

## **CHAPTER TWENTY-ONE**

### **DISPUTE SETTLEMENT**

#### **Section A – Dispute Settlement**

##### **Article 21.1: Cooperation**

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

##### **Article 21.2: Scope and Coverage**

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Section apply with respect to the avoidance or settlement of all disputes between the Parties regarding the 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 otherwise fails to carry out its obligations under this Agreement; or
- (c) there is nullification or impairment in the sense of Annex 21-A.

##### **Article 21.3: Choice of Forum**

1. Subject to paragraph 2, disputes regarding a matter arising under both this Agreement and another trade agreement to which both Parties are party, including the WTO Agreement, may be settled in either forum at the discretion of the complaining Party.

2. Notwithstanding paragraph 1, if a Party complained against claims that its measures are subject to Article 1.3 (Relation to Multilateral Environmental Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

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

#### **Article 21.4: Consultations**

1. A Party may request in writing consultations with the other Party regarding a matter referred to in Article 21.2.

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

3. With respect to disputes relating to automotive goods, a Party may refer a matter referred to in Article 21.2 to the Sub-Committee on Trade in Automotive Goods established under Annex 2-C by delivering written notification to the other Party in accordance with the requirements set out in paragraph 2. This Sub-Committee shall endeavour to resolve the matter through consultations conducted in accordance with paragraphs 5, 6 and 7.

4. Subject to paragraph 5, the Parties shall enter into consultations within 30 days of the date of receipt of the request for consultations by the Party complained against, unless the Parties agree otherwise.

5. In cases of urgency, including those that concern perishable goods or motor vehicles, the Parties shall enter into consultations within 10 days of the date of receipt of the request for consultations by the Party complained against.

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

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

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

#### **Article 21.5: Good Offices, Conciliation and Mediation**

1. The Parties may agree to undertake alternative methods of dispute resolution, such as good offices, conciliation, or mediation.

2. Alternative methods of dispute resolution are conducted according to procedures agreed to by the Parties.

3. Unless the Parties agree otherwise, procedures established under this Article may begin at any time and be suspended or terminated at any time by either Party.

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

#### **Article 21.6: Establishment of a Panel**

1. Unless the Parties agree otherwise, if a matter referred to Article 21.2 is not resolved by recourse to consultations referred to Article 21.4 within:

- (a) 35 days of the date of the receipt of the request for consultations; or

- (b) 10 days of the date of the receipt of the request for consultations in cases of urgency, as referred to in Article 21.4.5;

the complaining Party may, through written notification to the Party complained against, refer the matter to a dispute settlement panel. The panel is established upon receipt by the Party complained against of the written notification of the complaining Party.

2. In its written notification of panel establishment, the complaining Party shall identify the specific measures or other matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

#### **Article 21.7: Panel Composition**

1. In this Section, the “Receipt Date” means the date on which the written notification by one Party for the establishment of a panel referred to in Article 21.6.1 is received by the other Party.
2. The panel shall be composed of three members.
3. Within 30 days after the Receipt Date or 10 days in cases of motor vehicles, each Party shall appoint a panellist and propose up to four candidates, who are neither nationals of either Party nor have their usual place of residence in the territory of either Party, to serve as the chair of the panel (hereinafter referred to as “the chair”).
4. Each Party shall notify the other Party in writing of its panel member appointment and its proposed candidates to serve as the chair. If a Party fails to appoint a panellist in accordance with this Article, the panellist shall be selected by lot from the candidates proposed by each Party to serve as the chair in accordance with paragraph 3.

5. Within 60 days after the Receipt Date or 15 days in cases of motor vehicles, the Parties shall endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties are unable to agree on the chair within this time period, within an additional period of seven days, or within an additional period of four days in cases of motor vehicles, the chair shall be selected by lot from the candidates proposed by each Party in accordance with paragraph 3.

6. If a panellist appointed by a Party is unable to serve, withdraws or is removed, a replacement shall be appointed by that Party within 30 days, or within 10 days in cases of motor vehicles, failing which the replacement shall be appointed in accordance with paragraph 4. If the chair is unable to serve, withdraws or is removed, the Parties shall promptly agree on the appointment of a replacement, failing which the replacement shall be appointed by a selection by lot from among the remaining candidates previously proposed by each Party to serve as the chair in accordance with paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates satisfying the criteria set out in paragraph 3 and the chair shall be selected by lot from among them. In any such case, any time period applicable to the proceeding is suspended for a period beginning on the date the panellist or the chair is unable to serve, withdraws or is removed and ending on the date the replacement is selected.

