

CHAPTER 20 DISPUTE SETTLEMENT

ARTICLE 20.1: COOPERATION

The Parties shall endeavour 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 20.2: SCOPE

Unless otherwise provided in this Agreement or otherwise agreed by the Parties, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit the Party could reasonably have expected to accrue to it under Chapter 2 (Trade in Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 7 (Cross-Border Trade in Services), or 12 (Government Procurement), is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

ARTICLE 20.3: 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 20.4: CHOICE OF FORUM

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.
2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Agreement or under the WTO Agreement, it shall not initiate a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded or terminated by the complaining Party. In addition, where a Party has initiated a dispute settlement proceeding either under this Agreement or under the WTO Agreement to seek redress of an obligation which is identical or substantially identical under the two Agreements, it shall not initiate a dispute settlement proceeding to seek redress of the identical or substantially identical obligation in the other forum until the first proceeding has been concluded or terminated by the complaining Party.
3. Notwithstanding paragraph 2, a Party may initiate a dispute settlement proceeding in the other forum if the first forum selected fails for procedural or jurisdictional reasons to make findings on the claim.
4. For the purposes of paragraphs 2 and 3:
 - (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*, in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the WTO Dispute Settlement Body (hereinafter referred to as 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 Chapter are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel under Article 20.8 and are deemed to be concluded when the panel present a final report to the Parties under Article 20.11.

ARTICLE 20.5: RULES OF INTERPRETATION

Any panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, including as reflected in the *Vienna Convention on the Law of Treaties*. Where an obligation under this Agreement is identical or substantially identical to an obligation under the WTO Agreement, the panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the DSB. The rulings of the panel cannot add to or diminish the rights and obligations provided for in this Agreement.

ARTICLE 20.6: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and any other issue of concern. The other Party shall reply promptly to the request and enter into consultations.

2. Each Party shall:

- (a) provide sufficient information in the consultations to enable a full examination of the matter subject to consultations, including how the measure at issue might affect the operation of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

ARTICLE 20.7: REFERRAL TO THE JOINT COMMITTEE

1. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 20.6, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. The Joint Committee shall promptly convene and endeavour to resolve the matter.

ARTICLE 20.8: ESTABLISHMENT OF PANEL

1. If the matter has not been resolved within 60 days of the delivery of a notification described in Article 20.7, or within such other period as the Parties may agree, the complaining Party may request the establishment of a panel to consider the matter by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the specific measure at issue and a brief summary of the factual and legal basis for the complaint sufficient to present the problem clearly.

2. Within five days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, the Parties shall enter into consultations with a view to reaching agreement on the procedures for selecting a panel. If the Parties are unable to reach agreement on the procedures for selecting the panel within 15 days of the date of delivery of the written notification referring a matter to a panel as provided in paragraph 1, either Party may at any time thereafter notify the other Party that it wishes to use the procedures set forth in subparagraphs (a) and (b). Where

such a notification is made, the panel shall be composed in accordance with subparagraphs (a) and (b):

- (a) the panel shall have three panellists. Within 30 days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, each Party shall appoint one panellist, who may be its national, and provide to the other Party a list of up to three nominees for appointment as the third panellist who shall be the chair of the panel. The Parties shall then consult with each other with the objective of appointing the third panellist, taking into account the lists of nominees; and
- (b) if all of the panellists have not been appointed within 45 days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, any of the remaining panellists shall be appointed on request of either Party by random drawing from the lists of nominees for appointment as chair or as a regular panellist.

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

4. The date of establishment of the panel shall be the date the last panellist is appointed in accordance with paragraph 2.

5. Individuals appointed to a panel in accordance with this Article shall:

- (a) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (b) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
- (c) be independent of, and not be affiliated with or take instructions from, either Party;
- (d) not have dealt with the matter in any capacity;
- (e) disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality; and
- (f) comply with the code of conduct set out in Annex 20-A.

6. Unless the Parties otherwise agree, the chair shall not be a national of either Party.

7. Where a panel is reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1 the reconvened panel shall, where possible, have the same panellists as in the original panel. If the panel cannot be reconvened with all of its original panellists, the procedures for selection of the panellists set out in paragraphs 2 through 6 shall apply.

