



Council of the  
European Union

Brussels, 18 April 2018  
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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 April 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2018) 195 final - ANNEX 2

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Subject: ANNEX to the Proposal for a Council Decision on the signing, on behalf of  
the European Union, of the Investment Protection Agreement between the  
European Union and its Member States the one part, and the Republic of  
Singapore, of the other part

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Delegations will find attached document COM(2018) 195 final - ANNEX 2.

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Encl.: COM(2018) 195 final - ANNEX 2



Brussels, 18.4.2018  
COM(2018) 195 final

ANNEX 2

**ANNEX**

*to the*

**Proposal for a Council Decision**

**on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States the one part, and the Republic of Singapore, of the other part**

## EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 2.6 (Expropriation) addresses two situations. The first is direct expropriation where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. The second is indirect expropriation where a measure or series of measures by a Party has an effect equivalent to direct expropriation in that it substantially deprives the covered investor of the fundamental attributes of property in its covered investment, including the right to use, enjoy and dispose of its covered investment, without formal transfer of title or outright seizure.
2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the measure or series of measures and its duration, although the fact that a measure or a series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

- (b) the extent to which the measure or series of measures interferes with the possibility to use, enjoy or dispose of the property; and
- (c) the character of the measure or series of measures, notably its object, context and intent.

For greater certainty, except in the rare circumstance where the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measure or series of measures by a Party that are designed and applied to protect legitimate public policy objectives such as public health, safety and the environment, do not constitute indirect expropriation.

LAND EXPROPRIATION

1. Notwithstanding Article 2.6 (Expropriation), where Singapore is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the Land Acquisition Act (Chapter 152)<sup>1</sup>, shall be upon payment of compensation at market value in accordance with the aforesaid legislation.
  
2. For the purposes of this Agreement, any measure of expropriation under the Land Acquisition Act (Chapter 152) should be for a public purpose or incidental to a public purpose.

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<sup>1</sup> Land Acquisition Act (Chapter 152) as of the date of the entry into force of this Agreement.

**EXPROPRIATION AND INTELLECTUAL PROPERTY RIGHTS**

For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that the measure is consistent with the TRIPS Agreement and Chapter Ten (Intellectual Property) of EUSFTA, does not constitute expropriation. Moreover, a determination that the measure is inconsistent with the TRIPS Agreement and Chapter Ten (Intellectual Property) of EUSFTA does not establish that there has been an expropriation.

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PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation of Chapter Two (Investment Protection) may be submitted to, or if already submitted, be pursued under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 2.3 (National Treatment)<sup>1</sup>.
  
2. Notwithstanding Article 3.6 (Submission of Claim to Tribunal) under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties), and subject to paragraph 1 of this Annex, an investor may not submit a claim under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties) that a restructuring of debt of a Party breaches an obligation under Chapter Two (Investment Protection) other than Article 2.3 (National Treatment), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 3.3 (Consultations) under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties).

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<sup>1</sup> For the purpose of this Annex, the mere fact that the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives in the context of a debt crisis or threat thereof does not amount to a breach of Article 2.3 (National Treatment).

3. For the purposes of this Annex:

"negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 75 % of the aggregate principal amount of the outstanding debt subject to restructuring have consented to such debt exchange or other process.

"governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.

4. For greater certainty, "debt of a Party" includes, in the case of the European Union, debt of a government of a Member State, or of a Government in a Member State, at the central, regional or local level.

AGREEMENTS REFERRED TO IN ARTICLE 4.12

The agreements between Member States of the European Union and Singapore are:

1. Agreement between the Government of the Republic of Singapore and the Government of the Republic of Bulgaria on the Mutual Promotion and Protection of Investments, done at Singapore on 15 September 2003;
2. Agreement between the Government of the Republic of Singapore and the Belgo-Luxemburg Economic Union on the Promotion and Protection of Investments, done at Brussels on 17 November 1978;
3. Agreement between the Government of the Republic of Singapore and the Government of the Czech Republic on the Promotion and Protection of Investments, done at Singapore on 8 April 1995;
4. Treaty between the Federal Republic of Germany and the Republic of Singapore concerning the Promotion and Reciprocal Protection of Investments, done at Singapore on 3 October 1973;

