delivered its decision pursuant to this paragraph. The suspension of concessions or other obligations shall be consistent with this decision.

Article 15.24: Review of any Measure Taken to Comply After the Adoption of Temporary Remedies

1. Upon the notification by the respondent Party to the complaining Party and the Joint Committee of the measure taken to comply with the final report:

- (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 15.23, the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or
- (b) in a situation where necessary compensation has been agreed, the respondent Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the respondent Party and the Joint Committee. The decision of the panel shall be notified to the Parties and the Joint Committee no later than 30 days after the date of submission of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the covered provisions, the suspension of concessions or other obligations, or the application of the compensation, as the case may be, shall be terminated no later than 15 days after the date of the decision. If the panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

Article 15.25: Suspension and Termination of Proceedings

If both Parties so request in writing, the panel shall suspend its work for a period agreed by the Parties and not exceeding 12 consecutive months from such request. In the event of a suspension of the work of the panel, the relevant time periods under this Chapter shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

Article 15.26: Choice of Forum

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.
2. If a dispute with regard to a particular measure arises under this Agreement and under another international trade agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 2, the selected forum shall be used to the exclusion of other fora.
4. For purposes of paragraph 3:
 - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 15.8;
 - (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and
 - (c) dispute settlement proceedings under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

Article 15.27: Costs

1. Unless the Parties otherwise agree, the costs of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.
2. Each Party shall bear its own expenses and other legal costs incurred in relation to the panel proceedings.

Article 15.28: Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 15.3.
2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article 15.29: Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified in this Chapter.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.
3. All time periods laid down in this Chapter for cases of urgency shall be cut by half except as otherwise provided in this Chapter.

Article 15.30: Annexes

The Joint Committee may modify the Annexes 15-A and 15-B.

Annex 15-A

Rules of Procedure for the Panel

Timetable

1. After consulting the Parties, the panel shall, whenever possible within seven days of the appointment of the final panelist, fix the timetable for the panel process.
2. The panel process shall, as a general rule, not exceed 135 days from the date of establishment of the panel until the date of the final report, unless the Parties otherwise agree.
3. Should the panel consider there is a need to modify the timetable, it shall inform the Parties in writing of the proposed modification and the reason for it. In cases of urgency in accordance with Article 15.10 the panel, after consulting the Parties, shall adjust the timetable as appropriate and shall notify the Parties of such adjustment.

Written Submissions and other Documents

4. Unless the panel otherwise decides, the complaining Party shall deliver its first written submission to the panel no later than 20 days after the date of composition of the panel. The respondent Party shall deliver its first written submission to the panel and to the complaining Party no later than 20 days after the date of delivery of the complaining Party's first written submission unless the arbitral panel decides otherwise.
5. A Party shall provide a copy of its written submission to each of the panelists and to the other Party.
6. Within 20 days of the conclusion of the hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.
7. The Parties shall transmit all information or written submissions, written versions of oral statements and responses to questions put by the panel to the other Party to the dispute at the same time as it is submitted to the panel.
8. The Parties and the panelist shall transmit any request, notice, written submissions or other document by delivery against receipt, registered post, courier,

facsimile, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

9. Minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

Operation of the Panel

10. The chairperson of the panel shall preside at all of its meetings, and shall fix the date and time of the hearing in consultation with the Parties and other members of the panel. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.

11. Panel deliberations shall be confidential. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants of the panel to be present during such deliberations. The reports of panels shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

12. Opinions expressed in the panel report by individual panelists shall be anonymous.

Hearings

13. The Parties shall be given the opportunity to attend hearings and meetings of the panel.

14. The panel shall provide for at least one hearing for the Parties to present their cases to the panel.

15. Unless a Party disagrees, the Panel may decide to convene additional hearings or not to convene a hearing at all.

16. All panelists shall be present at hearings. Panel hearings shall be held in closed session with only the panelists and the Parties in attendance. However, in consultation with the Parties, assistants, translators, advisers of the disputing Parties, administration personnel, interpreters, or designated note takers may also be present at hearings to assist the panel in its work. Any such arrangements established by the panel may be modified with the agreement of the Parties.

17. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the respondent Party are afforded equal time to present

their case. The panel shall, as a general rule, conduct the hearing in the following manner: argument of the complaining Party; argument of the respondent Party; the reply of the complaining Party; the counter-reply of the respondent Party; closing statement of the complaining Party; and closing statement of the respondent Party. The chairperson may set time limits for oral arguments to ensure that each Party is afforded equal time.