ARTICLE 20.9: FUNCTIONS OF PANELS

1. A panel 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 relevant provisions of this Agreement cited by the Parties; and
- (c) whether:
 - (i) the measure at issue is inconsistent with the obligations of this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (iii) the measure at issue is causing nullification or impairment in the sense of Article 20.2(c).

2. Unless the Parties otherwise agree within 20 days of the date of the delivery of the request for the establishment of the panel, the panel's terms of reference shall be:

“To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the panel, to make findings, determinations, and, if applicable, recommendations as provided in Articles 20.11.1 and 20.11.2 and to present the written reports referred to in Articles 20.11.1 and 20.11.4.”

3. This Article shall not apply to a panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1.

ARTICLE 20.10: RULES OF PROCEDURE

1. Unless the Parties otherwise agree and subject to paragraph 3, the panel shall follow the model rules of procedure set out in Annex 20-B.
2. The panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.
3. A panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1 may establish its own procedures, in consultation with the Parties, which do not conflict with this Chapter or the model rules of procedure.

ARTICLE 20.11: PANEL REPORT

1. Unless the Parties otherwise agree, the panel shall, within 180 days of the date the chair is appointed, present to the Parties an initial report containing its findings on the facts of the case and on the applicability of the provisions of this Agreement, and its determination as to:
 - (a) whether
 - (i) the measure at issue is inconsistent with the obligations of this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (iii) the measure at issue is causing nullification or impairment in the sense of Article 20.2(c); and
 - (b) any other issue of concern that the Parties have jointly requested that the panel address, as well as the reasons for its findings and determinations.
2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or technical advice it has obtained in accordance with its rules of procedure. The panel may, on the joint request of the Parties, make recommendations for the resolution of the dispute.
3. Each Party may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.
4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

5. Paragraphs 1, 3 and 4 shall not apply to a panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1.

ARTICLE 20.12: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

ARTICLE 20.13: IMPLEMENTATION OF THE FINAL REPORT

1. Where the final report of a panel contains:

- (a) a determination that the measure at issue is inconsistent with the obligations of this Agreement, or that the Party complained against has otherwise failed to carry out its obligations under this Agreement, the Party complained against has an obligation to bring the measure into conformity with this Agreement; or
- (b) a determination of non-violation nullification or impairment in the sense of Article 20.2(c), the Party complained against has an obligation to eliminate the nullification or impairment or reach a mutually satisfactory solution with the complaining Party.

2. Within 20 days of the issuance of the final report of the panel, the Party complained against shall notify the complaining Party:

- (a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with 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 Party complained against would need to implement.

3. If a reasonable period of time is required, it shall, whenever possible, be mutually determined by the Parties. Where the Parties are unable to agree on the reasonable period of time within 30 days of the issuance of the final report, either Party may request the panel to determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made within 120 days of the issuance of the final report.

4. Where a request is made in accordance with paragraph 3, the panel shall present to the Parties a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request. Prior to making this determination, the panel shall seek written submissions from the Parties, and if requested by either Party, hold a meeting with the Parties where each Party will be given an opportunity to present its submission. As a guideline, the reasonable period of time determined by the panel should not exceed 15 months from the date of the issuance of the panel's final report. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances. Unless the Parties otherwise agree, the principles applied in arbitrations under Article 21.3(c) of the DSU shall apply *mutatis mutandis*.

ARTICLE 20.14: NON-IMPLEMENTATION

1. The Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation where:

- (a) the reasonable period of time referred to in Article 20.13 has elapsed; or
- (b) the Party complained against has notified the complaining Party that it does not intend to comply with the obligation in Article 20.13.1.

2. If the Parties:

- (a) are unable to agree on compensation within 30 days of the date the period for developing such compensation has begun; or
- (b) have agreed on compensation and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notification to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect to the level of non-conformity, or nullification or impairment that the panel has found. The notification shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits 30 days after the later of the date it provides notification

to the other Party under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. A right to suspend benefits which arises under paragraph 2 shall not be exercised while a compliance review proceeding is being undertaken under Article 20.15.

