

CHAPTER 6

DISPUTE SETTLEMENT

Article 6.1 Definitions

For the purposes of this Chapter:

- (a) **“arbitrator”** means a member of an arbitration panel established under Article 6.8 (Composition and Establishment of the Arbitration Panel);
- (b) **“arbitration panel”** means a panel established under Article 6.8 (Composition and Establishment of the Arbitration Panel);
- (c) **“complaining Party”** means any Party that requests the establishment of an arbitration panel under Article 6.7 (Initiation of Arbitration Procedure);
- (d) **“DSU”** means the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement;
- (e) **“Party complained against”** means the Party that is alleged to be in violation of the provisions of this Agreement; and
- (f) **“proceeding”**, unless otherwise specified, means an arbitration panel proceeding under this Chapter.

Article 6.2 Objective

The objective of this Chapter is to avoid and settle any dispute between the Parties with a view to arriving at, where possible, a mutually acceptable solution.

Article 6.3

Scope

1. Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of the provisions of this Agreement wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with the obligations under this Agreement; or
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement.

2. For greater certainty, disputes arising from the nullification or impairment of any benefit that a Party could reasonably have expected to accrue to it under this Agreement as a result of the application of any measure by the other Party which is not inconsistent with this Agreement shall not be subject to the provisions of this Chapter.

Article 6.4 Choice of Forum

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement proceedings.

2. Where the complaining Party has, with regard to a particular measure, initiated a dispute settlement proceeding either under this Chapter or under the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. Moreover, the complaining Party should not initiate dispute settlement proceedings under this Chapter and under the WTO Agreement, unless substantially different obligations are in dispute, or unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation, provided that the failure of the forum is not the result of a failure of a Party to act diligently.

3. For the purposes of paragraph 2:

- (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU and are deemed to be ended when the Dispute Settlement Body (hereinafter referred to as "DSB") established in paragraph 1 of Article 2 of the DSU adopts the Panel's report, and the Appellate Body's report as the case may be, under Article 16 and paragraph 14 of Article 17 of the DSU; and
- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 6.7 (Initiation of Arbitration Procedure) and are deemed to be ended when the arbitration panel issues its final report to the Parties under Article 6.11 (Interim and Final Arbitration Panel Report) or when arbitration procedures have been terminated under Article 6.15 (Suspension and Termination of Arbitration Procedures).

4. Nothing in this Chapter shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations as provided for under this Chapter.

Article 6.5

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of the provisions of this Agreement and to resolve any dispute thereof by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations, by means of a written request to the other Party's contact point, and shall give the reasons for the request, including identification of the measures at issue, the applicable provisions of the Agreement and the reasons for the applicability of such provisions.
3. Consultations shall be held no later than thirty (30) days after the date of receipt of the request, and shall be deemed concluded sixty (60) days after the date of receipt of the request, unless the Parties agree otherwise. Consultations on matters of urgency, including those regarding perishable goods, shall be held no later than fifteen (15) days after the date of receipt of the request, and shall be deemed concluded thirty (30) days after the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations may be held in person or by any technological means available to the Parties. If consultations are held in person, they shall be held in the territory of the Party to whom the request was made, unless the Parties agree otherwise. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.
5. If the Party to whom the request is made does not respond to the request for consultations within ten (10) days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 6.7 (Initiation of Arbitration Procedure).

Article 6.6

Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time. They may be terminated at any time upon the request of either Party.
2. If the Parties so agree, good offices, conciliation or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.
3. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any other proceeding.

Article 6.7

Initiation of Arbitration Procedure

A request for the establishment of an arbitration panel shall be made in writing to the contact point of the Party complained against. The complaining Party shall identify in its request the specific measure or other matter at issue, whether consultations have been held and a summary of the legal basis of the complaint in a manner sufficient to present the problem clearly.

