



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement
Services

Brussels, 4 July 2016
TRADE B.1/NS/lmr/3856685

Limited¹

 <p>Council of the European Union General Secretariat</p>	
Trade Policy Committee (Services and Investment)	
m.d. :	52/16
source :	Commission
for :	Information / Comments
date :	05 - 07 - 2016

**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE
(SERVICES AND INVESTMENT)**

SUBJECT: *TiSA negotiations – Institutional and dispute settlement provisions
(non-papers)*

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OBJECTIVE: *For information and comments*

REMARKS:

Please find attached two non-papers on institutional and dispute settlement provisions in TiSA to be discussed at the occasion of the next TiSA round (8-18 July 2016).

These provisions are based on the non-paper circulated at the occasion of the Informal TPC SI in Amsterdam on 18/19 May 2016. The dispute settlement provisions are based on the usual EU FTA template.

Member States are kindly invited to comment on these non-papers by 15 July.

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NON- PAPER

TISA - DISPUTE SETTLEMENT CHAPTER

General Notes:

1. The present text is a non-paper that could serve as basis for discussion on the (state-to-state) dispute Settlement provisions of TiSA. The objective of this non-paper is to agree on an efficient and effective dispute settlement provisions, which no party could block and that would not prejudice the future multilateralization of the Agreement.
2. The non-paper is structured in 3 sections and 37 articles that could form the Dispute Settlement chapter. The first section contains (5) "general provisions", the second section focuses on the "adjudication procedure" (24) while the last and third section contains a "mediation" procedure (8). Articles are numbered from 1 for ease of reading, especially when an article cross-refers to another provision of the chapter. The final numbering would be revised. The Rules of Procedure* and Code of Conduct * would be proposed later, to align their content to the discussion on the main Chapter. All reference to institutional bodies is provisional and would be revised in the light of the institutional part of TiSA.
3. The text is based on the *Dispute Settlement Understanding* of the WTO.
4. In a nutshell, (1) if consultations failed and a mutually agreed solution cannot be reached, disputing Parties can resort to binding adjudication. (2) A panel can be composed by agreement of the disputing parties. Failing that, the panel can be composed by appointment from the pre-established lists agreed by TiSA Parties. If that also fails, a panel can be appointed by lot. (3) Panel procedures are detailed to preserve the due process of the defendant, and provide for an effective mechanism to solve the disputes for the complainant. (4) The timeframes are in line with DSU timeframes. (4) Third-parties can participate in the procedures, from consultation stage. (5) Transparency is ensured inter alia through public participation in hearings, the possibility to submit amicus curiae and the publication of reports. (6) It provides for compliance review, temporary remedies, and clear rules regarding "sequencing" and post-compliance (when the respondent undertakes a second compliance effort while being subject to *retaliatory* measures). (7) To ensure that complainants have effective means of redress available, it includes a provision on cross-retaliation in areas other than services, which is coupled with an express jurisdictional waiver.
5. Finally, the dispute settlement mechanism under TiSA could include a pre-established procedure to reach mutually agreed solutions with the assistance of a mediator. Mediation would not prevent or pre-empt adjudication.
6. The non-paper contains no appeal mechanism at this stage. A simplified mechanism of appellate review could be envisaged to correct errors of law at panel stage and imbue a certain degree of consistency. This mechanism could take the form of an *ad hoc* panel that meets in the formation of 5 chairs from the chair list pre-established by TiSA Parties. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

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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 are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered 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

In this Chapter, the following definitions shall apply:

- “adviser” means a person retained by a Party to the dispute to advise or assist that Party in connection with the adjudication;
- “arbitrator” means a member of an arbitration panel effectively established under Article [11] (Establishment of a Panel);
- "Code of Conduct" means Code of Conduct for Members of Arbitration 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 an arbitration 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 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. They shall jointly notify the TiSA Committee and the chairperson of the panel, where applicable, of any such solution.