Written Questions

18. The panel may direct written questions to either Party at any time during the proceedings. A Party to whom the panel addresses a written question shall deliver a written reply to the panel and the other Party in accordance with the timetable established by the panel.

19. Each Party shall be given the opportunity to provide written comments on the response of the other Party within the timetable established by the panel.

Confidentiality

20. The panel's hearings and the documents submitted to it shall be confidential. Each Party shall treat as confidential information submitted to the panel by the other Party which that Party has designated as confidential.

21. Where a Party designates as confidential its written submissions to the panel, it shall, on request of the other Party, provide the panel and the other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public no later than 10 days after the date of request. Nothing in these Rules shall prevent a Party from disclosing statements of its own positions to the public.

Working language

22. The working language of the panel proceedings, including for written submissions, oral arguments or presentations, the report of the panel, and all written and oral communications between the Parties and with the panel, shall be English.

Venue

23. The venue for the hearings of the panel shall be decided by agreement between the Parties. If there is no agreement, the first hearing shall be held in the territory of the respondent Party, and any additional hearings shall alternate between the territories of the Parties.

Expenses

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

Ex Parte Contacts

25. The panel shall not meet or communicate with a Party in the absence of the other Party.

26. Neither Party shall meet or communicate with any panelist in relation to the dispute in the absence of the other Party or other panelists.

27. No panelist shall discuss any aspect of the subject-matter of the proceedings with a Party in the absence of the other Party and other panelists.

Annex 15-B

Code of Conduct for Panelists and Others Engaged in Dispute Settlement Proceedings Under This Agreement¹

Definitions

1. For purposes of this Annex:
 - (a) **assistant** means a person who, under the terms of appointment of a panelist, conducts research or provides support for the panelist works under the direction and control of a panelist to assist with case-specific tasks;
 - (b) **candidate** means a person who is under consideration for selection as a panelist;
 - (c) **panelist** means a member of a panel established under Article 15.8;
 - (d) **proceeding**, unless otherwise specified, means the proceeding of a panel under this Chapter; and
 - (e) **staff**, in respect of a panelist, means persons under the direction and control of the panelist, other than assistants.

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former panelists shall comply with the obligations established in paragraphs 18 through 22.

Disclosure Obligations

3. Prior to confirmation of his or her selection as a panelist under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably

¹ This Code of Conduct shall apply *mutatis mutandis* to persons appointed to provide good offices, conciliation, or mediation under Article 15.7, unless otherwise agreed by the Parties.

create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships, and matters.

4. Once selected, a panelist shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 3 and shall disclose them by communicating them in writing to the Joint Committee for consideration by the Parties. The obligation to disclose is a continuing duty, which requires a panelist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Performance of Duties by Panelists

5. A panelist shall comply with the provisions of this Chapter and its Annexes.

6. On selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

7. A panelist shall not deny other panelists the opportunity to participate in all aspects of the proceeding.

8. A panelist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

9. A panelist shall take all appropriate steps to ensure that the panelist's assistant and staff are aware of, and comply with, paragraphs 2 through 4 and 19 through 21.

10. A panelist shall not engage in *ex parte* contacts concerning the proceeding.

11. A panelist shall not communicate matters concerning actual or potential violations of this Annex by another panelist unless the communication is to both Parties or is necessary to ascertain whether that panelist has violated or may violate this Annex. Each panelist shall keep a record and render a final account of the time devoted to the panel proceedings and of his or her expenses, as well as the time and expenses of his or her staff and assistants.

Independence and Impartiality of Panelists

12. A panelist shall be independent and impartial. A panelist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

13. A panelist shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party or fear of criticism.

14. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panelist's duties.

15. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid actions that may create the impression that others are in a special position to influence the panelist. A panelist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

16. A panelist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panelist's conduct or judgment.

17. A panelist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panelist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

18. A panelist or former panelist shall avoid actions that may create the appearance that the panelist was biased in carrying out the panelist's duties or would benefit from the decision or report of the panel.

Maintenance of Confidentiality

19. A panelist or former panelist shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage, or advantage for others, or to affect adversely the interest of others.

20. A panelist shall not disclose a panel report, or parts thereof, prior to its publication.

21. A panelist or former panelist shall not at any time disclose the deliberations of a panel, or any panelist's view, except as required by legal or constitutional requirements.

22. A panelist shall not make a public statement regarding the panel proceeding.