Article 6.8

Composition and Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three (3) arbitrators. Each Party shall appoint an arbitrator no later than thirty (30) days after the receipt of the request referred to in Article 6.7 (Initiation of Arbitration Procedure), and the two arbitrators shall, no later than thirty (30) days after the appointment of the second of them, designate by agreement the third arbitrator.
2. The Parties shall, no later than seven (7) days after the designation of the third arbitrator, approve or disapprove the appointment of that arbitrator, who shall, if approved, act as the chairperson of the arbitration panel.
3. If the third arbitrator has not been designated as provided under paragraph 1, or either Party disapproves the appointment of the third arbitrator, the Director-

General of the WTO shall, at the request of either Party, within a further period of thirty (30) days, appoint the third arbitrator, who shall act as the chairperson of the arbitration panel.

4. If a Party does not appoint an arbitrator as provided under paragraph 1, the other Party may inform the Director-General of the WTO, who shall appoint the chairperson of the arbitration panel within a further period of thirty (30) days. Upon appointment, the chairperson shall request the Party which has not appointed an arbitrator to do so within fourteen (14) days. If after such period, that Party has still not appointed an arbitrator, the chairperson shall inform the Director-General of the WTO, who shall make this appointment within a further period of thirty (30) days.

5. For the purposes of paragraphs 3 and 4, in the event that the Director-General of the WTO is a national of Kazakhstan or Singapore, the Deputy Director-General of the WTO or the officer next in seniority who is not such a national shall be requested to make the necessary appointments.

6. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is appointed.

7. Any person appointed as an arbitrator of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements. An arbitrator shall be chosen strictly on the bases of objectivity, reliability, sound judgment and independence, and shall conduct himself or herself on these bases throughout the course of the arbitration proceedings and in accordance with Annex 6 – 2 (Code of Conduct for Arbitrators). Additionally, the chairperson shall not be a national of, have his or her usual place of residence in the territory of, or be employed by, Kazakhstan or Singapore. The chairperson shall be a national of a state having diplomatic relations with Kazakhstan and Singapore. If a Party considers that any arbitrator of the arbitration panel is in violation of these requirements, the Parties shall consult and if they agree, the arbitrator shall be removed and a new arbitrator shall be appointed in accordance with this Article.

8. If any arbitrator of the arbitration panel appointed under this Article resigns or becomes unable to participate in the proceeding, or is removed according to paragraph 7, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. In such a case, the work of the arbitration panel shall be suspended for a period beginning on the date the original arbitrator resigns, becomes unable to participate in the proceeding, or is removed according to paragraph 7, and all timeframes applicable to the arbitration panel proceedings shall be extended by the amount of time for which the work of the arbitration panel is suspended. The work of the arbitration panel shall resume on the date the successor is appointed. The successor shall have all the powers and duties of the original arbitrator.

Article 6.9 **Terms of Reference**

Unless the Parties otherwise agree no later than twenty (20) days after the date of receipt of the request for the 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 on Trade in Services and Investment between the Republic of Kazakhstan and the Republic of Singapore, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 6.7 (Initiation of Arbitration Procedure), and to make findings, determinations and any recommendations for resolution of the dispute, and issue a written report, as provided in Article 6.11 (Interim and Final Arbitration Panel Report)”.

Article 6.10 **Proceedings of the Arbitration Panel**

1. The arbitration panel shall meet in closed session, unless the Parties decide otherwise.
2. Each Party shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the

arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution or mutually agreed solution.

5. The arbitration panel shall make every effort to take any decision by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.

6. At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source it deems appropriate for the arbitration panel proceedings. The arbitration panel also has the right to seek the opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments. Where the arbitration panel takes such information into account in the preparation of its report, it shall also take into account any comments by the Parties on such information.

7. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

8. Notwithstanding paragraph 7, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential any information and written submissions submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, no later than thirty (30) days after a request by the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

Article 6.11
Interim and Final Arbitration Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out:
 - (a) a summary of the submissions and arguments of the Parties;
 - (b) the findings of fact, together with reasons;
 - (c) its determination as to the interpretation or application of the provisions of this Agreement, and whether
 - (i) a measure at issue is inconsistent with the obligations of this Agreement; or
 - (ii) a Party complained against has otherwise failed to carry out its obligations under this Agreement;
 - (d) any other determination requested in the terms of reference; and
 - (e) if there is a determination of inconsistency, its recommendation that the Party complained against bring the measure into conformity with the obligations under this Agreement and, if the Parties agree, on the means to resolve the dispute,

no later than ninety (90) days, or sixty (60) days in case of urgency, after the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the arbitration panel issue its interim report later than one hundred and twenty (120) days after the date of its establishment.

