

EU PROPOSAL¹

TISA - DISPUTE SETTLEMENT CHAPTER

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¹ The European Union reserves the right to modify or withdraw, in whole or in part, this proposal.

DISPUTE SETTLEMENT CHAPTER

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Chapter [X]

DISPUTE SETTLEMENT

Section 1 General Provisions

ARTICLE 1

Objective

1. The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arriving at, where possible, a mutually agreed solution.
2. The provisions of this Chapter preserve the rights and obligations of Parties under this Agreement and are without prejudice to the rights of the Parties to seek authoritative interpretation of provisions of this Agreement pursuant to Article [*Authoritative Interpretations*].

ARTICLE 2

Scope of Application

Except as otherwise provided in this Agreement, this Chapter shall apply to the settlement of any disputes between the Parties concerning the interpretation and application of the provisions of this Agreement.

ARTICLE 3

Definitions

The following definitions shall apply for the purpose of this Chapter:

- "adviser" means a person retained by a disputing Party or third party to advise or assist that Party in connection with the adjudication;
- "arbitrator" means a member of a panel effectively established under Article [11] (Establishment of a Panel);
- "disputing Party" or "disputing Parties" means the complaining Party and the responding Party, or the complaining Party or the responding Party, as the case may be;
- "Code of Conduct" means Code of Conduct for Members of Panels and Mediators [set out in Annex [II] to this Agreement];
- "complaining Party" means a Party that requests the establishment of a panel under Article [11] (Establishment of a Panel);
- "consulting Party" means a Party that requests consultations under Article [9] (Consultations) or the Party to which the request for consultations is made;
- "panel" means a panel established under Article [11] (Establishment of a Panel);

- "responding Party" means a Party that has been complained against under Article [11] (Establishment of a Panel);
- "Rules of Procedure" means the rules [set out in Annex [I] to this Agreement];
- "third party" means a TiSA Party, other than a disputing Party, that delivers a written notice in accordance with Article [20] (Third Party Participation).

ARTICLE 4

Mutually agreed solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time which shall be consistent with this Agreement. They shall jointly notify the other TiSA Parties and the chairperson of the panel, where applicable, of any mutually agreed solution to matters formally raised under the consultation and dispute settlement provisions of this Chapter.

ARTICLE 5

Expenses and Costs

1. Each Party shall bear its own expenses derived from the participation in the adjudication or mediation procedure. The disputing Parties shall jointly and equally share the costs derived from organisational matters, including the remuneration and expenses of the members of the panel and of the mediator, and the additional organisational costs resulting from third-party participation in the adjudication procedure.
3. The remuneration of the members of the panel and of the mediator shall be in accordance with WTO standards.

Section 2 Adjudication procedure

ARTICLE 6

Administration of the Adjudication Procedure

Each TiSA Party shall be responsible for the administration of disputes under this Chapter and shall notify in writing to the other TiSA Parties of a contact point to facilitate the distribution of requests and notifications under this Chapter.

ARTICLE 7

Choice of Forum and Jurisdictional Waiver

1. Where a dispute regarding any matter arises under this Agreement and under another international agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. A Party shall not, for a particular measure, seek redress for the breach by another Party of a substantially equivalent obligation under this Agreement and under another international agreement to which the disputing Parties are party, including the WTO Agreement. Once an adjudication proceeding has been initiated, the Party shall not, for a particular measure, bring a claim seeking redress for the breach of the substantially equivalent obligation under the other international agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim.
3. For the purposes of this Article,
 - adjudication proceedings under another international agreement to which the disputing Parties are party are deemed to be initiated in accordance with the relevant provisions of that agreement;
 - adjudication 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 of the WTO;
 - adjudication proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of a panel under Article [11] paragraph 1.
4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO or authorised under the adjudication procedure of another international agreement to which the disputing Parties are party.
5. The WTO Agreement or other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under Article [27]. The Parties to this Agreement hereby waive their right to seek redress for violation of the

WTO Agreement or another international agreement to which the disputing Parties are party resulting from the suspension of obligations under this Chapter.

ARTICLE 8

Time limits

1. All time limits set out in this Chapter, including the limits for the panels to issue their reports, shall be counted in calendar days, the first day being the day following the act or the fact to which they refer, unless otherwise specified.
2. Any time limit referred to in this Chapter may be modified by mutual agreement of the disputing Parties. The panel may, at any time, propose to the disputing Parties to modify any time-limit referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 9

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article [2] 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, copied to the other TiSA Parties. The request for consultations shall give the reasons for the request, identifying the measure at issue and indicating the provisions referred to in Article [2] that form the legal basis for the complaint.
3. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than 10 days after its receipt. The reply shall be copied to all other TiSA Parties.
4. Consultations shall be entered into within 30 days of the receipt of the request, unless the consulting Parties agree otherwise. Consultations for urgent matters, including those regarding seasonal services, shall be entered into within 10 days of the receipt of the request.
5. Consultations may be held in person or by any technological means available to the consulting Parties. If the consultations are held in person, unless the consulting Parties agree otherwise, they shall be held in the territory of the Party to which the request is made.
6. Consultations, and in particular 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. Each consulting Party shall provide during consultations sufficient factual information, so as to allow a complete examination of the manner in which the measure at issue could affect the operation and application of this Agreement.
8. A Party other than a consulting Party that considers it has a substantial trade interest in the matter may notify the consulting Parties, copying the notification to the other

TiSA Parties, in writing and within 10 days after the date of circulation of the request for consultations, of its desire to be joined in consultations. Such Party shall be joined in the consultations provided that the Party to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event, they shall so inform the other TiSA Parties. If the request for joinder is not accepted, the applicant Party shall be free to request consultations under this Article.

ARTICLE 10

Conduct of the Adjudication Procedure

1. The adjudication procedure under this Section shall be governed by the Rules of Procedure set out in Annex [I] to this Agreement and by the Code of Conduct set out in Annex [II] to this Agreement. The TiSA Committee shall have the authority to modify the Rules of Procedure (Annex I) and Code of Conduct of Arbitrators and Mediators (Annex II).
2. After consulting the disputing Parties, the panel shall fix the timetable for the panel proceedings, as soon as practicable and whenever possible within one week of its establishment. In cases of urgency, including those involving seasonal services, the disputing Parties and the panel shall make every effort to accelerate the proceedings to the greatest extent possible.
3. Each party to the dispute and its advisers shall treat as confidential any information submitted to the panel by a party to the dispute which the latter has designated as confidential.

Sub-Section 2.1 Panels

ARTICLE 11

Establishment of a Panel

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article [9], the Party that requested consultations may refer the matter to a panel by providing its written request for the establishment of a panel to the responding Party and the other TiSA Parties in accordance with this Article.
2. Unless otherwise agreed by the consulting Parties, the Party that requested consultations may request the establishment of a panel provided:
 - (a) the responding Party does not respond to the request for consultations within the timeframe set out in Article [9(3)];
 - (b) the consulting Parties agree not to hold consultations or the consultations are not entered into within the timeframes set out in Article [9(4)]; or
 - (c) the consultations fail to settle the dispute within 60 days after the date of receipt of the request for consultations, or within 20 days in case of urgent matters, or during that timeframe, if the consulting Parties jointly consider that consultations have failed to settle the dispute.
3. The requesting Party shall indicate whether consultations were held and identify the specific measure at issue in its request, and provide a brief summary of the legal basis of the complaint, explaining how such measures constitute a breach of the provisions referred to in Article [2], in a manner sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.
4. The date of establishment of the panel shall be the date on which all three arbitrators selected in accordance with Article [13] have accepted their appointment and confirmed their availability to serve as a member of the panel to the disputing Parties.

ARTICLE 12

Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Parties concerned. A single panel should be established to examine such complaints whenever feasible.
2. The single panel shall organise its examination and present its findings in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute

concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as arbitrators on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

ARTICLE 13

Panel Composition

1. Within [15] days of the delivery of the written request for the establishment of a panel to the responding Party, the disputing Parties shall consult in order to reach an agreement on the composition of the panel.
2. The panel shall be composed of three arbitrators. Unless the disputing Parties agree otherwise, they shall not appoint a national of any of the disputing Parties, and any nationals of the disputing Parties appointed to the roster established under Article [15] shall be excluded from a selection process under paragraphs [3] and [4] of this Article.
3. In the event that the disputing Parties do not agree on the composition of the panel within the time period specified in paragraph [1] of this Article, each Party may appoint an arbitrator from the list of arbitrators established under Article [15] within 5 days from the expiry of the time period specified in paragraph [1] of this Article. If either of the disputing Parties fails to appoint the arbitrator, the Chair of the TiSA Committee, or the Chair's designee (for instance, when the Chair is a national of one of the disputing Parties), shall, upon request of the other Party, select by lot the arbitrator from the list of arbitrators established under Article [15].
4. Unless the disputing Parties reach an agreement concerning the chairperson of the panel within the time period specified in paragraph [1] of this Article, the Chair of the TiSA Committee, or the Chair's designee (for instance, when the Chair is a national of one of the disputing Parties), shall, upon request of either of the disputing Parties, select by lot the arbitrator that will serve as chairperson of the panel from the list of chairpersons established under Article [15].
5. The Chair of the TiSA Committee, or the Chair's designee, shall select the arbitrators within 5 days of the request referred to in paragraph [3] or paragraph [4].
6. Should the roster provided for in Article [15] not be established or should any of the lists provided for in Article [15] not contain sufficient names at the time a request is made pursuant to paragraph [3] or paragraph [4] of this Article, the arbitrators shall be drawn by lot from the individuals who have been formally proposed the TiSA Parties in accordance with paragraph [2] of Article [15].

ARTICLE 14

Replacement of Arbitrators

If in an adjudication proceeding, the original panel, or some of its arbitrators, are unable to participate, withdraw, or need to be replaced because they do not comply with the requirements of the Code of Conduct set out in Annex [II] to this Agreement, a replacement shall be selected in accordance with Article [13] and the Rules of Procedure. The time limit for the issuance of the report shall be extended for the time necessary for the appointment of a new arbitrator, up to a maximum of 20 days.

ARTICLE 15

Roster

1. The TiSA Committee shall have the authority to establish or modify the roster of arbitrators. No later than [6] months after the date of entry into force of this Agreement, the TiSA Committee shall establish a roster of individuals, chosen on the basis of objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. The roster shall be composed of a list of at least [one per each Party] prospective panel chairs and a list of at least [one per each Party] prospective arbitrators.
2. Each Party may appoint one individual for the list of chairpersons and a maximum of [2] individuals to the list of prospective arbitrators.
3. The list of prospective chairs and arbitrators shall remain in effect for a minimum of [4] years, or until the TiSA Committee constitutes a new roster. Members of the roster may be reappointed. The TiSA Committee may appoint a replacement at any time if a roster member is no longer willing or available to serve. An acceding Party may appoint one individual for the list of chairpersons and up to [2] individuals to the list of prospective arbitrators, which shall be included in the list by decision of the TiSA Committee.
4. The arbitrators must have specialised knowledge and experience of international trade law, in particular of subject matters within the scope of this Agreement. The arbitrators acting as chairpersons must also have experience as counsel or panellist in dispute settlement proceedings on subject matters within the scope of this Agreement. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government. They shall comply with the Code of Conduct set out in Annex [II] to this Agreement.

ARTICLE 16

Terms of Reference

1. Panels shall have the following terms of reference unless the disputing Parties agree otherwise within [20] days from the establishment of the panel:
 - (a) to examine, in the light of the relevant provisions of this Agreement, the matter referred to in the notification pursuant to Article [11] (Establishment of a Panel); and

- (b) make findings, determinations, and recommendations, and to deliver written reports and rulings referred to in in Articles [22] to [24].
2. Panels shall address the relevant provision in the Agreement cited by the disputing Parties.

ARTICLE 17

Function of Panels

1. A panel's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute. Where a panel concludes that a measure is inconsistent with the Agreement, it shall recommend that the Party concerned brings the measure into conformity with the Agreement.
2. The panel shall interpret the provisions referred to in Article [2] in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body. In particular, in the absence of cogent reasons, the panel shall not depart from legal interpretations in prior Appellate Body reports adopted by the WTO Dispute Settlement Body regarding substantially equivalent obligations.
3. Panel reports cannot add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 18

Decisions and Reports of the Panel

1. The deliberations of the panel shall be confidential. The reports of panels shall be drafted without the presence of the parties to the dispute in light of the information provided and statements made.
2. The panel shall make every effort to make any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case shall dissenting opinions of arbitrators be disclosed. The final panel report shall be unconditionally accepted by the parties to the dispute.
3. Each disputing Party shall make the final report publicly available, subject to the protection of confidential information, in accordance with the Rules of Procedure.

ARTICLE 19

Amicus Curiae Submissions and Right to Seek Information and Technical Advice

1. The panel shall have the right to request any information from any source which it deems appropriate, including from the disputing Parties.
2. The panel also has the right to seek the opinion of experts, as it deems appropriate. The panel shall consult the disputing Parties before choosing such experts.
3. A panel shall accept *amicus curiae* submissions filed in accordance with the Rules of Procedure:
 - (a) from a person of a TiSA Party; and
 - (b) from a WTO Member that is not a TiSA Party, provided the dispute concerns matters that could affect the interpretation or application of obligations that are substantially equivalent to GATS obligations.
4. Any information obtained under this Article shall be disclosed to each of the disputing Parties, which shall be provided an opportunity to comment.

ARTICLE 20

Third Party Participation

1. A Party that is not a disputing Party and that considers it has a substantial interest in the matter before the panel shall, on delivery of a written request to the disputing Parties, copied to the other TiSA Parties, have the opportunity to attend all hearings, make written submissions, present views orally to the panel, and receive written submissions of the disputing Parties.
2. The Party shall request third party participation no later than [15] days after the date of circulation of the request for the establishment of the panel under Article [11] (Establishment of a Panel).

ARTICLE 21

Public hearings

Any hearing of a panel shall be open to the public, except if the submission and arguments of a party to the dispute contain confidential information.

Sub-Section 2.2 Panel Proceedings

ARTICLE 22

Interim Panel Report

1. The panel shall deliver an interim report to the disputing Parties setting out:
 - (a) findings of fact;
 - (b) whether the responding Party is in conformity with its obligations under this Agreement;
 - (c) any other determination requested in the terms of reference and recommendations for the resolution of the dispute; and
 - (d) reasons for the findings, determinations and recommendations that it makes.
2. Within a period of time set by the panel, a disputing Party may submit a written request for the panel to review precise aspects of its interim report in accordance with the Rules of Procedure. After considering any written comments by either disputing Party, the panel may modify its reports and make any further examination that it considers appropriate.
3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage, and shall answer clearly to the questions and observations made by the disputing Parties. The interim review stage shall be conducted, as the case may be within the time period set out in paragraphs [2] and [3] of Article [23].

ARTICLE 23

Final Panel Report

1. The final report shall set out the findings of fact, a determination of whether the responding Party is in conformity with its obligations under this Agreement and the reasons behind any findings, determinations and recommendations that the panel makes.
2. The panel shall, as a general rule, deliver its final report to the disputing Parties and third parties, copied to the other TiSA Parties, within six months after the date of establishment of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify in writing the disputing Parties and third parties, copied to the other TiSA Parties, stating the reasons for the delay and the date on which the panel plans to deliver its final report. In no case should the period from the establishment of the panel to the delivery of the report exceed nine months.
3. In cases of urgency, including those involving seasonal services, the panel shall aim to issue its report to the disputing Parties, copying the other TiSA Parties, within three months.

ARTICLE 24

Preliminary Rulings

1. A panel may give preliminary rulings, if any of the disputing Parties so requests.
2. Either disputing Party may request the panel to issue a finding that the dispute is urgent no later than [5] days after the date of establishment of the panel. The other disputing Party may no later than [5] days of the date of the delivery of the request submit its views on the request. The panel shall issue its finding as to whether the dispute is urgent no later than [10] days of the date of delivery of the request.

Sub-Section 2.3 Compliance

ARTICLE 25

Implementation of the Final Report

1. If the panel has determined in its final report that a measure at issue is inconsistent with the obligation under this Agreement, the responding Party shall take any measure necessary to comply with the final panel report promptly and in good faith.
2. If immediate compliance is not practicable, the Party concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be a period mutually agreed by the disputing Parties within 45 days from the issuance of the final panel report.
3. If there is disagreement between the disputing Parties on the duration of the reasonable period of time within the time period referred to in paragraph [2], the complaining Party shall, within 20 days from the last day of the time period specified in paragraph [2], request in writing that the original panel determine the length of the reasonable period of time. Such request shall be delivered simultaneously to the complaining Party, copied to the other TiSA Parties. The original panel shall deliver its determination of the reasonable period to the disputing Parties, copied to the other TiSA Parties, within 90 days of the date of receipt of the request.
4. The reasonable period of time should generally be the shortest period of time in which it is reasonably possible within the legal system of the responding Party to eliminate the non-conformity. The original panel shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the issuance of the final report. The reasonable period of time may be extended by mutual agreement of the disputing Parties.
5. At any time after the midpoint of the reasonable period of time, and within 20 days from the delivery of the complaining Party's request to that effect, the responding Party shall notify the complaining Party of the steps it is taking to comply with the panel report and shall make itself available to discuss those steps.
6. The responding Party shall notify the complaining Party in writing before the expiry of the end of the reasonable period of time of any measure that it has taken to eliminate the non-conformity. The notification shall provide a brief description of how it has eliminated the non-conformity and any text of such measure. If the responding Party fails to provide such notification, the complaining Party may notify the responding Party that it intends to suspend benefits as provided for in Article [27(1)].

ARTICLE 26

Compliance Review of Implementation of Final Report

1. In the event that there is disagreement between the disputing Parties concerning the existence or the consistency of any measure notified under paragraph [6] of Article

[25] with the provisions of this Agreement, the complaining Party may deliver a written request to the original panel to rule on the matter.

2. The complaining Party shall identify in its request the specific measure at issue and explain how such measure is inconsistent with the provisions of this Agreement, in a manner sufficient to present the legal basis for the complaint clearly.
3. The original panel shall deliver its report to the disputing Parties, copied to the other TiSA Parties, within 90 days after the date of the receipt of the request.

ARTICLE 27

Temporary Remedies in Case of Non-compliance

1. The responding Party shall, if so requested by the complaining Party enter into negotiations with a view to developing temporary compensation when:
 - (a) the responding Party fails to notify any measure taken to comply with the panel report before the expiry of the reasonable period of time;
 - (b) the panel rules pursuant to Article [26] that no measure taken to comply exists; or
 - (c) the panel rules pursuant to Article [26] any measure notified under paragraph [6] of Article [25] is inconsistent with that Party's obligations under this Agreement.
2. If the complaining Party decides not to request an offer for temporary compensation under paragraph [1] of this Article, or, in case such request is made, if no agreement on compensation is reached within 30 days after the expiry of the reasonable period of time or the delivery of the panel report under paragraph [3] of Article [26], the complaining Party shall be entitled, upon notification to the responding Party, copied to the other TiSA Parties, to suspend concessions or other obligations vis-à-vis the responding Party arising from any provision of this Agreement and any concessions or obligations arising under another international trade agreement to which the disputing Parties are party, including the WTO Agreement. The complaining Party may implement the suspension from 10 days after the receipt of the notification by the responding Party of its intention to do so, unless the responding Party has requested the original panel to rule on the matter under paragraph 4 of this Article.
3. In considering what concessions or other obligations to suspend, the complaining Party shall apply the following principles and procedures:
 - (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations with respect to the same sectors as that in which the panel has found a violation, unless as otherwise provided in this Agreement;
 - (b) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concession or other obligations in other sectors under the same agreement;

- (c) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sector(s) under this Agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another international trade agreement between the disputing Parties;
 - (d) finally, if that Party considers that it is not practicable or effective to suspend concessions or other obligations under another international trade agreement between the parties, it may seek to suspend concessions or other obligations under the WTO covered agreements to the extent that the suspension of concessions or other obligations may be necessary to the enforce the provisions of this Agreement
4. If the responding Party considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel to rule on the matter. Such request shall be notified to the complaining Party, copied to the other TiSA Parties, before the expiry of the 10 day period referred to in paragraph [2]. The original panel shall issue its report on the level of the suspension of obligations to the disputing Parties, copied to the other TiSA Parties, within 60 days from the date of expiry of the reasonable period of time. Obligations shall not be suspended until the original panel has issued its report, and any suspension shall be consistent with that report.
 5. The suspension of obligations and the compensation foreseen in this Article shall be temporary, and shall not be applied after:
 - (a) the disputing Parties have reached a mutually agreed solution pursuant to Article [4];
 - (b) the disputing Parties have agreed that the measure notified under Article [25] brings the responding Party into conformity with the provisions referred to in Article [2]; or
 - (c) any measure that the panel under Article [26] has found to be inconsistent with the provisions referred to in Article [2] has been withdrawn or amended so as to bring it into conformity with those provisions in accordance with the provisions of paragraph 1 of Article [28].

ARTICLE 28

Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies for Non-compliance

1. The responding Party shall notify the complaining Party and the other TiSA Parties of any measure it has taken to comply with the report of the panel following the suspension of concessions or other obligations, or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days from the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph [2], the responding Party may terminate the application of such compensation within [30] days from receipt of its notification that it has complied with the report of the panel.

2. If the disputing Parties do not reach an agreement on whether the notified measure brings the responding Party into conformity with the provisions referred to in Article [2] within [30] days of the date of receipt of the notification, the complaining Party shall deliver a written request to the original panel to rule on the matter. Such a request shall be delivered simultaneously to the responding Party, copied to the other TiSA Parties.

3. The panel report shall be delivered to the disputing Parties, copied to the other TiSA Parties, within 90 days of the date of the submission of the request. If the panel rules that the measure taken to comply is in conformity with the provisions referred to in Article [2], the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the panel report.

Sub-Section 2.4 Suspension and Termination of Procedures

ARTICLE 29

Suspension and Termination of Panel and Compliance Procedures

1. The panel shall, at the request of both disputing Parties, suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of that period at the written request of both disputing Parties, or at the end of that period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly, copied to the other TiSA Parties. If a Party does not request the resumption of the panel's work at the expiry of the agreed suspension period, the panel proceeding shall terminate.
2. The disputing Parties may agree to terminate the panel and compliance procedures, as the case may be, by jointly notifying the chairperson of the panel and the other TiSA Parties at any time before the issuance of the final report of the panel.

Section 3 Mediation

ARTICLE 30

Relationship to Adjudication of Disputes

The mediation procedure is without prejudice to the Parties' rights and obligations under the provisions of Section 2 "Adjudication procedure", or the dispute settlement procedures under any other agreement.

ARTICLE 31

Request for Information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request for information regarding a measure adversely affecting trade between the Parties. The Party to which such request is made shall, within 20 days of receipt of the request, deliver a written response containing its comments on the information contained in the request.
2. When the responding Party considers it will not be able to deliver a response within 20 days of receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

ARTICLE 32

Initiation of the Procedure

1. A Party may request that the Parties enter into a mediation procedure at any time, by means of a written request delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:
 - (a) identify the specific measure at issue;
 - (b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade between the Parties; and
 - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The mediation procedure may only be initiated by mutual agreement of the Parties to facilitate the finding of a mutually agreed solution. When a request is made pursuant to paragraph 1, the Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days of its receipt.

ARTICLE 33

Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator within 15 days of the delivery of the acceptance referred to in paragraph 2 of Article [32].
2. In the event that the Parties do not agree on the mediator within the time period specified in paragraph 1, either Party may request the Chair of the TiSA Committee, or the Chair's designee, to select the mediator by lot from the list established under Article [15].
3. The Chair of the TiSA Committee, or the Chair's designee, shall select the mediator within five days of the request made pursuant to paragraph 2 of this Article.
4. Should the list referred to in Article [15] not be established at the time a request is made pursuant to Article [32] of this Section, the mediator shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.
5. A mediator shall not be a national of either Party, unless the Parties agree otherwise.
6. The mediator shall, in an impartial and transparent manner, assist the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution.

ARTICLE 34

Rules of Procedure and Code of Conduct

1. Mediation procedures under this Section shall be governed by Rules [XX] (Notifications) and [XX] (Translation and interpretation) of the Rules of Procedure set out in Annex [I] to this Agreement and, *mutatis mutandis*, by the Code of Conduct set out in Annex [II] to this Agreement.
2. Unless the Parties agree otherwise, and without prejudice to paragraph [6] of Article [36] of this Section, the Parties and the mediator shall treat all steps of the procedure, including any advice or proposed solution, as confidential. However, any Party may disclose to the public the fact that mediation is taking place.
4. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this, or any other agreement, nor shall a panel take into consideration:
 - (a) positions taken by the other Party in the course of the mediation procedure or information gathered under paragraph [2] of Article [36] of this Section; or
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
 - (c) advice given or proposals made by the mediator.
5. A mediator may not serve as an arbitrator or chairperson of a panel in an adjudication

proceeding under this Agreement or under other international agreement to which the Parties are party, including the WTO Agreement, involving the same matter for which they have been a mediator.

ARTICLE 35

Time-limits

Any time limit referred to in this Section may be modified by mutual agreement between the Parties.

ARTICLE 36

Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver a detailed, written description of its concerns to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days of the receipt of this description, the other Party may deliver written comments on the description. Either Party may include any information that it deems relevant in its description or comments.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.
3. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution.
4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.
5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, particularly if the measure relates to seasonal services.
6. Either Party may make the solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information a Party has designated as confidential.
7. On request of the Parties, the mediator shall deliver a draft factual report to the Parties, providing a brief summary of:
 - (a) the measure at issue;
 - (b) the procedures followed; and
 - (c) any mutually agreed solution reached, including possible interim solutions.

- 8. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received within that period, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.
- 9. The procedure shall be terminated:
 - (a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;
 - (b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;
 - (c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or
 - (d) by a written declaration of a Party, after having explored mutually agreed solutions under the mediation procedure and having considered any advice and proposed solutions by the mediator, on the date of that declaration.

ARTICLE 37

Implementation of a Mutually Agreed Solution

- 1. Where the Parties reached agreement on a solution, each Party shall take the measures necessary to implement the mutually agreed solution within an agreed timeframe.
- 2. The implementing Party shall notify the other Party, in writing, of any steps or measures taken to implement the mutually agreed solution.

* * *

Annex I Rules of Procedure*:

General Provisions; Notifications; Commencing the Adjudication; Initial Submissions; Working of Panels; Replacement; Hearings; Questions in Writing; Confidentiality; Ex parte contacts; Amicus curiae submissions; Urgent cases; Translation and interpretation; Other procedures

Annex II Code of Conduct for Arbitrators and Mediators*:

Responsibilities to the Process; Disclosure obligations; Duties of arbitrators; Independence and impartiality of arbitrators; Obligations of former arbitrators; Confidentiality; Expenses; Mediators.