7. Each panellist shall:

- (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with, or take instructions from either Party;
- (d) not be employed by either Party; and
- (e) comply with the Code of Conduct for Members of Panels set out in Annex 21-B.

8. If a Party believes that a panellist does not satisfy a qualification set out in paragraph 7 or has failed to comply with the Code of Conduct for Members of Panels set out in Annex 21-B, the Parties shall consult and, if they agree, the panellist shall be removed.

#### **Article 21.8: Rules of Procedure**

1. A panel established under this Chapter shall follow the Model Rules of Procedure set out in Annex 21-C. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

2. Unless the Parties agree otherwise, the rules of procedure of a panel shall ensure:

- (a) that each Party has the opportunity to provide initial and rebuttal written submissions;
- (b) subject to subparagraph (g), that a Party may make available to the public either Party's written submissions, written versions of its oral statements, and written responses to requests or questions from the panel at any time after such information is submitted to the panel;
- (c) that each Party has the right to at least one hearing before the panel;
- (d) subject to subparagraph (g), that hearings of the panel are open to the public;
- (e) that the panel considers requests from non-governmental entities located in either Party's territory to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
- (f) that all submissions and comments made to the panel are available to the other Party; and
- (g) the protection of confidential information<sup>1</sup>.

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<sup>1</sup> As provided under Articles 22.2 (National Security) and 22.5 (Disclosure of Information), a panel shall not require a Party to furnish or allow access to information of the type identified in those provisions.

3. Unless the Parties agree otherwise, the terms of reference of the panel shall be:  
  
“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the written notification of the panel establishment, and to make findings, determinations, and recommendations as provided in Article 21.9.”
4. If a complaining Party wishes to argue that there is nullification or impairment of benefits in the sense of Annex 21-A, the terms of reference shall so indicate.
5. If a Party wishes the panel to make findings as to the degree of adverse effects of any measure determined to be inconsistent with the obligations of this Agreement or as to the degree of nullification or impairment in the sense of Annex 21-A, the terms of reference shall so indicate.
6. At the request of a Party, or on the panel’s own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to any terms and conditions agreed to by the Parties.
7. The panel may rule on its own jurisdiction.
8. Findings, determinations, and recommendations of the panel in the sense of Article 21.9 shall be made by a majority of its members. Panellists may provide separate opinions on matters not unanimously agreed.
9. The expenses of a panel proceeding under this Section, including the remuneration of its members, shall be borne by the Parties in equal shares.

**Article 21.9: Panel Reports**

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Section.

2. The panel shall base its reports on the relevant provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law, including Articles 31, 32, and 33 of the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May 1969, on the submissions and arguments of the Parties and on information and technical advice put before it pursuant to the provisions of this Section.
3. Within 90 days after the three panellists are appointed, or within 50 days in cases of motor vehicles, the panel shall issue to the Parties an initial report containing its findings of fact and its determinations as to:
  - (a) whether the measure at issue is inconsistent with a Party's obligations under this Agreement;
  - (b) whether there is nullification or impairment in the sense of Annex 21-A;  
or
  - (c) any other issue included in the terms of reference.
4. The panel shall include in its initial report the basic rationale behind its findings and determinations.
5. At the request of a Party, the panel shall include in its initial report recommendations for the resolution of the dispute.
6. A Party may submit written comments to the panel regarding its initial report. After considering these comments, the panel, on its own initiative or at the request of a Party, may:
  - (a) request the views of a Party;
  - (b) reconsider its report; or
  - (c) make any further examination that it considers appropriate.
7. The panel shall issue to the Parties a final report within 30 days of the issuance of the initial report, or within 17 days in cases of motor vehicles.
8. Notwithstanding the provisions of Article 21.8 and Annex 21-C, the initial report of the panel shall be confidential. The final report of the panel may be published by either Party 15 days after it is issued to the Parties, subject to the protection of confidential information.

### **Article 21.10: Implementation of the Final Report**

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which, unless the Parties agree otherwise, shall be in conformity with the determinations and recommendations, if any, of the panel.
2. Wherever possible, the resolution shall be the removal of a measure not conforming to this Agreement or the removal of nullification or impairment in the sense of Annex 21-A. If the Parties fail to agree on the resolution of the dispute, the Parties may agree to compensation in lieu of the removal of a measure or of the removal of nullification or impairment.
3. If the Parties do not agree on a resolution pursuant to paragraph 1 within 30 days of the issuance of the final report of the panel, or within 10 days in cases of motor vehicles, or within another period as the Parties may agree, the Party complained against shall, at the request of the complaining Party, enter into negotiations with a view to agreeing on compensation referred to in paragraph 2.