ARTICLE 5

Expenses and Costs

1. Each Party shall bear its own expenses derived from the participation in the adjudication or mediation procedure. Each third party shall bear its own expenses derived from the participation in the adjudication procedure.
2. The Parties shall jointly and equally share the costs derived from the organisational matters, including the remuneration and expenses of the members of the panel and of the mediator and 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

The TiSA Committee shall be responsible for the administration of the adjudication procedure under this Chapter. The TiSA Committee shall have the authority to establish or modify the roster of arbitrators, [*adopt panel reports*]¹ and modify the Rules of Procedure [(Annex [I])] and Code of Conduct [(Annex [II])].

ARTICLE 7

Choice of Forum and Jurisdictional Waiver

1. Where a dispute regarding any matter arises under this Agreement and under another international trade 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 of a substantially equivalent obligation under this Agreement and under the WTO Agreement or in any other international agreement to which both Parties are parties in the relevant *fora*. Once an adjudication proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other 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,
 - 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 of the WTO;
 - dispute settlement 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;
 - dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration 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

¹ *Negotiator's note: depending on the decision made in terms of processing of panel reports by TiSA Parties.*

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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 other international agreement between the Parties resulting from the suspension of obligations under this Chapter.

ARTICLE 8

Time limits

1. All time limits laid down 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 Parties to the dispute. The panel may at any time propose to the 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 TiSA Committee, identifying the measure at issue and the provisions referred to in Article [2] that it considers applicable.
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 the TiSA Committee.
4. Consultations shall be held 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 held within 15 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 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 interest in the matter may notify the consulting Parties and the TiSA Committee, 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 to 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 TiSA Committee. If the request for joinder is not accepted, the applicant shall be free to request consultations under this Chapter.

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 Code of Conduct set out in Annex [II] to this Agreement.
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 by a Party to the dispute to the arbitration panel which that Party 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 sought consultations may request the establishment of a panel in accordance with this Article.
2. Unless otherwise agreed by the consulting Parties, the Party that sought consultations may request the establishment of a panel provided:
 - (a) the responding Party does not respond to the request for consultations within the timeframe laid down in Article [9(3)], or
 - (b) the Parties agree not to hold consultations or the consultations are not held within the timeframes laid down in Article [9(4)], or

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- (c) if the consultations fail to settle the dispute within the timeframes laid down in Article [9(4)] or during that timeframe, if the parties jointly consider that consultations have failed to settle the dispute.
3. The complaining Party shall notify the responding Party and the TiSA Committee in writing of its referral of the matter to a panel. The complaining Party shall identify the measure at issue in its request, and it shall explain how such measure constitutes a breach of the provisions referred to in Article [2] in a manner sufficient to present the legal basis for the complaint clearly.
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 TiSA Committee.

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 organize its examination and present its findings to the TiSA Committee 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 10 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 arbitration 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

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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, 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, 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 any of the lists provided for in Article [15] not be established or 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 Parties to the Agreement 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. No later than [6] months after the date of entry into force of this Agreement, the TiSA Committee shall establish a roster of individuals who are willing and able to serve as arbitrators. The roster shall be composed of a list of prospective panel chairs and a list of prospective arbitrators for each Party to the Agreement.

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2. The list of panel chairs shall include at least [one per each Party] individuals to be used for the selection of panel chairs. Each Party may nominate up to two individuals for the list of chairpersons. Each Party may appoint a maximum of [5] 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 nominate up to two individuals for the list of chairpersons and up to 5 individuals to the list of prospective arbitrators, which shall be included in the list by decision of the TiSA Committee.
4. Chairs and arbitrators shall have specialised knowledge and experience of law, international trade, especially in the specific sectors covered by this Agreement. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties. They shall comply with the Code of Conduct set out in Annex [II] to this Agreement. Chairs in particular shall be jurists of recognised competence and have demonstrated expertise in international trade, especially in the specific sectors covered by this Agreement.

ARTICLE 16

Terms of Reference

Unless the disputing Parties agree otherwise, no later than [20] days after the date of delivery of the request for the establishment of a panel, the terms of reference of the panel shall be to:

- (a) 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].