2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within thirty (30) days of its issuance. The arbitration panel shall consider any written comments on the interim report by the Parties within fifteen (15) days from the date of receipt of the written comments.

After considering any such written comments by the Parties, the arbitration panel may modify its report and make any further examination it considers appropriate.

3. The arbitration panel shall issue its final report to the Parties no later than forty-five (45) days, or thirty (30) days in case of urgency, after the issuance of the interim report. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. Under no circumstances should the arbitration panel issue its final report later than one hundred and eighty (180) days after the date of its establishment. The final report shall set out the matters listed in paragraph 1, include a sufficient discussion of the arguments made at the interim review stage and address clearly the written comments of the Parties.

4. The final report of the arbitration panel shall be unconditionally accepted by the Parties with regard to a particular dispute. In its findings and recommendations, the arbitration panel cannot add to or diminish the rights and obligations provided in this Agreement.

Article 6.12

Implementation of the Arbitration Panel Report

1. Each Party shall take any measure necessary to comply in good faith with the final report of the arbitration panel. If, in its final report, the arbitration panel determines that a measure at issue is inconsistent with the obligations under this Agreement, or that the Party complained against has otherwise failed to carry out its obligations under this Agreement, the Party complained against shall, whenever possible, eliminate the non-conformity with this Agreement.

2. No later than thirty (30) days after the issuance of the final report of the arbitration panel, the Party complained against shall notify the complaining Party of the time it will require for compliance with the final report (hereinafter referred to as the “reasonable period of time”), if immediate compliance is not practicable. The Parties shall endeavour to agree on the reasonable period of time.

3. If the Parties fail to agree within a period of forty-five (45) days after the issuance of the final report of the arbitration panel on the reasonable period of

time, the complaining Party may, no later than fifty (50) days after the issuance of the final report, request in writing to the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party. The original arbitration panel shall issue to the Parties its determination on the length of the reasonable period of time no later than twenty (20) days after the date of the submission of the request.

4. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 6.8 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination on the length of the reasonable period of time shall be no later than thirty-five (35) days¹ after the date of the submission of the request referred to in paragraph 3.

5. The Party complained against shall notify the complaining Party before the end of the reasonable period of time of any measure that it has taken to comply with the final report of the arbitration panel. The reasonable period of time may be extended by mutual agreement of the Parties at any time before its expiry.

6. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 5 with the provisions of this Agreement, the complaining Party may request in writing that the original arbitration panel make a determination on the matter. Such request shall be notified simultaneously to the other Party, and shall identify any specific measure at issue and the provisions referred to in Article 6.3 (Scope) that it considers the measure to be inconsistent with, in a manner sufficient to present the disagreement clearly. The original arbitration panel shall issue to the Parties its determination no later than forty-five (45) days after the date of the submission of the request.

7. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 6.8 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination

¹ For greater certainty, the period of thirty-five (35) days does not include any days suspended pursuant to paragraph 8 of Article 6.8 (Composition and Establishment of the Arbitration Panel).

shall be no later than sixty (60) days² after the date of the submission of the request referred to in paragraph 6.

² For greater certainty, the period of sixty (60) days does not include any days suspended pursuant to paragraph 8 of Article 6.8 (Composition and Establishment of the Arbitration Panel).

Article 6.13

Compensation and Suspension of Concessions or Other Obligations

1. If the Party complained against fails to notify any measure taken to comply with the final report of the arbitration panel in accordance with Article 6.12 (Implementation of the Arbitration Panel Report), or if the arbitration panel determines that any measure notified under Article 6.12 (Implementation of the Arbitration Panel Report) does not exist or is inconsistent with any provision of this Agreement, the Party complained against shall enter into negotiations with the complaining Party, with a view to reaching a mutually acceptable agreement on compensation.