4. In considering what benefits to suspend in accordance with paragraph 2:

- (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with the obligations of this Agreement or in the same sector or sectors where nullification or impairment in the sense of Article 20.2(c) has been found to exist; and
- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

5. If the Party complained against considers that:

- (a) the level of benefits that the complaining Party has proposed to be suspended is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found; or
- (b) it has eliminated the non-conformity, or the nullification or impairment that the panel has found,

it may, within 30 days of the date the complaining Party provides notification under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days of the date it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days of a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found, it shall determine the level of benefits it considers to be equivalent to the level of non-conformity, or nullification or impairment.

6. Where the right to suspend benefits has been exercised under this Article, if the Party complained against considers that the level of benefits suspended by the complaining Party is not equivalent to the level of non-conformity, or the nullification or impairment that the panel has found, it may request that the panel be reconvened to consider the matter. Where the panel reconvenes in accordance with this paragraph, the timeframes in paragraph 5 shall apply. If the panel determines that the level of benefits suspended by the complaining Party is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found, it shall determine the level of

benefits it considers to be equivalent to the level of non-conformity, or nullification or impairment.

7. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or 6 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity, or the nullification or impairment.

ARTICLE 20.15: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.14.5, if the Party complained against considers that it has eliminated the non-conformity, or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notification to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 90 days of the date of delivery of the written notification.

2. If the panel decides that the Party complained against has eliminated the non-conformity, or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.14.

3. A panel reconvened in accordance with this Article or in relation to Article 20.14.5(b) shall make an objective assessment of the matter before it, including an objective assessment of:

- (a) the facts of any measure taken by the Party complained against to comply with the obligation in Article 20.13.1; and
- (b) whether the Party complained against has complied with the obligation in Article 20.13.1.

4. A panel reconvened in accordance with this Article or in relation to Article 20.14.5(b) shall set out in its report its findings on:

- (a) the facts of the case; and
- (b) whether the Party complained against has complied with the obligation in Article 20.13.1.

ARTICLE 20.16: PRIVATE RIGHTS

Neither Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Agreed version of the Korea-Australia Free Trade Agreement text as initialled by Chief Negotiators on 10 February 2014

ARTICLE 20.17: EXPENSES

Unless the Parties otherwise agree, the expenses of a panel, including the remuneration of the panellists, shall be borne by the Parties in equal share.

ARTICLE 20.18: TIME PERIODS

Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

**ANNEX 20-A
CODE OF CONDUCT**

Responsibilities to the Process

1. Every panellist 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 panellists shall comply with the obligations established in paragraphs 16 through 19.

Disclosure Obligations

2. Prior to confirmation of his or her selection as a panellist 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 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.

3. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 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 panellist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Performance of Duties by Panellists

4. A panellist shall comply with the provisions of this Chapter and the applicable rules of procedure.

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

6. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.

7. A panellist 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.

8. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with paragraphs 1, 2, 3, 18, 19 and 20.

9. A panellist shall not engage in *ex parte* contacts concerning the proceeding.

10. A panellist shall not communicate matters concerning actual or potential violations of this Annex unless the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

Independence and Impartiality of Panellists

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

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

13. A panellist 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 panellist's duties.

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

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

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

Duties in Certain Situations

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

Maintenance of Confidentiality

18. A panellist or former panellist 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.

19. A panellist shall not disclose a panel ruling or parts thereof prior to its publication.

20. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view except as required by law.

Definitions

21. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

panellist means a member of a panel established under Article 20.8;

proceeding, unless otherwise specified, means a panel proceeding under this Chapter; and

staff, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants.

ANNEX 20-B
MODEL RULES OF PROCEDURE

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in this Chapter.

Timetable

2. After consulting the Parties, a panel shall, as soon as practicable and whenever possible within 10 days after the establishment of the panel, fix the timetable for the panel process. The indicative timetable attached to these Rules should be used as a guide. The panel process, from the date of establishment until the date of the final report shall, as a general rule, not exceed 270 days, unless the Parties otherwise agree.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the Parties to prepare their respective submissions. The panel shall set precise deadlines for written submissions by the Parties.

4. Any time period applicable to the panel proceeding shall be suspended for a period that begins on the date on which any panellist resigns or becomes unable to act and ends on the date on which the successor panellist is appointed.

Operation of Panels

5. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

6. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

7. Only panellists may take part in the deliberations of the panel. The panel may, in consultation with the Parties, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the panel may be modified by the agreement of the Parties.

8. The panel's deliberations shall be confidential. The panellists and the persons retained by the panel shall maintain the confidentiality of panel proceedings and deliberations.

9. Where a procedural question arises that is not addressed by these Rules, a panel may, after consulting the Parties, adopt an appropriate procedure that is consistent with this Agreement.

10. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

Written Submissions and Other Documents

11. Each Party shall transmit to the panel and the other Party a first submission in writing setting out the facts of its case and its arguments. Unless the Parties otherwise agree, a complaining Party shall deliver its first submission to each panellist and to the Party complained against within 14 days after the date of the establishment of the panel. The Party complained against shall deliver its first submission to each panellist and to the complaining Party within 21 days after the date of receipt of the first submission of the complaining Party. Each Party shall have an opportunity to submit written rebuttal submissions after both Parties have submitted first submissions.

12. A Party shall submit all factual evidence to the panel in its first written submission, except with respect to evidence necessary for the purposes of rebuttals or answers to questions. Exceptions to this rule may be granted on a showing of good cause.

13. In respect of a request, notice or other documents related to the panel proceedings that are not covered by Rule 10 or 11, each Party shall deliver one copy of the documents to the other Party by facsimile, email or other means of electronic transmission.

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

Hearings

15. The timetable established in accordance with Rule 2 shall provide for at least one hearing for the Parties to present their case to the panel.

16. In hearings with the panel, each Party shall have an opportunity to present the facts of its case and its arguments. The complaining Party shall present its position first. The Parties shall be given an opportunity for final statements, with the complaining Party presenting its statement first.

17. The Parties shall make available to the panel written versions of their oral statements and responses to questions made in hearings with the panel.

18. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the Party complained against are afforded equal time to present their case.

19. A panel shall hold its hearing in closed session, unless the Parties otherwise agree.

Availability of Information

20. Subject to Rules 21 and 22, each Party's written submissions, written versions of its oral statements, and written responses to questions from the panel may be made available to the public by either Party.

21. A Party may designate, for confidential treatment, specific information it includes in its submissions, to the extent it considers strictly necessary to protect privacy or legitimate commercial interests of particular enterprises, public or private, or to address essential confidentiality concerns.

22. Each Party shall treat as confidential information submitted by the other Party which that Party has designated as confidential. Where a Party designates information as confidential, that Party shall, on request of the other Party, provide the panel and other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

23. The initial report presented to the Parties in accordance with Article 20.11.1 and any comments on it shall be confidential.

24. Each Party shall take such reasonable steps as are necessary to ensure that its individuals involved in panel proceedings, including its experts, interpreters, translators, and court reporters (designated note takers) maintain the confidentiality of the panel proceedings.

Information Gathering

25. The Parties shall respond promptly and fully to any request by the panel for such information as the panel considers necessary and appropriate.

26. On request of a Party, or on its own initiative, the panel may seek information and technical advice, or grant a request to provide views, from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree. The panel shall provide each Party with any views, information or technical advice it receives and an opportunity to provide comments.

Reports

27. The panel shall provide to the Parties an initial report, meeting the requirements specified in Article 20.11.1.

28. The initial report and final report of the panel shall be drafted without the presence of the Parties. Opinions expressed in the reports of the panel by its individual panellists shall be anonymous.

Venue

29. The venue for the panel hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the first hearing to be held in the territory of the Party complained against.

Remuneration and Payment of Expenses

30. 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 in accordance with Rule 7.

**Attachment to Annex 20-B
Model Rules of Procedure for Dispute Settlement Panel Proceedings**

Indicative Timetable for a Dispute Settlement Panel¹

Panel established on xx/xx/xxxx

(a)	Receipt of first written submissions of the Parties	
	(i) Complainant Party:	14 days
	(ii) Party complained against:	21 days
(b)	Receipt of written rebuttal submissions of the Parties:	10-25 days
(c)	Date of first hearing with the Parties:	20-45 days
(d)	Issuance of initial report to the Parties:	60-90 days
(e)	Deadline for the Parties to provide comments on the initial report:	14 days
(f)	Issuance of final report to the Parties:	31 days
	Total time:	170-240 days

¹ Provision may be made for additional hearings and further submissions.