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.
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

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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.* 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.
2. The TiSA Committee shall make the final panel report publicly available, subject to the protection of confidential information, in accordance with the Rules of Procedure.

ARTICLE 19

Information and Technical Advice

1. At the request of a disputing Party, or upon its own initiative, the panel may request any information from any source which it deems appropriate, including the Parties involved in the dispute.
2. The panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts.
3. Natural or legal persons established in the territory of a Party may submit *amicus curiae* briefs to the arbitration panel. *Amicus curiae* submissions shall conform to the provisions set out in the Rules of Procedure.
4. Any information obtained under this Article shall be disclosed to each of the Parties and submitted for their comments.

ARTICLE 20

Third Party Participation

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1. A Party that is not a disputing Party and that considers it has a substantial interest in the matter before the arbitration panel shall, on delivery of a written request to the disputing Parties, copied to the TiSA Committee, 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 [10] 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 contain confidential information.

Sub-Section 2.2 Panel Proceedings

ARTICLE 22

Interim Panel Report

1. The panel shall deliver an interim report to the Parties setting out:
 - (a) the findings of fact,
 - (b) the applicability of the relevant provisions referred to in Article [2];
 - (c) any other determination requested in the terms of reference and recommendations for the resolution of the dispute; and
 - (d) the reasons for the findings, determinations and recommendations that it makes.
2. Within a period of time set by the panel, a 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 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 sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the questions and observations made by the 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].

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ARTICLE 23

Final Panel Report

1. The final report shall set out the findings of fact, the applicability of the relevant provisions referred to in Article [2] and the reasons behind any findings, determinations and recommendations that it makes.
2. The panel shall, as a general rule, deliver its final report to the Parties and to the TiSA Committee within 120 days [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 the Parties and the TiSA Committee in writing, 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 150 days [nine months].
3. In cases of urgency, including those involving seasonal services, the panel shall aim to issue its report to the Parties within 60 days [three months].
4. *[Placeholder: processing of report by TiSA parties]*

ARTICLE 24

Preliminary Rulings

1. A panel may give preliminary rulings, if any of the disputing Parties so requests.
2. A panel shall give a preliminary ruling on whether it deems the case to be urgent within 10 days of its establishment, if any of the disputing Parties so requests.

Sub-Section 2.4 Compliance

ARTICLE 25

Compliance with the Final Panel Report

1. If the panel has determined in its final report that the 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 Parties on the duration of the reasonable period of time within the time period referred to in paragraph [2], the complaining Party

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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 other Party and to the TiSA Committee. The original panel shall deliver its determination of the reasonable period to the Parties and to the TiSA Committee 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 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 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 steps it is taking to comply with the panel report and make itself available to discuss those steps.
6. The responding Party shall notify the complaining Party and the TiSA Committee of any measure that it has taken to comply with the final panel report. This notification shall be delivered in writing at least one month before the expiry of the reasonable period of time.

ARTICLE 26

Compliance Review

1. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph [6] of Article [25] with the provisions referred to in Article [2], 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 referred to in Article [2], in a manner sufficient to present the legal basis for the complaint clearly.
3. The original panel shall deliver its report to the Parties and to the TiSA Committee 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 and after consultations with that Party, present an offer for 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] that the measure notified under paragraph [6] of Article [25] is inconsistent with that Party's obligations under the provisions referred to in Article [2].
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 end 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 and to the TiSA Committee, to suspend obligations arising from any provision referred to in Article [2] of this Agreement and any 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, unless the responding Party has requested arbitration under paragraph 3 of this Article.
3. 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 and to the TiSA Committee 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 Parties and to the TiSA Committee within 30 days of the date of the delivery of the request. Obligations shall not be suspended until the original panel has issued its report, and any suspension shall be consistent with that report.
4. The suspension of obligations and the compensation foreseen in this Article shall be temporary and shall not be applied after:
- (a) the Parties have reached a mutually agreed solution pursuant to Article [4]; or
 - (b) the 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.

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 TiSA Committee of the measure it has taken to comply with the report of the panel following the

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suspension of concessions 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 concessions 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 thirty 30 days from receipt of its notification that it has complied with the report of the arbitration panel.

2. If the 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 other Party and to the TiSA Committee.
3. The panel report shall be delivered to the Parties and to the TiSA Committee within 45 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 arbitration panel report.

Sub-Section 2.5 Suspension and Termination of Procedures

ARTICLE 29

Suspension and Termination of Panel and Compliance Procedures

1. The panel shall, at the request of both 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 Parties, or at the end of that period at the written request of either Party. The requesting Party shall notify the Chairperson of the TiSA Committee and the other Party accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the agreed suspension period, the panel proceeding shall terminate.
2. The Parties may agree to terminate the panel and compliance procedures, as the case may be, by jointly notifying the Chairperson of the panel and of the TiSA Committee at any time before the issuance of the final report of the panel.

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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 citizen 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 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 chair of a panel in an adjudication proceeding under this Agreement or under other international trade agreement to which the Parties are members, 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 organize 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. [*The solution may be adopted by means of a decision of the TiSA Committee.*] 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 Arbitration; 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*:

Limited

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

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PART IV – INSTITUTIONAL PROVISIONS

Section 1 – Institutional Provisions

Article IV:1 – Establishment of The TiSA Committee

1. The Parties hereby establish the TiSA Committee, composed of government representatives of each Party. The Parties shall be represented at a level appropriate to the issues under discussion by the TiSA Committee.
2. The TiSA Committee shall consider the opportunity to grant access to its sessions, as observers, to representatives of a non-Party.
3. The TiSA Committee shall meet upon request of a Party and at least on a yearly basis for the three years following the entry into force of this Agreement.

Article IV:2 – Chair of the TiSA Committee

1. The TiSA Committee shall be chaired by a Party, on a yearly basis. The TiSA Committee shall elect its Chair three years in advance.
2. The Party chairing the TiSA Committee shall provide any necessary administrative support, and shall notify the other Parties of any decision of the TiSA Committee.

Article IV:2 – Functions of the TiSA Committee

1. The TiSA Committee shall:
 - a) consider any matter relating to the implementation or operation of this Agreement, and any other matter of interest relating to an area covered by this Agreement;
 - b) adopt its own rules of procedure, as well as its meeting schedule and the agenda for its meetings;
 - c) adopt decisions as envisaged in this Agreement.
2. The TiSA Committee may:
 - a) establish, refer matters to, or consider matters raised by, any ad hoc or standing committee, working group or any other subsidiary body;

- b) consider any amendments or modifications to the provisions of this Agreement, which shall be subject to the completion of the internal procedures of each Party;
- c) adopt interpretations of the provisions of this Agreement, which shall be binding on the panels established under the Section [Dispute Settlement].

Article IV:3 - Decision-making

- 1. The TiSA Committee shall take all decisions by consensus. The TiSA Committee shall be deemed to have taken a decision by consensus if no Party present at any meeting when a decision is taken objects to the proposed decision.
- 2. The decisions taken by the TiSA Committee shall be binding on the Parties.
- 3. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, without prejudice to any other contact points as required by this Agreement.

Section 2 - Modification of Schedules of commitments

Article IV:4 - Notification of the intent to modify or withdraw commitments

- 1. A Party (referred to in this Section as the "modifying Party") may modify or withdraw any commitment in its Schedule, at any time, in accordance with the provisions of this Section.
- 2. A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Chair of the TiSA Committee no later than three months before the intended date of implementation of the modification or withdrawal.

Article IV:5 - Compensatory adjustments

- 1. At the request of any Party the benefits of which under this Agreement may be affected (referred to in this Section as an "affected Party") by a proposed modification or withdrawal notified under Article IV:4 (2), the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of commitments prior to such negotiations.

2. Compensatory adjustments shall be accorded to all TiSA Parties.
3. (a) If agreement is not reached between the modifying Party and any affected Party before the end of the period provided for negotiations under the rules of procedures adopted pursuant paragraph 5, such affected Party may refer the matter to arbitration. Any affected Party that wishes to enforce a right that it may have to compensation must participate in the arbitration.
(b) If no affected Party has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.
4. The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.
5. The TiSA Committee shall establish any necessary procedures for the implementation of this Section.

Section 3 - Accession

Article IV:6 – Openness

This Agreement is open to accession by any Member of the World Trade Organization.

Article IV:7 – Procedures and Requirements

1. A non-Party to this Agreement shall notify the Chair of the TiSA Committee of its intention to accede to the Agreement. The Chair of the TiSA Committee shall notify without delay the other Parties of this intention through the contact points designated under Article IV:3(2) (Contact Points).
2. Any acceding Party shall be prepared to comply with the obligations in this Agreement, subject to such terms and conditions as may be agreed between that acceding Party and the Parties.
3. The decision on the accession of a new Party shall be adopted by the TiSA Committee.
4. The TiSA Committee shall adopt any necessary procedures for the implementation of this Section.

Section 4 - Multilateralisation

Article IV:8 – Objective of multilateralisation

The Parties recognise the importance of the multilateralisation of the Agreement as soon as possible. To this end, they shall consider means for incorporating the rights and obligations under this Agreement into the WTO.

Article IV:9 – Process leading to multilateralisation

1. The TiSA Committee shall consider the multilateralisation of the Agreement upon proposal by a Party and at least every [3 years] following the entry into force of this agreement.
2. Upon positive determination to be taken by consensus, the TiSA Committee shall submit the instrument of multilateralization to the Parties for acceptance in accordance with their internal procedures.

Section 5 – Final Provisions

Article IV:10 – Annexes, Protocol and Footnotes

The Annexes, Protocol and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article IV:11 – Authentic Texts

The English, Spanish and French texts of this Agreement are equally authentic.

Article IV:12 – Depositary

1. The original English, Spanish and French texts of this Agreement shall be deposited with [Party], which is hereby designated as the Depositary of this Agreement.
2. The Depositary shall promptly provide certified copies of the original texts of this Agreement and of any amendments to this Agreement to each signatory and acceding Party.
3. The Depositary shall promptly inform each signatory and acceding Party, and provide them with the date and a copy, of:
 - (a) a notification under Article IV:13 (Entry into Force); and
 - (b) the deposit of an instrument of accession under Article IV:7 (2) (Accession);
 - (c) a notification under Article IV:14 (Amendments)

Article IV:13 – Entry into Force

1. This Agreement shall enter into force 60 days after the date on which all original signatories have notified the Depository in writing of the completion of their applicable legal procedures.
2. In the event that not all original signatories have made the notification provided for in paragraph 2 within a period of two years from the date of signature of this Agreement, it shall enter into force 60 days after that date for those original signatories that have made that notification, provided that such parties account for at least $\frac{2}{3}$ of the original signatories
3. After the date of entry into force of this Agreement under paragraph 2, an original signatory for which this Agreement has not entered into force shall notify the Depository of the completion of its applicable legal procedures and its intention to become a Party to this Agreement. The Agreement shall enter into force with respect to the notifying original signatory 30 days after the notification.

Article IV:14 – Amendments

1. The Parties may agree to amend this Agreement. Upon proposal by a Party, the TiSA Committee shall consider the amendment of the Agreement.
2. Amendments shall enter into force in accordance with the provisions of Article IV:13

Article IV:15 – Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Chair of the TiSA Committee. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the contact points designated under Article IV:3(2) (Contact Points).
2. A withdrawal shall take effect six months after a Party provides written notice under paragraph 1 to the Chair of the TiSA Committee, unless the TiSA Committee takes a decision establishing a different period.

Article IV:16 Relation to Other Agreements

1. Recognising the Parties' intention for this Agreement to coexist with their existing international agreements, each Party affirms:
 - (a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and

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(b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Section 5 (Dispute Settlement).

Article IV-17 – Reservations

This Agreement does not allow for reservations within the meaning of the Vienna Convention on the Law of Treaties.

Article IV-18- Private Rights

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.