2. If the Parties fail to agree on compensation within thirty (30) days after:

(a) the expiry of the reasonable period of time; or

(b) the issuance of the arbitration panel's determination that any measure notified under Article 6.12 (Implementation of the Arbitration Panel Report) does not exist or is inconsistent with any provision of this Agreement,

as the case may be, the complaining Party shall be entitled, upon notification to the Party complained against, to suspend concessions or other obligations arising from this Agreement of equivalent effect to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The notification shall specify the level of concessions or other obligations that the complaining Party intends to suspend and indicate the reasons on which the suspension is based. The complaining Party may begin implementing the suspension twenty (20) days after the delivery of its notification to the Party complained against, subject to paragraph 4.

3. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector as that in which the final report of the arbitration panel referred to in Article 6.11

(Interim and Final Arbitration Panel Report) has found an inconsistency with the obligations under this Agreement;

- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector, it may suspend concessions or other obligations with respect to other sectors; and
- (c) the complaining Party will take into consideration those concessions or other obligations the suspension of which would least disturb the functioning of this Agreement.

4. The Party complained against may request in writing the original arbitration panel to make a determination on whether the level of concessions or other obligations that the complaining Party intends to suspend is equivalent to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. Such request shall be notified to the complaining Party before the expiry of the twenty (20)-day period referred to in paragraph 2. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall issue to the Parties its determination no later than thirty (30) days after the date of the submission of the request. Concessions or other obligations shall not be suspended until the arbitration panel has issued its determination and any suspension shall be consistent with the arbitration panel's determination.

5. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 6.8 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination shall be no later than forty-five (45) days³ after the date of the submission of the request referred to in paragraph 4.

6. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 are temporary measures. Neither compensation nor suspension is preferred to full elimination of any non-conformity with this Agreement as

³ For greater certainty, the period of forty-five (45) days does not include any days suspended pursuant to paragraph 8 of Article 6.8 (Composition and Establishment of the Arbitration Panel).

determined in the final report of the arbitration panel. Any suspension shall only be applied until such time as the non-conformity is fully eliminated, or the non-conformity is determined in accordance with Article 6.14 (Compliance Review) to have been eliminated, or the Parties have otherwise reached a mutually satisfactory solution.

Article 6.14

Compliance Review

1. If the Party complained against considers that it has eliminated the non-conformity with this Agreement as originally determined by the final report of the arbitration panel, it may request in writing that the original arbitration panel make a determination on the matter. Such request shall be notified simultaneously to the other Party. The original arbitration panel shall issue to the Parties its determination no later than forty-five (45) days after the date of the submission of the request. If the arbitration panel determines that the Party complained against has eliminated the non-conformity with the provisions of this Agreement, the complaining Party shall cease to apply any suspension of concessions or other obligations that it has implemented.

2. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 6.8 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination shall be no later than sixty (60) days⁴ after the date of the submission of the request referred to in paragraph 1.

Article 6.15

Suspension and Termination of Arbitration Procedures

1. The arbitration panel shall, at the written request of both Parties, suspend its work at any time for a period agreed by the Parties, not exceeding twelve (12) months, and shall resume its work at the end of this agreed period at the written request of the complaining Party, or before the end of this agreed period at the written request of both Parties. If the complaining Party does not request the

⁴ For greater certainty, the period of sixty (60) days does not include any days suspended pursuant to paragraph 8 of Article 6.8 (Composition and Establishment of the Arbitration Panel).

resumption of the arbitration panel's work before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Chapter shall be deemed terminated. Subject to Article 6.4 (Choice of Forum), the suspension or termination of the arbitration panel's work is without prejudice to the rights of either Party in another proceeding.

2. The Parties may, at any time, agree in writing to terminate the dispute settlement procedures initiated pursuant to this Chapter.

Article 6.16

Rules of Procedure

Dispute settlement procedures under this Chapter shall be governed by Annex 6 – 1 (Rules of Procedure for Arbitration).

Article 6.17

Rules of Interpretation

The arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

Article 6.18

Expenses

Each Party shall bear the cost of its appointed arbitrator and its own expenses and legal costs. The cost of the chairperson of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Article 6.19

Time Limits

1. All time limits laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties.