

CHAPTER 28

DISPUTE SETTLEMENT

Section A: Dispute Settlement

Article 28.1: Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 28.7.1 (Establishment of a Panel);

consulting Party means a Party that requests consultations under Article 28.5.1 (Consultations) or the Party to which the request for consultations is made;

disputing Party means a complaining Party or a responding Party;

panel means a panel established under Article 28.7 (Establishment of a Panel);

perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

responding Party means a Party that has been complained against under Article 28.7 (Establishment of a Panel);

Rules of Procedure means the rules referred to in Article 28.13 (Rules of Procedure for Panels) and established in accordance with Article 27.2.1(f) (Functions of the Commission); and

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 28.14 (Third Party Participation).

Article 28.2: Cooperation

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

第 28 章

争端解决

A 节：争端解决

第 28.1 条 定义

就本章而言：

起诉方指根据第 28.7.1 条(专家组的设立)请求设立专家组的一缔约方；

磋商方指根据第 28.5.1 条(磋商)请求磋商的缔约方或被请求磋商的缔约方；

争端方指一起诉方或一应诉方；

专家组指根据第 28.7 条(专家组的设立)设立的专家组；

易腐货物指归入协调制度编码第 1 章至第 24 章的易腐农产品和鱼制品；

应诉方指根据第 28.7 条(专家组的设立)被起诉的一缔约方；

议事规则指第 28.13 条(专家组的议事规则)中所指的并依照第 27.2.1 条(f)项(自贸协定委员会的职能)制定的规则；以及

第三方指除争端方外的、根据第 28.14 条(第三方参与)递送书面通知的一缔约方。

第 28.2 条 合作

缔约方应始终努力对本协定的解释和适用达成一致，并应尽一切努力通过合作和磋商就可能影响本协定运用或适用的任何事项达成双方满意的解决办法。

Article 28.3: Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;
- (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement; or
- (c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

2. No later than six months after the effective date that Members of the WTO have the right to initiate non-violation nullification or impairment complaints under Article 64 of the TRIPS Agreement, the Parties shall consider whether to amend paragraph 1(c) to include Chapter 18 (Intellectual Property).

3. An instrument entered into by two or more Parties in connection with the conclusion of this Agreement:

- (a) does not constitute an instrument related to this Agreement within the meaning of paragraph 2(b) of Article 31 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969 and shall not affect the rights and obligations under this Agreement of Parties which are not party to the instrument; and
- (b) may be subject to the dispute settlement procedures under this Chapter for any matter arising under the instrument if that instrument so provides.

Article 28.4: Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party,

第 28.3 条 范围

1. 除非本协定中另有规定，否则本章的争端解决条款应适用于：
 - (a) 在避免或解决缔约方之间有关本协定的解释或适用的所有争端方面；
 - (b) 一缔约方认为另一缔约方的实际措施或拟议措施与本协定的义务不一致或将会出现不一致的情况，或另一缔约方在其他方面未能履行本协定项下的义务的情况；或
 - (c) 一缔约方认为由于另一缔约方实施与本协定不相抵触的措施，其根据第 2 章(货物的国民待遇和市场准入)、第 3 章(原产地规则和原产地程序)、第 4 章(纺织品和服装)、第 5 章(海关管理和贸易便利化)、第 8 章(技术性贸易壁垒)、第 10 章(跨境服务贸易)或第 15 章(政府采购)可合理预期获得的利益正在丧失或减损的情况。
2. 不迟于 WTO 成员有权根据《TRIPS 协定》第 64 条提起利益丧失或减损非违反之诉生效之日后 6 个月，缔约方应审议是否修正第 1 款(c)项以包括第 18 章(知识产权)。
3. 两个或多个缔约方订立的与本协定的缔结有关的法律文件：
 - (a) 不构成 1969 年 5 月 23 日订于维也纳的《维也纳条约法公约》第 31 条第(2)款(b)项范围内的与本协定相关的法律文件，且不得影响不属该法律文件参加方的缔约方在本协定项下的权利和义务；及
 - (b) 如该法律文件如此规定，则可就该法律文件项下产生的任何事项诉诸本章的争端解决程序。

第 28.4 条 场所的选择

1. 如一争端涉及本协定项下和包括《WTO 协定》在内的争

including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 28.5: Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in Article 28.3 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure¹ or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 27.5.1 (Contact Points).

2. 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 seven days after the date of its receipt of the request.² That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into consultations in good faith.

3. A Party other than a consulting Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing no later than seven days after the date of circulation of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than:

- (a) 15 days after the date of receipt of the request for matters concerning perishable goods; or
- (b) 30 days after the date of receipt of the request for all other matters.

5. Consultations may be held in person or by any technological means

¹ The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

² For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.

端方均为参加方的另一国际贸易协定项下产生的任何事项，则起诉方可选择解决争端的场所。

2. 一旦起诉方已根据第 1 款中所指一协定请求设立一专家组或将一事项向一专家组或其他法庭提交，则应使用所选择的场所而同时排除其他场所。

第 28.5 条 磋商

1. 任何缔约方可请求与任何其他缔约方就第 28.3 条(范围)中所述任何事项进行磋商。请求进行磋商的缔约方应以书面形式提出请求，并应列出提出磋商请求的理由，包括对实际措施或拟议措施¹或其他争议事项的确认及关于起诉法律根据的说明。请求方应将请求通过根据第 27.5.1 条(联络点)指定的联络点同时散发其他缔约方。

2. 被请求磋商的缔约方应不迟于在其收到请求之日后 7 天以书面形式对请求作出答复，除非磋商各方另有议定。²该缔约方应通过总联络点将答复同时散发其他缔约方并真诚参加磋商。

3. 认为对该事项具有实质利益的不属磋商方的一缔约方可不迟于磋商请求散发之日后 7 天通过向其他缔约方作出书面通知的方式参加磋商。该缔约方应在其通知中包括关于其对该事项的实质性利益的说明。

4. 除非磋商各方另有议定，否则应在不迟于下列期限前参加磋商：

- (a) 对于涉及易腐货物的事项，在收到磋商请求之日后 15 天；或
- (b) 对于所有其他事项，在收到磋商请求之日后 30 天。

5. 磋商可面对面进行或通过磋商各方可获得的任何技术手段

¹ 对于拟议措施，在不损害随时提出磋商请求权利的情况下，缔约方应尽一切努力在拟议措施公布之日起 60 天内根据本规定提出磋商请求。

² 为进一步明确，如被请求磋商的缔约方未在本款要求的时限内进行答复，则在请求方发出请求之日后 7 天其应被视为已收到该磋商请求。

available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties agree otherwise.

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

- (a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and
- (b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

7. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

8. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

Article 28.6: Good Offices, Conciliation and Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 28.7 (Establishment of a Panel).

Article 28.7: Establishment of a Panel

1. A Party that requested consultations under Article 28.5.1 (Consultations) may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within:

进行。如磋商面对面进行，则磋商应在被请求磋商方的首都进行，除非磋商各方另有议定。

6. 磋商各方应尽一切努力通过本条下的磋商就该事项达成双方满意的解决办法。为此：

- (a) 每一磋商方应提供充分的信息从而可以全面审查实际措施或拟议措施如何影响本协定的运用或适用；及
- (b) 参加磋商的一缔约方应对磋商过程中所交换的指定为属机密性质的任何信息按照与提供信息的缔约方相同的基础加以处理。

7. 在本条下的磋商中，一磋商方可请求另一磋商方提供其政府机构或其他监管机构中对争议事项具备专门知识的人士予以协助。

8. 磋商应保密，且不得损害任何缔约方在任何其他程序中的权利。

第 28.6 条 斡旋、调解和调停

1. 缔约方可随时同意自愿采取争端解决的替代方法，例如斡旋、调解或调停。

2. 涉及斡旋、调解或调停的程序应保密，且不得损害缔约方在任何其他程序中的权利。

3. 参加本条下程序的缔约方可随时中止或终止这些程序。

4. 如争端各方同意，则斡旋、调解或调停可在争端解决程序进行的同时继续进行直至根据第 28.7 条(专家组的设立)设立专家组。

第 28.7 条 专家组的设立

1. 根据第 28.5.1 条(磋商)请求磋商的缔约方可通过向应诉方作出书面通知的方式请求设立专家组，如磋商各方未能在下列期限内解决争议：

- (a) a period of 60 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations);
 - (b) a period of 30 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations) in a matter regarding perishable goods; or
 - (c) any other period as the consulting Parties may agree.
2. The complaining Party shall circulate the request concurrently to all Parties through the overall contact points designated under Article 27.5.1 (Contact Points).
3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
4. A panel shall be established upon delivery of the request.
5. Unless the disputing Parties agree otherwise, the panel shall be composed in a manner consistent with this Chapter and the Rules of Procedure.
6. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.
7. A panel shall not be established to review a proposed measure.

Article 28.8: Terms of Reference

1. 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 shall be to:
 - (a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and
 - (b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 28.17.4 (Initial Report).
2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs benefits within the meaning of Article 28.3.1(c) (Scope), the terms of reference shall so indicate.

- (a) 在收到第 28.5.1 条(磋商)下的磋商请求之日后的 60 天期限；
 - (b) 对于涉及易腐货物的事项，在收到第 28.5.1 条(磋商)下的磋商请求之日后的 30 天期限；或
 - (c) 磋商各方可能同意的任何其他期限。
2. 起诉方应将该请求通过根据第 27.5.1 条(联络点)所指定的总联络点同时散发所有缔约方。
 3. 起诉方应在设立专家组的请求中包括对争议措施或其他争议事项的确认，并包括一份足以清晰陈述有关问题的关于起诉法律根据的摘要。
 4. 专家组应自请求递送之日起设立。
 5. 除非争端各方另有议定，否则专家组应以与本章和议事规则相一致的方式组成。
 6. 如就一事项已设立专家组且另一缔约方就相同事项请求设立专家组，只要可行，应设立一单一专家组审查有关起诉。
 7. 不得设立专家组审查一拟议措施。

第 28.8 条 职权范围

1. 除非争端各方在不迟于设立专家组的请求递送之日后 20 天另有议定，否则职权范围应为：
 - (a) 按照本协定相关条款，审查根据第 28.7.1 条(专家组的设立)提交的设立专家组请求中所指的事项；及
 - (b) 按第 28.17.4 条(初步报告)所规定的，提出调查结果和作出决定及任何联合请求的建议，并附相关理由。
2. 如起诉方在设立专家组请求中声称一措施造成第 28.3.1 条(c)项(范围)范围内的利益丧失或减损，则专家组职权范围应如此说明。

Article 28.9: Composition of Panels

1. A panel shall be composed of three members.
2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose a panel:
 - (a) Within a period of 20 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall each appoint a panellist and notify each other of those appointments.
 - (b) If the complaining Party or Parties fail to appoint a panellist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.
 - (c) If the responding Party fails to appoint a panellist within the period specified in subparagraph (a), the complaining Party or Parties shall select the panellist not yet appointed:
 - (i) from the responding Party's list established under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists);
 - (ii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists), from the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists); or
 - (iii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists) and no roster of panel chairs has been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), by random selection from a list of three candidates nominated by the complaining Party or Parties,

no later than 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel).
 - (d) For appointment of the third panellist, who shall serve as chair:
 - (i) the disputing Parties shall endeavour to agree on the appointment of a chair;

第 28.9 条 专家组的组成

1. 专家组应由 3 名成员组成。
2. 除非争端各方另有议定，否则在组成专家组时应适用下列程序：
 - (a) 在根据 28.7.1 条(专家组的设立)递送设立专家组请求之日后 20 天内，一个或多个起诉方作为一方，应诉方作为另一方，应各自任命一名专家组成员并相互通知各自任命。
 - (b) 如一个或多个起诉方未能在(a)项中所规定的期限内任命一名专家组成员，则争端解决程序应在该期限结束时终止。
 - (c) 如应诉方未能在(a)项中所规定的期限内任命一名专家组成员，则一个或多个起诉方应自下列名册或名单中选择未任命的专家组成员：
 - (i) 自应诉方根据第 28.11.9 条(专家组主席名册和缔约方特定名单)建立的名单中选择；或
 - (ii) 如应诉方尚未根据第 28.11.9 条(专家组主席名册和缔约方特定名单)建立名单，则自根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的专家组主席名册中选择；或
 - (iii) 如应诉方尚未根据第 28.11.9 条(专家组主席名册和缔约方特定名单)建立名单，也未根据第 28.11 条(专家组主席名册和缔约方特定名单)建立专家组主席名册，则自一个或多个起诉方提名的 3 名候选人名单中随机挑选，
应不迟于根据 28.7.1 条(专家组的设立) 递送设立专家组请求之日后 35 天作出上述选择。
 - (d) 对于应担任主席的第三名专家组成员的任命：
 - (i) 争端各方应努力就主席的任命达成一致；

- (ii) if the disputing Parties fail to appoint a chair under subparagraph (d)(i) by the time the second panellist is appointed or within a period of 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), whichever is longer, the two panellists appointed shall, by agreement, appoint the chair from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists);
- (iii) if the two panellists do not agree on the appointment of the chair under subparagraph (d)(ii) within a period of 43 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the two panellists shall appoint the chair with the agreement of the disputing Parties;
- (iv) if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, the disputing Parties shall select the chair by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) within a period of 60 days after the date of delivery of the request for the establishment of the panel;
- (v) notwithstanding subparagraph (d)(iv), if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, a disputing Party may elect to have the chair appointed from the roster established under Article 28.11(Roster of Panel Chairs and Party Specific Lists) by an independent third party, provided that the following conditions are met:
 - (A) any costs associated with the appointment are borne by the electing Party;
 - (B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third party's appointment process; and

- (ii) 如在第二名专家组成员任命时，或在根据第 28.7.1 条(专家组的设立)递送设立专家组请求之日后 35 天的期限内，以较长者为准，争端各方未能根据(d)项(i)目任命主席，则已被任命的两名专家组成员经一致同意，应自根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的名册中任命主席；
- (iii) 如两名专家组成员未能在根据第 28.7.1 条(专家组的设立)递送设立专家组请求之日后 43 天的期限内根据(d)项(ii)目就主席任命达成一致，则两名专家组成员应经争端各方同意任命主席；
- (iv) 如两名专家组成员未能在递送设立专家组请求之日后 55 天的期限内根据(d)项(iii)目任命主席，则争端各方应在递送设立专家组请求之日后 60 天的期限内，自根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的名册中随机挑选主席；
- (v) 尽管有(d)项(iv)目，但是如两名专家组成员未能在递送设立专家组请求之日后 55 天的期限内根据(d)项(iii)目任命主席，则一争端方可选择由一独立第三方自根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的名册中任命主席，但需满足下列条件：
 - (A) 与此任命有关的任何费用由作出选择的一方承担；
 - (B) 向独立第三方提出任命主席的请求应由争端各方联合提出。一争端方与独立第三方之间随后任何通信均应抄送另一个或多个争端方。任何争端方不得试图影响独立第三方的任命程序；以及

- (C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in subparagraph (d)(iv);
- (vi) if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(ii) through (v) cannot apply, the complaining Party or Parties, on the one hand, and the responding Party, on the other hand, may nominate three candidates. The chair shall be randomly selected from those candidates that are nominated within a period of 60 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and
- (vii) notwithstanding subparagraph (d)(vi), if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(i) through (v) cannot apply, a disputing Party may, following the nomination of candidates under subparagraph (d)(vi), elect to have the chair appointed from those candidates by an independent third party, provided that the following conditions are met:
 - (A) any costs associated with such appointment are borne by the electing Party;
 - (B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third party's appointment process; and
 - (C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in

- (C) 如独立第三方不能或不愿按照请求在递送设立专家组请求之日后 60 天的期限内完成任命，则主席应在另一 5 天的期限内使用(d)项(iv)目中所列程序随机选择；
- (vi) 如尚未根据第 28.11 条(专家组主席名册和缔约方特定名单)建立名册，且(d)项(ii)目至(v)目不能适用，则一个或多个起诉方作为一方，应诉方作为另一方，可提名 3 名候选人。主席应自在根据第 28.7.1 条(专家组的设立)递送设立专家组请求之日后的 60 天期限内提名的候选人中随机挑选；以及
- (vii) 尽管有(d)项(vi)目，但是如尚未根据第 28.11 条(专家组主席名册和缔约方特定名单)建立名册，且(d)项(i)目至(v)目不能适用，则任何争端方在根据(d)项(vi)目提名侯选人后，可选择由一独立第三方的自侯选人中任命主席，但需满足下列条件：
 - (A) 与此任命有关的任何费用由作出选择的一方承担；
 - (B) 向独立第三方提出任命主席的请求应由争端各方联合提出。一争端方与独立第三方之间随后任何通信均应抄送另一个或多个争端方。任何争端方不得试图影响独立第三方的任命程序；以及
 - (C) 如独立第三方不能或不愿按照请求在递送设立专家组请求之日后 60 天期限内完成任命，则主席应在另一 5 天的期限内使用(vi)目中所列程序随机

subparagraph (vi).

3. Unless the disputing Parties agree otherwise, the chair shall not be a national of any of the disputing Parties or a third Party and any nationals of the disputing Parties or a third Party appointed to the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) shall be excluded from a selection process under paragraph 2(d).

4. Each disputing Party shall endeavour to select panellists who have expertise or experience relevant to the subject matter of the dispute.

5. For a dispute arising under Chapter 19 (Labour), Chapter 20 (Environment) or Chapter 26 (Transparency and Anti-corruption), each disputing Party shall select panellists in accordance with the following requirements, in addition to those set out in Article 28.10.1 (Qualifications of Panellists):

- (a) in any dispute arising under Chapter 19 (Labour), panellists other than the chair shall have expertise or experience in labour law or practice;
- (b) in any dispute arising under Chapter 20 (Environment), panellists other than the chair shall have expertise or experience in environmental law or practice; and
- (c) in any dispute arising under section C of Chapter 26 (Transparency and Anti-corruption), panellists other than the chair shall have expertise or experience in anti-corruption law or practice.

6. If a panellist selected under paragraph 2 is unable to serve on the panel, the complaining Party, the responding Party, or the disputing Parties, as the case may be, shall, no later than seven days after learning that the panellist is unavailable, select another panellist in accordance with the same method of selection that was used to select the panellist who is unable to serve, unless the disputing Parties agree otherwise.

7. If the process for selecting the new panellist under paragraph 6 is not completed within the time frame set out in that paragraph then the disputing Parties shall select the panellist by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) no later than 15 days after learning that the original panellist is no longer able to serve.

8. If a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) then the disputing Parties shall select the panellist by using the method of selection set out in paragraph 2(d)(vi) no later than 15 days after learning that the original panellist is no longer able to serve.

9. If a panellist appointed under this Article resigns or becomes unable to

选择。

3. 除非争端各方另有议定，否则主席不得属任何一争端方或第三方的国民，提名列入根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的名册的争端各方或第三方的任何国民应排除在第 2 款(d)项下的选择程序之外。
4. 每一争端方应努力选择具备与争端主题事项相关的专门知识或经验的专家组成员。
5. 对于第 19 章(劳工)、第 20 章(环境)或第 26 章(透明度和反腐败)下产生的争端，每一争端方除应依照满足第 28.10.1 条(专家组成员的资格)中所列要求外，还应依照下列要求选择专家组成员：
 - (a) 在第 19 章(劳工)下产生的任何争端中，除主席外的专家组成员应具备劳动法律或实务的专门知识或经验；
 - (b) 在第 20 章(环境)下产生的任何争端中，除主席外的专家组成员应具备环境法律或实务的专门知识或经验；以及
 - (c) 在第 26 章(透明度和反腐败)C 节下产生的任何争端中，除主席外的专家组成员应具备反腐败法律或实务的专门知识或经验。
6. 如根据第 2 款选择的一名专家组成员不能在专家组中任职，则起诉方、应诉方或争端各方(视情况而定)应不迟于得知该专家组成员不能任职后 7 天依照原用于选择该无法任职专家组成员的相同方式选择另一名专家组成员，除非争端各方另有议定。
7. 如根据第 6 款选择新专家组成员的程序未在该款中所列时限内完成，则争端各方应不迟于得知该原专家组成员不能任职后 15 天，自根据第 28.11 条(专家组主席名册和缔约方特定名单)建立的名册中随机选择专家组成员。
8. 如名册尚未根据第 28.11 条(专家组主席名册和缔约方特定名单)建立，则争端各方应不迟于得知该原专家组成员不能任职后 15 天，通过使用第 2 款(d)项(vi)目中所列选择方式选择专家组成员。
9. 如在诉讼程序进行中或在根据第 28.20 条(不执行-补偿或

serve on the panel, either during the course of the proceeding or when the panel is reconvened under Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits) or Article 28.21 (Compliance Review), a replacement panellist shall be appointed within 15 days in accordance with paragraphs 6, 7 and 8. The replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, and all time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

10. If a disputing Party believes that a panellist is in violation of the code of conduct referred to in Article 28.10.1(d) (Qualifications of Panellists), the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 28.10: Qualifications of Panellists

1. All panellists shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
 - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
 - (c) be independent of, and not affiliated with or take instructions from, any Party; and
 - (d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 28.6 (Good Offices, Conciliation and Mediation).

Article 28.11: Roster of Panel Chairs and Party Specific Lists

Roster of Panel Chairs

1. No later than 120 days after the date of entry into force of this Agreement, those Parties for which this Agreement has come into force under Article 30.5 (Entry into Force) shall establish a roster to be used for the selection of panel chairs.

中止利益)或第 28.21 条(对遵守情况的审议)再次召集专家组时,根据本条任命的一名专家组成员辞职或不能继续在专家组中任职,则应在 15 天内依照第 6 款、第 7 款和第 8 款任命替代专家组成员。替代人选应拥有原专家组成员的所有权力和职责。专家组的工作应在任命替代专家组成员前中止,且本章和议事规则中所列所有时限应按中止工作的时间长度加以延长。

10. 如一争端方认为一名专家组成员违反第 28.10.1 条(d)项(专家组成员的资格)中所指的行为准则,则争端各方应进行磋商,如各方同意,则该专家组成员应予以撤换,并应依照本条选择一名新专家组成员。

第 28.10 条 专家组成员的资格

1. 所有专家组成员应:
 - (a) 具备在法律、国际贸易、本协定所涵盖的其他事项或国际贸易协定项下产生的争端解决方面的专门知识或经验;
 - (b) 在客观性、可靠性和合理判断力基础上经过严格挑选;
 - (c) 独立于且不附属于任何缔约方或接受任何缔约方的指示;以及
 - (d) 遵守议事规则中规定的行为准则。
2. 根据第 28.6 条(斡旋、调解和调停)已参与一争端的个人不得担任该争端的专家组成员。

第 28.11 条 专家组主席名册和缔约方特定名单

专家组主席名册

1. 不迟于本协定生效之日后 120 天,根据第 30.5 条(生效)本协定已对其生效的缔约方应建立专家组主席名册用于选择专家组主席。

2. If the Parties are unable to establish a roster within the time period specified in paragraph 1, the Commission shall immediately convene to appoint individuals to the roster. Taking into account the nominations made under paragraph 4 and the qualifications set out in Article 28.10 (Qualifications of Panellists), the Commission shall establish the roster no later than 180 days after the date of entry into force of this Agreement.
3. The roster shall consist of at least 15 individuals, unless the Parties agree otherwise.
4. Each Party may nominate up to two individuals for the roster and may include up to one national of any Party among its nominations.
5. The Parties shall appoint individuals to the roster by consensus. The roster may include up to one national of each Party.
6. Once established under paragraph 1 or 2, or if reconstituted following a review by the Parties, a roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. Members of the roster may be reappointed.
7. The Parties may appoint a replacement at any time if a roster member is no longer willing or available to serve.
8. Subject to paragraphs 4 and 5, any acceding Party may nominate up to two individuals for the roster. Either or both of those individuals may be included on the roster by consensus of the Parties.

Party Specific Indicative List

9. At any time after the date of entry into force of this Agreement, a Party may establish a list of individuals who are willing and able to serve as panellists.
10. The list referred to in paragraph 9 may include individuals who are nationals of that Party or non-nationals. Each Party may appoint any number of individuals to its list and appoint additional individuals or replace a list member at any time.
11. A Party that establishes a list in accordance with paragraph 9 shall promptly make it available to the other Parties.

Article 28.12: 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

2. 如缔约方未能在第 1 款中所规定的时限内建立名册，则自贸协定委员会应立即召开会议任命列入名册的个人。考虑到根据第 4 款进行的提名和第 28.10 条(专家组成员的资格)中所列资格，自贸协定委员会应不迟于本协定生效之日后 180 天建立名册。
3. 名册应至少由 15 人组成，除非缔约方另有议定。
4. 每一缔约方可最多提名 2 人列入名册，并可在其提名中最多包括 1 名来自任何缔约方的国民。
5. 缔约方应以协商一致方式任命列入名册的个人。名册中最多可包括来自每一缔约方的 1 名国民。
6. 根据第 1 款或第 2 款一经建立或在缔约方审议后重新组成，名册应保持有效至少 3 年或直至缔约方组成一新名册。名册中的成员可重新任命。
7. 如名册中一成员不再愿意或无法任职，则缔约方可随时任命替代成员。
8. 在遵守第 4 款和第 5 款的前提下，任何申请加入方可最多提名 2 人列入名册。经缔约方协商一致其中 1 个或 2 人可列入名册。

缔约方特定指示性名单

9. 在本协定生效之日后，一缔约方可随时建立一份愿意且有能够在专家组任职的人员名单。
10. 第 9 款中所指名单可包括属该缔约方国民或非国民的个人。每一缔约方可任命任何数量的个人列入名单，并可随时任命额外人员或替换名单中的成员。
11. 依照第 9 款建立名单的缔约方应迅速使其他缔约方可获得该名单。

第 28.12 条 专家组的职能

1. 专家组的职能是对向其提交的事项作出客观评估，包括对事实、本协定的适用性及与本协定的一致性进行的审查，并作出

recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties (1969)*. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

Article 28.13: Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement in accordance with Article 27.2.1(f) (Functions of the Commission), shall ensure that:

- (a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;
- (b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;
- (c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;
- (d) subject to subparagraph (f), each disputing Party shall:
 - (i) make its best efforts to release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and
 - (ii) if not already released, release all these documents by the time the final report of the panel is issued;
- (e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views

其职权范围所要求的和为解决争端所需要的调查结果、决定和建议。

2. 除非争端各方另有议定，否则专家组应以与本章和议事规则相一致的方式履行职能和进行诉讼。

3. 专家组应依照《维也纳条约法公约》(1969)第 31 条和第 32 条所体现的国际法条约解释规则审议本协定。对于已纳入本协定的《WTO 协定》任何条款，专家组还应审议 WTO 争端解决机构所通过的专家组报告和上诉机构报告中的相关解释。专家组的调查结果、决定和建议不得增加或减少缔约方在本协定项下的权利和义务。

4. 专家组应经协商一致作出决定，但是如专家组不能达成一致，则可以多数投票表决作出决定。

第 28.13 条 专家组的议事规则

依照第 27.2.1 条(f)项 (自贸协定委员会的职能)在本协定项下设立的议事规则应保证：

- (a) 争端各方有权参加至少一次专家组听证会，听证会上每一争端方可口头陈述观点；
- (b) 在遵守(f)项的前提下，任何专家组听证会应对公众开放，除非争端各方另有议定；
- (c) 每一争端方有机会提供一次最初书面陈述和一次书面辩驳书面陈述；
- (d) 在遵守(f)项的前提下，每一争端方应：
 - (i) 尽最大努力尽快在提交后，向公众发布其书面陈述、口头陈述的书面版本及对专家组问题或请求的书面答复(如有)；及
 - (ii) 如尚未发布，则在专家组最终报告发布时发布所有这些文件；
- (e) 专家组应审议位于一争端方领土内的非政府实体关

regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

- (f) confidential information is protected;
- (g) written submissions and oral arguments shall be made in English, unless the disputing Parties agree otherwise; and
- (h) unless the disputing Parties agree otherwise, hearings shall be held in the capital of the responding Party.

Article 28.14: Third Party Participation

A Party that is not a disputing Party and that considers it has an interest in the matter before the panel shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, make written submissions, present views orally to the panel, and receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of circulation of the request for the establishment of the panel under Article 28.7.2 (Establishment of a Panel).

Article 28.15: Role of Experts

At the request of a disputing Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

Article 28.16: Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

于就争端提供可帮助专家组评估争端各方陈述和论据的书面意见的请求；

- (f) 机密信息受到保护；
- (g) 书面陈述和口头辩论应使用英文，除非争端各方另有议定；以及
- (h) 除非争端各方另有议定，否则听证会应在应诉方首都举行。

第 28.14 条 第三方参与

不属争端方而认为其对专家组审议的事项具有利益的一缔约方，在向争端各方递送书面通知后，应有权出席所有听证会、提交书面陈述、向专家组口头陈述观点并接收争端各方的书面陈述。该缔约方应不迟于根据第 28.7.2 条(设立专家组) 散发设立专家组请求之日后 10 天作出书面通知。

第 28.15 条 专家的作用

专家组可应一争端方请求或自行向其认为适当的任何个人或机构寻求信息和技术建议，只要争端各方同意且遵守争端各方议定的任何条款和条件。争端各方应有机会就根据本条获得的任何信息或建议进行评论。

第 28.16 条 程序的中止或终止

1. 应起诉方请求，或在有多个起诉方的情况下，应起诉方联合请求，专家组可随时中止工作，中止期限不连续超过 12 个月。如被诉方请求专家组中止工作，则专家组应随时中止工作。如出现中止，则本章中和议事规则中所列相关时限应按中止工作的时间长度加以延长。如专家组的工作中止连续超过 12 个月，则专家组程序应终止，除非争端各方另有议定。
2. 如争端各方请求，则专家组应终止其程序。

Article 28.17: Initial Report

1. The panel shall draft its report without the presence of any Party.
2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any third Parties, and on any information or advice put before it under Article 28.15 (Role of Experts). At the joint request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.
3. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panellist. In cases of urgency, including those related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panellist.
4. The initial report shall contain:
 - (a) findings of fact;
 - (b) the determination of the panel as to whether:
 - (i) the measure at issue is inconsistent with obligations in this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations in this Agreement; or
 - (iii) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope);
 - (c) any other determination requested in the terms of reference;
 - (d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and
 - (e) the reasons for the findings and determinations.
5. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.
6. Panellists may present separate opinions on matters not unanimously agreed.

第 28.17 条 初步报告

1. 专家组应在任何缔约方不在场的情况下起草其报告。
2. 专家组应根据本协定相关条款、争端各方和第三方的陈述和论据以及根据第 28.15 条(专家的作用)提交其的任何信息或建议起草报告。应争端各方联合请求, 专家组可对解决争端提出建议。
3. 专家组应不迟于最后一名专家组成员任命之日后 150 天向争端各方提交初步报告。在紧急情况下, 包括涉及易腐货物的情况, 专家组应努力不迟于最后一名专家组成员任命之日后 120 天提交初步报告。
4. 初步报告应包含:
 - (a) 对事实的调查结果;
 - (b) 专家组关于下列各项的决定:
 - (i) 争议措施是否与本协定中的义务不一致;
 - (ii) 一缔约方在其他方面是否未能履行其在本协定中的义务; 或
 - (iii) 争议措施是否正在造成第 28.3.1 条(c)项(范围)范围内的利益丧失或减损;
 - (c) 职权范围所要求的任何其他决定;
 - (d) 如争端各方联合请求, 为解决争端所提出的建议; 以及
 - (e) 调查结果和决定的理由。
5. 在特殊情况下, 如专家组认为不能在第 3 款中所规定的期限内发布其初步报告, 则应将迟延的原因和其将发布报告的估计时间以书面形式告知争端各方。迟延不得超过 30 天额外期限, 除非争端各方另有议定。
6. 专家组成员可对未获一致同意的事项提出单独意见。

7. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may agree.

8. After considering any written comments by the disputing Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

Article 28.18: Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the disputing Parties agree otherwise. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall release the final report to the public.

2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

Article 28.19: Implementation of Final Report

1. The Parties recognise the importance of prompt compliance with determinations made by panels under Article 28.18 (Final Report) in achieving the aim of the dispute settlement procedures in this Chapter, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

- (a) the measure at issue is inconsistent with a Party's obligations in this Agreement;
- (b) a Party has otherwise failed to carry out its obligations in this Agreement; or
- (c) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope),

the responding Party shall, whenever possible, eliminate the non-conformity or the nullification or impairment.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to do so immediately.

7. 一争端方可不迟于初步报告提交后 15 天或在争端各方可能同意的另一期限内，向专家组提交其对初步报告的书面评论。
8. 在考虑争端各方对初步报告的任何书面评论后，专家组可修改报告并进行其认为适当的任何进一步审查。

第 28.18 条 最终报告

1. 专家组应不迟于初步报告提交之日起 30 天向争端各方提交最终报告，包括对未获一致同意的事项的任何单独意见，除非争端各方另有议定。在采取任何步骤保护机密信息后，争端各方应不迟于最终报告提交后 15 天向公众发布最终报告。
2. 专家组不得在初步报告或最终报告中披露哪位专家组成员持多数意见或哪位专家组成员持少数意见。

第 28.19 条 最终报告的执行

1. 缔约方认识到迅速遵守专家组根据第 28.18 条(最终报告)所作决定对于实现本章中争端解决程序的目标的重要性，这一目标即为保证争端获得积极解决。
2. 如专家组在最终报告中确定：
 - (a) 一争议措施与一缔约方在本协定中的义务不一致；
 - (b) 一缔约方在其他方面未能履行其在本协定中的义务；或
 - (c) 一争议措施正在造成第 28.3.11 条(c) 项(范围)范围内的利益丧失或减损；

则应诉方应在任何可能的情况下消除不符之处或利益丧失或减损。

3. 除非争端各方另有议定，否则如立即执行不可行，则应诉方应可在一合理期限内消除不符之处或利益丧失或减损。

4. The disputing Parties shall endeavour to agree on the reasonable period of time. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the final report under Article 28.18.1 (Final Report), any disputing Party may, no later than 60 days after the presentation of the final report under Article 28.18.1 (Final Report), refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 28.18.1 (Final Report). However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

Article 28.20: Non-Implementation – Compensation and Suspension of Benefits

1. The responding Party shall, if requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

- (a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity or the nullification or impairment; or
- (b) following the expiry of the reasonable period of time established in accordance with Article 28.19 (Implementation of Final Report), there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment.

2. A complaining Party may suspend benefits in accordance with paragraph 3 if that complaining Party and the responding Party have:

- (a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or
- (b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

4. 争端各方应努力就合理期限达成一致。如争端各方未能在根据第 28.18.1 条(最终报告)提交最终报告后 45 天内就合理期限达成一致，则任何争端方可不迟于根据第 28.18.1 条(最终报告)提交最终报告后 60 天，将该事项提交主席，通过仲裁确定合理期限。
5. 专家组主席应作为一项指南加以考虑，即合理期限不应超过自根据第 28.18.1 条(最终报告)提交最终报告起的 15 个月。但是，该时间可缩短或延长，取决于特定情况。
6. 主席应不迟于根据第 4 款向其提交该事项之日后 90 天确定合理期限。
7. 争端各方可同意改变第 4 款至第 6 款中所列程序以确定合理期限。

第 28.20 条 不执行—补偿与中止利益

1. 如一个或多个起诉方提出请求，则应诉方应不迟于收到该请求后 15 天与该一个或多个起诉方进行谈判，以期制定双方可接受的补偿，如：
 - (a) 应诉方已通知一个或多个起诉方拟不消除不符之处或利益丧失或减损；或
 - (b) 在依照第 28.19 条(最终报告的执行)确定的合理期限期满后，争端各方对应诉方是否已消除不符之处或该利益丧失或减损存在分歧。
2. 一起诉方可依照第 3 款中止利益，如该起诉方和该应诉方：
 - (a) 未能在启动补偿谈判后 30 天内就补偿达成协议；或
 - (b) 已就补偿达成协议，但相关起诉方认为应诉方未能遵守该协议的条款。

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.³ The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the panel issues its determination under paragraph 5, as the case may be.

4. In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

- (a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined non-conformity or nullification or impairment to exist;
- (b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and
- (c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account:
 - (i) the trade in the good, the supply of the service or other subject matter in which the panel has found the non-conformity or nullification or impairment, and the importance of that trade to the complaining Party;
 - (ii) that goods, all financial services covered under Chapter 11 (Financial Services), services other than such financial services, and each section in Chapter 18 (Intellectual Property), are each distinct subject matters; and
 - (iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

³ For greater certainty, the phrase “the level of benefits that the Party proposes to suspend” refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, or nullification or impairment in the sense of Article 28.3.1(c) (Scope), determined to exist by the panel in its final report issued under Article 28.18.1 (Final Report).

3. 一起诉方可在满足第 2 款中所列与该起诉方相关的条件后, 随时向应诉方作出书面通知告知中止具有同等效果的利益的意向。该通知应明确该缔约方拟议中止的利益水平。³起诉方可在根据本款作出通知之日或专家组根据第 5 款作出其决定之日(视情况而定)中的较晚日期后 30 天起实施中止利益。

4. 在考虑根据第 3 款中止何种利益时, 起诉方应适用下列原则和程序:

- (a) 应首先寻求中止与专家组已确定存在不符之处或利益丧失或减损相同主题事项中的利益;
- (b) 如其认为中止相同主题事项中的利益不可行或无效果, 且情况足够严重, 则起诉方可中止一不同主题事项中的利益。在第 3 款中所指的书面通知中, 起诉方应表明决定中止不同主题事项中利益所根据的理由; 以及
- (c) 在适用(a)项和(b)项中所列原则时, 起诉方应考虑:
 - (i) 专家组已认定存在不符之处或利益丧失或减损的货物贸易、服务提供或其他事项, 以及该贸易对起诉方的重要性;
 - (ii) 货物、第 11 章(金融服务)下所涵盖的所有金融服务、除此类金融服务外的服务以及第 18 章(知识产权)的每一节, 均属不同主题事项; 以及
 - (iii) 与利益丧失或减损相关的更广泛的经济因素及中止利益的更广泛的经济后果。

5. 如应诉方认为:

³ 为进一步明确, “该缔约方拟议中止的利益水平”的措辞指本协议项下的减让水平, 一起诉方认为中止减让将具有与由专家组在根据第 28.18.1 条(最终报告)发布的其最终报告中确定存在的、第 28.3.1 条(c) 项(范围)范围内的不符之处、利益丧失或减损同等的效果。

- (a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or
- (b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the panel has determined that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panel's determination.

7. The complaining Party shall not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The disputing Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 per cent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 per cent of the level that the complaining Party has proposed to suspend under paragraph 3.

8. If a monetary assessment is to be paid to the complaining Party, then it

- (a) 拟议中止的利益水平明显过度或起诉方未能遵循第 4 款中所列原则和程序；或
- (b) 应诉方已消除专家组确定存在的不符之处或利益丧失或减损，

则应诉方可在起诉方根据第 3 款递送书面通知之日后 30 天内，请求重新召集专家组以审议该事项。应诉方应以书面形式向起诉方递送其请求。专家组应在递送请求之日后尽快重新召集，并应不迟于重新召集以审议根据(a)项或(b)项提出的请求后 90 天，或不迟于重新召集以审议根据(a)项和(b)项提出的请求后 120 天，向争端各方提交其所作决定。如专家组确定起诉方拟议中止的利益水平明显过度，则应确定其认为具有同等效果的利益水平。

6. 除非专家组已确定起诉方已消除不符之处或利益丧失或减损，否则起诉方可中止利益，水平可达到专家组根据第 5 款已确定的水平，或如专家组未确定该水平，则可达到起诉方根据第 3 款拟议的水平。如专家组确定起诉方未能遵循第 4 款规定的原则和程序，则专家组应在其决定中列出起诉方可在哪一主题事项中中止利益的限度，以保证完全符合第 4 款中所列原则和程序。起诉方仅可以符合专家组决定的方式中止利益。

7. 如在起诉方作出关于中止利益意向的书面通知后 30 天内，或在专家组根据第 5 款重新召集的情况下，在专家组作出确定后 20 天内，应诉方向起诉方作出关于将支付货币赔偿的书面通知，则起诉方不得中止利益。争端各方应不迟于应诉方告知其有意支付货币赔偿后 10 天开始磋商，以期就赔偿金额达成一致。如争端各方在磋商开始后 30 天内未能达成一致且未进行关于使用第 8 款下基金的讨论，则该赔偿金额应定为以美元计等于专家组根据第 5 款已确定的具有同等效果的利益水平的 50%，或如专家组未确定该水平，则等于起诉方根据第 3 款拟议中止水平的 50%。

8. 如货币赔偿将向起诉方支付，则应以美元或以同等金额的应诉方货币或争端各方同意的另一货币，自应诉方告知有意支付

shall be paid in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties in equal, quarterly instalments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. If the circumstances warrant, the disputing Parties may decide that the responding Party shall pay an assessment into a fund designated by the disputing Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting the responding Party to carry out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly instalment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party that seeks an extension of the period for the payment under paragraph 10 shall make a written request for that extension no later than 30 days before the expiration of the 12 month period. The disputing Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraphs 3, 4 and 6, if:

- (a) the responding Party fails to make a payment under paragraph 8 or fails to make the payment under paragraph 13 after electing to do so;
- (b) the responding Party fails to provide the plan as required under paragraph 9; or
- (c) the monetary assessment period, including any extension, has lapsed and the responding Party has not yet eliminated the non-conformity or the nullification or impairment.

13. If the responding Party notified the complaining Party that it wished to discuss the possible use of a fund and the disputing Parties do not agree on the use of a fund within three months of the date of the responding Party's notice under paragraph 7, and this time period has not been extended by agreement of the disputing Parties, the responding Party may elect to make the monetary assessment payment equal to 50 per cent of the amount determined under paragraph 5 or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5. If this election is made, the

赔偿之日后 60 天起，分季度等额分期支付。如情况允许，争端各方可决定应诉方应将赔偿存入争端各方指定的一基金，该基金用于便利争端缔约方之间贸易的适当倡议，包括通过进一步减少不合理贸易壁垒或通过帮助应诉方履行其在本协定项下的义务。

9. 在应支付第一期季度分期付款之时，应诉方应向起诉方提供其为消除不符之处或利益丧失或减损所拟采取步骤的计划。

10. 应诉方可自其根据第 7 款作出书面通知之日起最长 12 个月内支付货币赔偿以替代利益中止，除非起诉方同意延期。

11. 根据第 10 款寻求延长支付期的一应诉方应不迟于 12 个月期限期满前 30 天提交书面延期请求。争端各方应确定任何延期的长度和条件，包括赔偿金额。

12. 起诉方可依照第 3 款、第 4 款和第 6 款对应诉方中止适用利益，如：

- (a) 应诉方未能根据第 8 款进行支付或在根据第 13 款作出选择后未能根据该款进行支付；
- (b) 应诉方未能按第 9 款所要求的提供计划；或
- (c) 货币赔偿的期限，包括任何延期，已期满，而应诉方仍未消除不符之处或利益丧失或减损。

13. 如应诉方通知起诉方希望讨论基金的可能用途，且争端各方未能在应诉方根据第 7 款作出通知之日后 3 个月内就基金的使用达成一致，且这一期限未能经争端各方同意而予以延长，则应诉方可选择支付等于根据第 5 款所确定金额的 50% 的货币赔偿，或在未作出第 5 款下确定的情况下，支付等于起诉方根据第 3 款拟议中止利益水平的 50% 的货币赔偿。如作出这一选择，则应在应诉方根据第 7 款作出通知后 9 个月内以美元或以同等金额的应

payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5, or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5, at the end of the election period.

14. The complaining Party shall accord sympathetic consideration to the notice provided by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

15. Compensation, suspension of benefits and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation, suspension of benefits and the payment of a monetary assessment shall only be applied until the responding Party has eliminated the non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

Article 28.21: Compliance Review

1. Without prejudice to the procedures in Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits), if a responding Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party or Parties. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. If the panel determines that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits suspended under Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits).

Section B: Domestic Proceedings and Private Commercial Dispute Settlement

Article 28.22: Private Rights

No Party shall provide for a right of action under its law against any other Party on the ground that a measure of that other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

诉方货币或争端各方同意的另一货币进行支付。如未作出这一选择，则起诉方在选择期结束时，可按根据第 5 款确定的金额，或在未作出第 5 款下确定的情况下，按起诉方根据第 3 款拟议的水平中止利益的适用。

14. 起诉方应对应诉方提出的关于第 8 款和第 13 款中所指基金可能用途的通知给予积极考虑。

15. 补偿、中止利益和货币赔偿的支付均应为临时措施。通过消除不符之处或利益丧失或减损而实现全面执行优于上述各项措施。补偿、中止利益和货币赔偿的支付仅应适用至应诉方已消除不符之处或利益丧失或减损或已达成双方满意的解决办法时为止。

第 28.21 条 对遵守情况的审查

1. 在不损害第 28.20 条(不执行—补偿与利益中止)中程序的情况下，如一应诉方认为其已消除专家组裁定的不符之处或利益丧失或减损，则应诉方可通过向一个或多个起诉方作出书面通知的方式将该事项提交专家组。专家组应不迟于应诉方作出书面通知后 90 天就该事项提交报告。

2. 如专家组确定应诉方已消除不符之处或利益丧失或减损，则一个或多个起诉方应迅速恢复根据第 28.20 条(不执行—补偿与利益中止)中止的任何利益。

B 节：国内程序与私人商事争议解决

第 28.22 条 个人权利

任何缔约方不得以另一缔约方的一措施不符合其在本协定项下的义务或另一缔约方在其他方面未能履行其在本协定项下的义务为由，在其国内法项下规定起诉任何其他缔约方的诉讼权利。

Article 28.23: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

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

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to, and is in compliance with, the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* done at New York on 10 June 1958.

第 28.23 条 替代性争议解决

1. 每一缔约方应在最大可能限度内鼓励和便利使用仲裁和其他替代性争议解决办法以解决本自由贸易区内私人当事人之间的国际商事争议。
2. 为此，每一缔约方应规定适当程序以保证在此类争议中仲裁协议得到遵守及仲裁裁决得到承认和执行。
3. 如一缔约方属 1958 年 6 月 10 日订于纽约的《联合国承认及执行外国仲裁裁决公约》的缔约方并遵守该公约，则该缔约方应被视为符合第 2 款的规定。