5. Agreement between the Government of the Republic of Singapore and the Government of the Republic of France concerning the Promotion and the Protection of Investments, done at Paris on 8 September 1975;
6. Agreement between the Government of the Republic of Singapore and the Government of the Republic of Latvia on the Promotion and Protection of Investments, done at Singapore on 7 July 1998;
7. Agreement between the Republic of Singapore and the Republic of Hungary on the Promotion and Protection of Investments, done at Singapore on 17 April 1997;
8. Agreement on Economic Cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Singapore, done at Singapore on 16 May 1972;
9. Agreement between the Government of the Republic of Singapore and the Government of the Republic of Poland on the Promotion and Protection of Investments, done at Warsaw, Poland, on 3 June 1993;
10. Agreement between the Government of the Republic of Singapore and the Government of the Republic of Slovenia on the Mutual Promotion and Protection of Investments, done at Singapore on 25 January 1999;

11. Agreement between the Republic of Singapore and the Slovak Republic on the Promotion and Reciprocal Protection of Investments, done at Singapore on 13 October 2006; and
  12. Agreement between the Government of the Republic of Singapore and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Protection of Investments, done at Singapore on 22 July 1975.
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MEDIATION MECHANISM  
FOR DISPUTES BETWEEN INVESTORS AND PARTIES

ARTICLE 1

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

SECTION A

PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 2

Initiation of the Procedure

1. A disputing party may request, at any time, the initiation of a mediation procedure. Such request shall be addressed to the other party in writing.

2. The party to which the request is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt.
3. Where the request relates to any treatment by an institution, body or agency of the Union or by any Member State of the Union, and no respondent has been determined pursuant to paragraph 2 of Article 3.5 (Notice of Intent), the request shall be addressed to the Union. If the Union accepts the request, the response shall specify whether the Union or the Member State concerned will be a party to the mediation procedure.<sup>1</sup>

## ARTICLE 3

### Selection of the Mediator

1. The disputing parties shall endeavour to agree on a mediator no later than fifteen days after the receipt of the reply to the request referred to in paragraph 2 of Article 2 (Initiation of the Procedure) of this Annex. Such agreement may include appointing a mediator from the Members of the Tribunal established according to Article 3.9 (Tribunal of First Instance).

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<sup>1</sup> For greater certainty, where the request concerns treatment by the European Union, the party to the mediation shall be the European Union and any Member State concerned shall be fully associated in the mediation. Where the request concern exclusively treatment by a Member State, the party to the mediation shall be the Member State concerned, unless it requests the European Union to be party.

2. If the disputing parties cannot agree on the mediator pursuant to paragraph 1, either disputing party may request the President of the Tribunal to draw the mediator by lot from the Members of the Tribunal established pursuant to Article 3.9 (Tribunal of First Instance). The President of the Tribunal shall select the mediator within ten working days of the request by either disputing party.
3. A mediator shall not be a national of either Party, unless the disputing parties agree otherwise.
4. The mediator shall assist, in an impartial and transparent manner, the disputing parties in bringing clarity to the measure and its possible adverse effects on investment, and reaching a mutually agreed solution.

## ARTICLE 4

### Rules of the Mediation Procedure

1. Within ten days after the appointment of the mediator, the disputing party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other disputing party, in particular of the operation of the measure at issue and its adverse effects on investment. Within twenty days after the date of delivery of this submission, the other disputing party may provide, in writing, its comments to the description of the problem. Either disputing party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned, and its possible adverse effects on investment. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.
3. The mediator may offer advice and propose a solution for consideration of the disputing parties who may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with Chapter Two (Investment Protection).
4. The procedure shall take place in the territory of the disputing party to which the request was addressed or by mutual agreement, in any other location or by any other means.
5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.
6. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential.

7. The procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;
- (b) by a mutual agreement of the disputing 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 disputing parties, that further efforts at mediation would be to no avail, on the date of that declaration;
- (d) by a written declaration of a disputing party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

## SECTION B

### IMPLEMENTATION

#### ARTICLE 5

##### Implementation of a Mutually Agreed Solution

1. Where the disputing parties have agreed to a solution, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.
3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:
  - (a) the measure at issue in these procedures;
  - (b) the procedures followed; and
  - (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

The mediator shall provide the disputing parties fifteen working days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within fifteen working days. The factual report shall not include any interpretation of this Agreement.

## SECTION C

### GENERAL PROVISIONS

#### ARTICLE 6

##### Relationship to Dispute Settlement

1. The mediation procedure is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicatory body, tribunal or panel take into consideration:
  - (a) positions taken by the other disputing party in the course of the mediation procedure;
  - (b) the fact that the other disputing 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.
  
2. The mediation mechanism is without prejudice to the legal positions of the Parties and the disputing parties under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties) or Section B (Resolution of Disputes between Parties).

3. Without prejudice to paragraph 6 of Article 4 (Rules of the Mediation Procedure) of this Annex and unless the disputing parties agree otherwise, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

## ARTICLE 7

### Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

## ARTICLE 8

### Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.

2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The fees and expenses of the mediators shall be in accordance with those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the initiation of the mediation.

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CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL,  
THE APPEAL TRIBUNAL AND MEDIATORS

Definitions

1. In this Code of Conduct:

"Member" means a Member of the Tribunal or a Member of the Appeal Tribunal established pursuant to Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties);

"mediator" means a person who conducts mediation in accordance with Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties);

"candidate" means an individual who is under consideration for selection as a Member;

"assistant" means a person who, under the terms of appointment of a Member, conducts research or provides assistance to the Member;

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

## Responsibilities to the process

2. Every candidate and Member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Members shall not take instructions from any organisation or government with regard to matters before the Tribunal or the Appeal Tribunal. Former Members must comply with the obligations established in paragraphs 15 through 21 of this Code of Conduct.

## Disclosure obligations

3. Prior to his or her appointment as a Member, a candidate shall disclose to the Parties any past or present interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.
4. A Member shall communicate matters concerning actual or potential violations of this Code of Conduct to the disputing parties and the non-disputing Party.

5. Members shall at all times continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a Member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the Member becomes aware of it. The Member shall disclose such interests, relationships or matters by informing the disputing parties and the non-disputing Party, in writing, for their consideration.

#### Duties of Members

6. A Member shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding and with fairness and diligence.
7. A Member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. A Member shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with paragraphs 2, 3, 4, 5, 19, 20 and 21 of this Code of Conduct.
9. A Member shall not engage in *ex parte* contacts concerning the proceeding.

## Independence and impartiality of Members

10. A Member must be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party or fear of criticism.
11. A Member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of his or her duties.
12. A Member may not use his or her position on the Tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.
13. A Member may not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.
14. A Member must avoid entering into any relationship or acquiring any financial interest that is likely to affect him or her impartiality or that might reasonably create an appearance of impropriety or bias.

## Obligations of former Members

15. All former Members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived any advantage from the decision or ruling of the Tribunal or the Appeal Tribunal.
16. Without prejudice to Article 3.9(5) (Tribunal of First Instance) and Article 3.10(4) (Appeal Tribunal), Members shall undertake that after the end of their term, they shall not become involved in any manner whatsoever:
  - (a) in investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term;
  - (b) in investment disputes directly and clearly connected with disputes, including concluded disputes, which they have dealt with as Members of the Tribunal or the Appeal Tribunal.
17. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.
18. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have breached the obligations set out in paragraphs 15 through 17, he shall examine the matter, and provide the opportunity to the former Member to be heard. If, after verification, he finds the alleged breach to be confirmed, he shall inform:

- (a) the professional body or other such institution with which that former Member is affiliated;
- (b) the Parties; and
- (c) the president of any other relevant investment tribunal or appeal tribunal.

The President of the Tribunal or of the Appeal Tribunal shall make public its findings pursuant to this paragraph.

#### Confidentiality

- 19. No Member or former Member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of that proceeding, and shall not, in particular, disclose or use any such information to a personal advantage or an advantage for others or to affect the interest of others.
- 20. A Member shall not disclose a decision or award or parts thereof prior to its publication in accordance with Annex 8.
- 21. A Member or former Member shall not at any time disclose the deliberations of the Tribunal or Appeal Tribunal, or any Member's view regarding the deliberations.

## Expenses

22. Each Member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

## Mediators

23. The disciplines described in this Code of Conduct applying to Members or former Members shall apply, *mutatis mutandis*, to mediators.

## Consultative Committee

24. The President of the Tribunal and the President of the Appeal Tribunal shall each be assisted by a Consultative Committee, composed of the respective Vice-President and the most senior member by age of the Tribunal and the Appeal Tribunal respectively, for ensuring the proper application of this Code of Conduct, Article 3.11 (Ethics) and for the execution of any other task, where so provided.

**RULES ON PUBLIC ACCESS TO DOCUMENTS,  
HEARINGS AND THE POSSIBILITY  
OF THIRD PERSONS TO MAKE SUBMISSIONS**

**ARTICLE 1**

1. Subject to Articles 2 and 4 of this Annex, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and to the repository referred to in Article 5 of this Annex, who shall make them available to the public:
  - (a) the request for consultations referred to in paragraph 1 of Article 3.3 (Consultations);
  - (b) the notice of intent referred to in paragraph 1 of Article 3.5 (Notice of Intent);
  - (c) the determination of the respondent referred to in paragraph 2 of Article 3.5 (Notice of Intent);
  - (d) the submission of a claim referred to in Article 3.6 (Submission of Claim to Tribunal);

- (e) pleadings, memorials, and briefs submitted to the Tribunal by a disputing party, expert reports, and any written submissions submitted pursuant to Article 3.17 (The non-disputing Party to the Agreement) and Article 3 of this Annex;
  - (f) minutes or transcripts of hearings of the Tribunal, where available; and
  - (g) orders, awards, and decisions of the Tribunal or, where applicable, of the President or Vice President of the Tribunal.
2. Subject to the exceptions set out in Article 4 of this Annex, the Tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available any other documents provided to, or issued by, the Tribunal not falling within paragraph 1. This may include, for example, making such documents available at a specified site or through the repository referred to in Article 5 of this Annex.

## ARTICLE 2

The Tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect this information from disclosure.

### ARTICLE 3

1. The Tribunal may, after consultations with the disputing parties, allow a person that is not a disputing party and not a non-disputing Party to the Agreement (hereinafter referred to as "third person") to file a written submission with the Tribunal regarding a matter within the scope of the dispute.
  
2. A third person wishing to make a submission shall apply to the Tribunal, and shall provide the following written information in a language of the proceedings, in a concise manner, and within such page limits as may be set by the Tribunal:
  - (a) description of the third person, including, where relevant, its membership and legal status (e.g. trade association or other non-governmental organisation), its general objectives, the nature of its activities, and any parent organisation, including any organisation that directly or indirectly controls the third person;
  
  - (b) disclosure of any connection, direct or indirect, which the third person has with any disputing party;
  
  - (c) information on any government, person or organisation that has provided any financial or other assistance in preparing the submission or has provided substantial assistance to the third person in either of the two years preceding the application by the third person under this Article (e.g. funding around 20 per cent of its overall operations annually);

- (d) description of the nature of the interest that the third person has in the proceedings; and
  - (e) identification of the specific issues of fact or law in the proceedings that the third person wishes to address in its written submission.
3. In determining whether to allow such a submission, the Tribunal shall take into consideration, among other things:
- (a) whether the third person has a significant interest in the proceedings; and
  - (b) the extent to which the submission would assist the Tribunal in the determination of a factual or legal issue related to the proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.
4. The submission filed by the third person shall:
- (a) be dated and signed by the person filing the submission on behalf of the third person;
  - (b) be concise, and in no case longer than as authorised by the Tribunal;
  - (c) set out a precise statement of the third person's position on issues; and
  - (d) only address matters within the scope of the dispute.

5. The Tribunal shall ensure that such submissions do not disrupt or unduly burden the proceedings, or unfairly prejudice any disputing party. The Tribunal may adopt any appropriate procedures where necessary to manage multiple submissions.
6. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a third person.

#### ARTICLE 4

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to paragraphs 3 to 9, shall not be made available to the public.
2. Confidential or protected information consists of:
  - (a) confidential business information;
  - (b) information which is protected against being made available to the public under this Agreement;
  - (c) information which is protected against being made available to the public, in the case of information of the respondent, under the law of the respondent and in the case of other information, under any law or rules determined to be applicable to the disclosure of such information by the Tribunal.

3. When a document other than an order or decision of the Tribunal is to be made available to the public pursuant to paragraph 1 of Article 1 of this Annex, the disputing party, non-disputing Party or third person who submits the document shall, at the time of submission of the document:
  - (a) indicate whether it contends that the document contains information which must be protected from publication;
  - (b) clearly designate the information at the time it is submitted to the Tribunal; and
  - (c) promptly or within the time set by the Tribunal, submit a redacted version of the document that does not contain the said information.
  
4. When a document other than an order or decision of the Tribunal is to be made available to the public pursuant to a decision of the Tribunal under paragraph 2 of Article 1 of this Annex, the disputing party, non-disputing Party or third person who has submitted the document shall, within thirty days of the Tribunal's decision that the document is to be made available to the public, indicate whether it contends that the document contains information which must be protected from disclosure and submit a redacted version of the document that does not contain the said information.
  
5. Where a redaction is proposed under paragraph 4, any disputing party other than the person who submitted the document in question may object to the proposed redaction and/or propose that the document be redacted differently. Any such objection or counter-proposal shall be made within thirty days of receipt of the proposed redacted document.

6. When an order, decision or award of the Tribunal is to be made available to the public pursuant to paragraph 1 of Article 1 of this Annex, the Tribunal shall give all disputing parties an opportunity to make submissions as to the extent to which the document contains information which must be protected from publication and to propose redaction of the document to prevent the publication of the said information.
7. The Tribunal shall rule on all questions relating to the proposed redaction of documents under paragraphs 3 to 6, and shall determine, in the exercise of its discretion, the extent to which any information contained in documents which are to be made available to the public, should be redacted.
8. If the Tribunal determines that information should not be redacted from a document pursuant to paragraphs 3 to 6 or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party or third person that voluntarily submitted the document into the record may, within thirty days of the Tribunal's determination:
  - (a) withdraw all or part of the document containing such information from the record of the proceedings; or
  - (b) resubmit the document in a form which complies with the Tribunal's determination.
9. Any disputing party that intends to use information which it contends to be confidential or protected information in a hearing shall so advise the Tribunal. The Tribunal shall, after consultation with the disputing parties, decide whether that information should be protected and shall make arrangements to prevent any protected information from becoming public in accordance with Article 2 of this Annex.

10. Information shall not be made available to the public where the information, if made available to the public, would jeopardise the integrity of the dispute settlement process as determined pursuant to paragraph 11.
  
11. The Tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardise the integrity of the dispute settlement process:
  - (a) because it could hamper the collection or production of evidence; or
  
  - (b) because it could lead to the intimidation of witnesses, lawyers acting for disputing parties, or members of the Tribunal; or
  
  - (c) in comparably exceptional circumstances.

## ARTICLE 5

The Secretary-General of the United Nations, through the UNCITRAL Secretariat, shall act as repository and shall make available to the public information pursuant to this Annex.

## ARTICLE 6

Where this Annex provides for the Tribunal to exercise discretion, the Tribunal shall exercise that discretion, taking into account:

- (a) the public interest in transparency in treaty-based investment dispute resolution and of the particular proceedings; and
  - (b) the disputing parties' interest in a fair and efficient resolution of their dispute.
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**RULES OF PROCEDURE FOR ARBITRATION**

**General provisions**

1. In Section B (Resolution of Disputes between Parties) of Chapter Three (Dispute Settlement) and under this Annex:

"adviser" means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

"arbitrator" means a member of an arbitration panel established under Article 3.29 (Establishment of the Arbitration Panel);

"assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

"complaining Party" means any Party that requests the establishment of an arbitration panel under Article 3.28 (Initiation of Arbitration Procedure);

"Party complained against" means the Party that is alleged to be in violation of the provisions referred to in Article 3.25 (Scope);

"arbitration panel" means a panel established under Article 3.29 (Establishment of the Arbitration Panel);

"representative of a Party" means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement

2. This Annex shall apply to dispute settlement proceedings under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties) unless the Parties agree otherwise.
3. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. The Parties shall share equally the expenses derived from organisational matters, including the expenses of the arbitrators.

#### Notifications

4. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.

5. A Party shall provide an electronic copy of each of its written submissions and rebuttals to each of the arbitrators and simultaneously to the other Party. A paper copy of the document shall also be provided.
6. All notifications shall be addressed to the Director, North America and Europe Division, Singapore Ministry of Trade and Industry and to the Directorate-General for Trade of the European Commission of the Union, respectively.
7. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may, unless the other Party objects, be corrected by delivery of a new document clearly indicating the changes.
8. If the last day for delivery of a document falls on an official legal holiday of Singapore or of the Union, the document shall be delivered on the next business day.

#### Commencing the arbitration

10. (a) If pursuant to Article 3.29 (Establishment of the Arbitration Panel) or to Rules 22, 24 or 51 of this Annex, the arbitrators are selected by lot, representatives of both Parties are entitled to be present when lots are drawn.
- (b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties or the arbitration panel deems appropriate, including the remuneration and expenses to be paid to the arbitrators. Arbitrators and representatives of the Parties may take part in this meeting *via* telephone or video conference.

11. (a) Unless the Parties agree otherwise within seven days from the date of establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

"to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel made pursuant to Article 3.28; to rule on the compatibility of the measure in question with the provisions referred to in Article 3.25 by making findings of law and/or fact, together with the reasons thereof; and to issue a ruling in accordance with Articles 3.31 and 3.32."

- (b) Where the Parties have agreed on the terms of reference of the arbitration panel, they shall notify such agreement to the arbitration panel forthwith.

#### Initial submissions

12. The complaining Party shall deliver its initial written submission no later than twenty days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than twenty days after the date of delivery of the initial written submission.

#### Working of arbitration panels

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

14. Unless otherwise provided in Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
15. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
16. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
17. Where a procedural question arises that is not covered by Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties) and its Annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
18. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed.

#### Replacement

19. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 3.29 (Establishment of the Arbitration Panel).

20. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct under Annex 11 (hereinafter referred to as "Code of Conduct"), and for this reason should be replaced, this Party should notify the other Party within fifteen days from the time at which it came to know of the circumstances underlying the arbitrator's non-compliance with the Code of Conduct.
21. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 3.29 (Establishment of the Arbitration Panel).
22. If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator did not comply with the requirements of the Code of Conduct, a new arbitrator shall be selected.

The Party which had selected the arbitrator who needs to be replaced, shall select one arbitrator from among the remaining relevant individuals on the list established under paragraph 2 of Article 3.44 (Lists of Arbitrators). If the Party fails to select an arbitrator within five days of the finding of the chairperson of the arbitration panel, the chair of the Committee or the chair's delegate shall select an arbitrator, by lot from the remaining relevant individuals on the list established under paragraph 2 of Article 3.44 (Lists of Arbitrators), within ten days of the finding of the chairperson of the arbitration panel.

Should the list provided for in paragraph 2 of Article 3.44 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 4 of Article 3.29 (Establishment of the Arbitration Panel), the Party which had selected the arbitrator who needs to be replaced or, if that Party fails, the chair of the Committee or the chair's delegate shall select an arbitrator within five days of the finding of the chairperson of the arbitration panel:

- (a) where the Party had failed to propose individuals, from among the remaining individuals proposed by the other Party pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators);
- (b) where the Parties had failed to agree on a list of names pursuant to Article paragraph 2 of Article 3.44 (Lists of Arbitrators), from among the individuals the Party had proposed pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators).

23. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 3.29 (Establishment of the Arbitration Panel)
24. If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to a neutral third party. If the Parties are unable to agree on a neutral third party, such matter shall be referred to one of the remaining members on the list referred to under paragraph 1 of Article 3.44 (Lists of Arbitrators). Her or his name shall be drawn by lot by the chair of the Committee, or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson did not comply with the requirements of the Code of Conduct, the Parties shall agree on the replacement. If the Parties fail to agree on a new chairperson, the chair of the Committee, or the chair's delegate, shall select by lot from among the remaining members on the list referred to under paragraph 1 of Article 3.44 (Lists of Arbitrators). The remaining members on the list shall exclude, where relevant, the person who decided that the original chairperson did not comply with the requirements of the Code of Conduct. The selection of the new chairperson shall be done within five days of the finding of the need to replace the chairperson.

25. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in Rules 19, 20, 21, 22, 23 and 24 of this Annex.

#### Hearings

26. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other arbitrators, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.
27. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Singapore and in Singapore if the complaining Party is the Union.
28. The arbitration panel may convene additional hearings if the Parties so agree.

29. All arbitrators shall be present during the entirety of any hearings.
30. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
- (a) representatives of the Parties;
  - (b) advisers to the Parties;
  - (c) administrative staff, interpreters, translators and court reporters; and
  - (d) arbitrators' assistants.

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

31. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel, and simultaneously to the other party, a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
32. The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public. Where the hearings are open to the public, unless the Parties agree otherwise:

- (a) public viewing shall take place via simultaneous closed circuit television broadcast to a separate viewing room at the venue of the arbitration;
- (b) registration for public viewing of the hearings shall be required;
- (c) no audio or video recording or photography shall be permitted in the viewing room;
- (d) the panel shall have the right to call for a closed session of any of the hearings in order to address issues related to any confidential information.

The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. Exceptionally, the panel shall have the right to conduct the hearings in a closed session at any time on its own initiative or at the request of either Party.

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

#### Submissions

- (a) submission of the complaining Party;
- (b) counter-submission of the Party complained against;

## Rebuttals

- (a) rebuttal of the complaining Party;
- (b) counter-rebuttal of the Party complained against.

34. The arbitration panel may direct questions to either Party at any time during the hearing.
35. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.
36. Each Party may deliver to the arbitration panel and simultaneously to the other Party a supplementary written submission concerning any matter that arose during the hearing within ten days of the date of the hearing.

## Questions in writing

37. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
38. Each Party shall also provide a copy of its written response to the arbitration panel's questions to the arbitration panel and simultaneously to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt.

## Confidentiality

39. The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with Rule 32 of this Annex, the deliberations and interim panel report, and all written submissions to, and communications with, the panel. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party's submission to the arbitration panel contains confidential information, that Party shall also provide, upon request of the other Party, within fifteen days, a non-confidential version of the submission that could be disclosed to the public. Nothing in this Annex shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

## Ex parte contacts

40. The arbitration panel shall not meet, hear or otherwise contact a Party in the absence of the other Party.
41. No arbitrators may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other arbitrators.

### Amicus curiae submissions

42. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or legal persons of the Parties, provided that they are made within ten days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual issue under consideration by the arbitration panel.
43. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment the nature of their activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rule 46 of this Annex.
44. The arbitration panel shall list in its ruling all the submissions it has received that conform to Rules 42 and 43 of this Annex. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any submission obtained by the arbitration panel under this Annex shall be submitted to the Parties for their comments.

### Urgent cases

45. In cases of urgency referred to in Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties), the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in this Annex as appropriate and shall notify the Parties of such adjustments.

### Translation and interpretation

46. During the consultations referred to in Article 3.26 (Consultations), and no later than the meeting referred to in Rule 10(b) of this Annex, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
47. Any Party may provide comments on any translated version of a document drawn up in accordance with this Annex.
48. In the event of any divergence over the interpretation of this Agreement, the arbitration panel shall take account of the fact that this Agreement was negotiated in English.

### Calculation of time-limits

49. Where, by reason of the application of Rule 8 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

## Other procedures

50. This Annex is also applicable to procedures established under paragraph 2 of Article 3.34 (Reasonable Period of Time for Compliance), paragraph 2 of Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling), paragraph 3 of Article 3.36 (Temporary Remedies in Case of Non-compliance), paragraph 2 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance). The time-limits laid down in this Annex shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.
51. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under paragraph 2 of Article 3.34 (Reasonable Period of Time for Compliance), paragraph 2 of Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling), paragraph 3 of Article 3.36 (Temporary Remedies in Case of Non-compliance), paragraph 2 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance), the procedures set out in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The time limit for the notification of the ruling shall be extended by fifteen days.
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MEDIATION PROCEDURE FOR DISPUTES BETWEEN PARTIES

ARTICLE 1

Objective and Scope

1. The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.
2. This Annex shall apply to any measure under the scope of this Agreement adversely affecting trade or investment between the Parties, except as otherwise provided.

ARTICLE 2

Request for Information

1. Before the initiation of the mediation procedure, a Party may request at any time in writing information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall provide, within twenty days, a written response.

2. Where the responding Party considers that a response within twenty days is not practicable, it shall inform the requesting Party of the reasons for the delay, together with an estimate of the shortest period within which it will be able to provide its response.

## ARTICLE 3

### Initiation of the Procedure

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed to present clearly the concerns of the requesting Party 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 or investment between the Parties; and
  - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The Party to which such request is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt.

## ARTICLE 4

### Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator no later than fifteen days after the receipt of the reply to the request referred to in paragraph 2 of Article 3 (Initiation of the Procedure) of this Annex.
2. If the Parties cannot agree on the mediator within the established time frame, either Party may request the chair of the Committee, or the chair's delegate, to draw the mediator by lot from the list established under paragraph 2 of Article 3.44 (Lists of Arbitrators). Representatives of both Parties are entitled to be present when the lots are drawn.
3. The chair of the Committee, or the chair's delegate, shall select the mediator within five working days of the request referred to in paragraph 2.
4. A mediator shall not be a national of either Party, unless the Parties agree otherwise.
5. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible adverse effects on trade and investment, and in reaching a mutually agreed solution. Annex 11 shall apply to mediators, *mutatis mutandis*. Rules 4 to 9 and Rules 46 to 49 of Annex 9 shall also apply, *mutatis mutandis*.

## ARTICLE 5

### Rules of the Mediation Procedure

1. Within ten days after the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its adverse effects on investment. Within twenty days after the date of delivery of this submission, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible adverse effects on investment. 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. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the Parties.
3. The mediator may offer advice and propose a solution for consideration of the Parties who may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.
4. The 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 sixty days from the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions.
  
6. The solution may be adopted by means of a decision of the Committee. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.
  
7. The procedure shall be terminated:
  - (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption;
  
  - (b) by a 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 exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

## ARTICLE 6

### Implementation of a Mutually Agreed Solution

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.
3. On request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of (i) the measure at issue in these procedures; (ii) the procedures followed; and (iii) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the Parties fifteen days to comment on the draft report. After considering the comments of the Parties submitted within the period, the mediator shall submit, in writing, a final factual report to the Parties within fifteen days. The factual report shall not include any interpretation of this Agreement.

## ARTICLE 7

### Relationship to Dispute Settlement

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties).

2. The mediation procedure is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement. A Party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall a panel take into consideration:
  - (a) positions taken by the other Party in the course of the mediation procedure;
  - (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.
3. Without prejudice to paragraph 6 of Article 5 (Rules of the Mediation Procedure) of this Annex and unless the Parties agree otherwise, all steps of the procedure, including any advice or proposed solution, are confidential. However, either Party may disclose to the public that mediation is taking place.

## ARTICLE 8

### Time Limits

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

## ARTICLE 9

### Costs

1. Each Party shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties shall share equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that foreseen in Rule 10(b) of Annex 9.

## ARTICLE 10

### Review

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation procedure in light of the experience gained and the development of a corresponding mechanism in the WTO.

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CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

"arbitrator" means a member of an arbitration panel established under Article 3.29 (Establishment of the Arbitration Panel);

"candidate" means an individual whose name is on the list of arbitrators referred to in Article 3.44 (Lists of Arbitrators) and who is under consideration for selection as an arbitrator under Article 3.29 (Establishment of the Arbitration Panel);

"assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

"proceeding", unless otherwise specified, means an arbitration panel proceeding under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties);

"staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

## Responsibilities to the process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Arbitrators shall not take instructions from any organisation or government with regard to matters before a Panel. Former arbitrators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

## Disclosure obligations

3. Prior to confirmation of his or her selection as an arbitrator under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties), a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.
4. A candidate or arbitrator shall only communicate matters concerning actual or potential violations of this Code of Conduct to the Committee for consideration by the Parties.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the Committee, in writing, for consideration by the Parties.

#### Duties of arbitrators

6. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

#### Independence and impartiality of arbitrators

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

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
12. An arbitrator may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
13. An arbitrator may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

#### Obligations of former arbitrators

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

## Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to affect the interest of others.
17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties).
18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view regarding the deliberations.

## Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his or her expenses, as well as the time and expenses of his or her assistants.

## Mediators

20. The disciplines described in this Code of Conduct applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators.

## UNDERSTANDING 1

### IN RELATION TO SINGAPORE'S SPECIFIC CONSTRAINTS OF SPACE OR ACCESS TO NATURAL RESOURCES

1. Article 2.3 (National Treatment) shall not apply to any measure relating to:
  - (a) the supply of potable water in Singapore;
  - (b) the ownership, purchase, development, management, maintenance, use, enjoyment, sale or other disposal of residential property<sup>1</sup> or to any public housing scheme in Singapore.
2. Three years after the entry into force of this agreement and every two years thereafter, should the Additional Buyer's Stamp Duty (ABSD) still be in force, the Committee will review to see if the maintenance of the ABSD is necessary for addressing the stability of the residential property market. In these consultations, Singapore will provide statistics and information relevant to the state of the residential property market.

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<sup>1</sup> The term "residential property" shall refer to real property defined as such in the Residential Property Act Chapter 274 as of the date of the entry into force of this Agreement.

## UNDERSTANDING 2

### IN RELATION TO THE REMUNERATION OF ARBITRATORS

With respect to Rule 10 of Annex 9 both Parties confirm their following understanding:

1. The remuneration and expenses to be paid to the arbitrators shall be based on standards of comparable international dispute resolution mechanisms in bilateral or multilateral agreements.
2. The exact amount of the remuneration and expenses shall be agreed by the Parties in advance of the meeting of the Parties with the arbitration panel under Rule 10 of Annex 9.
3. Both Parties shall apply this understanding in good faith with a view to facilitating the operation of the arbitration panel.

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