### **Article 21.11: Non-Implementation – Suspension of Benefits**

1. If no agreement on compensation is reached pursuant to Article 21.10.3 within 20 days, or within 10 days in cases of motor vehicles, from the date of the complaining Party's request for compensation, or if 30 days, or 10 days in cases of motor vehicles, have passed since the issuance of the final report if compensation is not requested by the complaining Party pursuant to Article 21.10.3, the complaining Party may:
  - (a) 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. The notification shall specify the level of benefits that the complaining Party intends to suspend; or
  - (b) implement the suspension 30 days, or 10 days in cases of motor vehicles, after the later of the date on which it provides notice to the other Party under subparagraph (a) or the date on which the panel issues its determination under paragraph 3, as the case may be.

2. In considering what benefits to suspend pursuant to paragraph 1:
  - (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that or those affected by the measure or other matter 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 Annex 21-A has been found to exist; and
  - (b) the complaining Party that does not consider it is practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
  
3. If the Party complained against considers that the level of benefits that the complaining Party intends to suspend pursuant to paragraph 1 is manifestly excessive, the Party complained against may request in writing that the original panel established under Article 21.6 be reconvened to rule on this matter. This request shall be notified to the complaining Party within 30 days, or within seven days in cases of motor vehicles, of the receipt of the written notification provided by the complaining Party under paragraph 1(a). The panel shall be composed, to the extent possible, of the panellists who served on the original panel. If an original panellist is unable to serve on the panel established under this paragraph, a replacement panellist shall be appointed in accordance with Article 21.7, applied *mutatis mutandis*. Articles 21.8 and 21.9 apply to procedures adopted and reports issued by a panel established under this paragraph, with the exception that the panel shall issue a single final report within 45 days, or within 25 days in cases of motor vehicles, of its establishment, or, if an original panellist is unable to serve on the panel established under this paragraph, from the date of the last appointment of any replacement panellist. A complaining Party may suspend benefits that are consistent with the panel ruling under this paragraph.
  
4. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to be inconsistent with the obligations of this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or the Parties have otherwise reached agreement on a resolution of the dispute.

### **Article 21.12: Compliance Review**

If there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of a panel established under Article 21.6, a Party may refer the matter to a dispute settlement panel (hereinafter referred to as the “compliance panel”) through written notification to the other Party. The compliance panel is established upon receipt by the other Party of the written notification.<sup>2</sup> In the written notification of compliance panel establishment, the Party shall identify the matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. A compliance panel established under this paragraph shall be composed, to the extent possible, of the panellists who served on the original panel established under Article 21.6. If an original panellist is unable to serve on the compliance panel established under this paragraph, a replacement panellist shall be appointed in accordance with Article 21.7, applied *mutatis mutandis*. Articles 21.8 and 21.9 apply to procedures adopted and reports issued by a compliance panel. Where a complaining Party has suspended benefits in accordance with Article 21.11, it may continue to suspend such benefits during proceedings under this paragraph. A compliance panel may include in its final report a recommendation that such suspension be terminated or that the amount of benefits suspended be modified.

## **Section B – Domestic Proceedings and Private Commercial Dispute Settlement**

### **Article 21.13: Referrals of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

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<sup>2</sup> In interpreting the terms “the existence or consistency with” and “measures taken to comply”, a compliance panel established under this Article shall take into account relevant jurisprudence under the Dispute Settlement Understanding.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

#### **Article 21.14: Private Rights**

A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of that other Party is inconsistent with this Agreement.

#### **Article 21.15: Alternative Dispute Resolution**

1. To the extent possible, each Party shall encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area established under Article 1.1 (Establishment of a Free Trade Area).

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

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to, and is in compliance with, the New York Convention.

## **Annex 21-A**

### **Nullification and Impairment**

1. If a Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

- (a) Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures and Trade Facilitation), and Seven (Trade Remedies);
- (b) Chapter Nine (Cross-Border Trade in Services); or
- (c) Chapter Fourteen (Government Procurement);

is nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, in the sense of Article XXIII(1)(b) of GATT 1994, Article XXIII(3) of GATS or Article XXII(2) of GPA, the Party may have recourse to dispute settlement under Section A of this Chapter. A panel established pursuant to Section A of this Chapter shall take into account relevant jurisprudence under the Dispute Settlement Understanding concerning Article XXIII(1)(b) of GATT 1994, Article XXIII(3) of GATS or Article XXII(2) of GPA.

2. A Party shall not invoke:

- (a) paragraph 1(a), to the extent that the benefit arises from a cross-border trade in services provision of Chapters Two (National Treatment and Market Access for Goods ), Three (Rules of Origin ), Four (Origin Procedures and Trade Facilitation ), and Seven (Trade Remedies); or
- (b) paragraph 1(b);

with respect to any measure subject to an exception under Article 22.1 (General Exceptions). In addition, a Party shall not invoke paragraphs 1(a), (b), and (c) with respect to any measure subject to the exception under Article 22.6 (Cultural Industries).

## Annex 21-B

### Code of Conduct for Members of Panels

#### *Definitions*

1. For the purposes of this Annex:
  - (a) **panellist** means a member of a panel established under Article 21.6;
  - (b) **candidate** means a natural person who is under consideration for selection as a member of a panel under Article 21.7;
  - (c) **assistant** means a natural person who, under the terms of appointment of a panellist, conducts researches or provides assistance to the panellist;
  - (d) **proceeding**, unless otherwise specified, means a panel proceeding under this Chapter; and
  - (e) **staff**, in respect of a panellist, means natural persons under the direction and control of the panellist, other than assistants.

#### *Responsibilities to the Process*

2. Every candidate and 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 mechanism is preserved. Former panellists must comply with the obligations established in paragraphs 15 through 18.

#### *Disclosure Obligations*

3. 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.

4. A candidate or panellist shall only communicate matters concerning actual or potential violations of this Annex to the Commission for consideration by the Parties.

5. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 3 and shall disclose them. The disclosure obligation is a continuing duty that requires a panellist to disclose any such interests, relationships, or matters that may arise during any stage of the proceeding. The panellist shall disclose such interests, relationships, or matters by informing the Commission, in writing, for consideration by the Parties.

#### *Duties of Panellists*

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

7. A panellist shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to another person.

8. A panellist shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with paragraphs 2 through 5, 16, 17, and 18.

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

#### *Independence and Impartiality of Panellists*

10. A panellist shall be independent and impartial, shall avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

11. 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 his or her duties.

12. A panellist shall not use his or her position on the panel to advance personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

13. A panellist shall not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

14. A panellist shall avoid entering into a relationship or acquiring a financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

*Obligations of Former Panellists*

15. All former panellists shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the panel.

*Confidentiality*

16. Neither a panellist nor a former panellist shall disclose or use, at any time, non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of that proceeding, or disclose or use, in any case, such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. A panellist shall not disclose a panel ruling or parts thereof prior to its publication in accordance with this Agreement.

18. A panellist or former panellist shall not disclose, at any time, the deliberations of a panel or a panellist's view.

## Annex 21-C

### Model Rules of Procedure

#### *Application*

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

#### *Definitions*

2. For the purposes of this Annex:

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

**assistant** means a natural person who, under the terms of appointment of a panellist, conducts research or provides assistance to the panel;

**candidate** means a natural person who is under consideration for selection as a member of a panel under Article 21.7;

**complaining Party** means a Party that requests the establishment of a panel under Article 21.6;

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

**panel** means a dispute settlement panel established under Article 21.6;

**panellist** means a member of a panel established under Article 21.6;

**Party complained against** means the Party that is alleged to be in violation of the provisions referred to in Article 21.2; and

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

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

#### *Administration of Proceedings*

4. The Party in whose territory the hearing takes place shall be in charge of the logistical administration of the dispute settlement proceedings, in particular the organisation of hearings, unless the Parties decide otherwise.

#### *Notifications*

5. The Parties and the panel shall transmit a request, notice, written submission, or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram, or any other means of telecommunication that provides a record of the sending thereof.

6. A Party shall provide a copy of each of its written submissions to the other Party and to each of the panellists. A copy of the document shall also be provided in electronic format.

7. All notifications shall be addressed to the Ministry of Trade, Industry and Energy of Korea, or its successor and to the Department of Foreign Affairs, Trade and Development of Canada, or its successor, respectively.

8. Minor errors of a clerical nature in a 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.

9. If the last day for delivery of a document falls on a public holiday of Korea or Canada, the document may be delivered on the next business day.

#### *Commencement of Panel Proceeding*

10. Unless the Parties decide otherwise, the Parties shall meet with or contact the panel within seven days of the appointment of the three panellists in order to determine such matters as the Parties or the panel deems appropriate, including the remuneration and expenses to be paid to the panellists, which will be in accordance with WTO standards.

11. The Parties shall notify the agreed terms of reference to the panel within two days of the appointment of the three panellists.

### *Initial Submissions*

12. The complaining Party shall deliver its initial written submission no later than 20 days after the appointment of the three panellists. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

### *Conduct of Panel Proceedings*

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

14. Unless otherwise provided for in this Agreement, the panel may conduct its activities by any means, including telephone, facsimile transmissions, or computer links.

15. Only panellists may take part in the deliberations of the panel, but the panel may permit its assistants to be present at its deliberations.

16. The drafting of any ruling shall remain the exclusive responsibility of the panel and must not be delegated.

17. If a procedural question arises that is not covered by the provisions of this Chapter, including this Annex, the panel may adopt an appropriate procedure that is compatible with those provisions.

18. When the panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed.

### *Hearings*

19. The chair of the panel shall fix the date and time of the hearing in consultation with the Parties and the other members of the panel, and confirm this information in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public.

20. Unless the Parties agree otherwise, the hearings shall alternate between the territories of the Parties with the first hearing to take place in the territory of the Party complained against.

21. The panel may convene additional hearings if the Parties so agree.

22. All panellists shall be present during the entirety of any hearing.

23. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters, translators, and court reporters; and
- (d) panellists' assistants.

Only the representatives and advisers of the Parties may address the panel.

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

25. Hearings shall be open to the public, unless the Parties decide otherwise. Hearings shall be held in closed session when the submissions and arguments of a Party contain confidential information.

26. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

*argument*

- (a) argument of the complaining Party; and
- (b) argument of the Party complained against;

*rebuttal argument*

- (a) argument of the complaining Party; and
- (b) counter-reply of the Party complained against.

27. The panel may direct questions to either Party at any time during the hearing.

28. The panel shall arrange for a transcript of each hearing to be prepared and delivered to the Parties as soon as possible after the hearing.

29. Each Party may deliver a supplementary written submission concerning a matter that arises during the hearing within 10 days of the date of the hearing.

*Questions in Writing*

30. The panel may at any time during the proceedings address questions in writing to a Party or both Parties. Each Party shall receive a copy of any questions put by the panel.

31. A Party shall also provide a copy of its written response to the panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of delivery.

*Confidentiality*

32. The Parties and their advisers shall maintain the confidentiality of the panel hearings if the hearings are held in closed session, in accordance with paragraph 25. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the panel which that Party has designated as confidential. If a Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later. This paragraph does not preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

#### *Ex Parte Contacts*

33. The panel shall not meet with or contact a Party in the absence of the other Party, nor shall a Party communicate with the panel or individual panellists without notifying the other Party.

34. Subject to paragraph 13, no member of the panel may discuss an aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other panellists.

#### *Amicus Curiae Submissions*

35. Unless the Parties decide otherwise, within three days of the date of the appointment of the three panellists, the panel may receive unsolicited written submissions from interested persons of the Parties, provided that they are made within 10 days of the date of the appointment of the three panellists, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual and legal issues under consideration by the panel.

36. The submission must contain a description of the person making the submission, including its nationality or place of establishment, the nature of its activities and the source of its financing, and specify the nature of the interest that the person has in the proceeding.

37. The panel shall list in its ruling all the submissions it has received that conform to paragraphs 35 and 36. The panel is not obliged to address in its ruling the factual or legal arguments made in these submissions. A submission obtained by the panel under paragraphs 35 and 36 shall be submitted to the Parties for their comments.

#### *Cases of Urgency*

38. In cases of urgency referred to in Article 21.6.1(b), the panel shall adjust, as appropriate, the time limits referred to in this Annex.

#### *Translation and Interpretation*

39. During the consultations referred to in Article 21.4, and no later than the meeting referred to in paragraph 10, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.

40. If the Parties are unable to agree on a common working language, each Party shall expeditiously arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party and the Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

41. Panel rulings shall be issued in the language or languages chosen by the Parties.

42. The costs incurred for translation of a panel ruling shall be borne equally by the Parties.

43. A Party may provide comments on any translated version of a document drawn up in accordance with paragraph 40.

*Calculation of Time Limits*

44. If, by reason of the application of paragraph 9, a Party receives a document on a date other than the date of the last day for delivery of that document, any period of time that is calculated on the basis of the date of the last day for delivery of that document shall be calculated from the date that document was actually received.