

RCEP DRAFT INVESTMENT TEXT: CHINA

(based on Draft Investment Text October 2015)

Article XX

SCOPE

1. This Chapter applies/shall apply to measures adopted or maintained by a Party relating to:

(a) investors of another Party;

(b) covered investments;

2. A Party's obligations under this Chapter/Section A [shall apply to/means] measures [adopted or maintained] by:

(a) the central, provincial and sub-provincial levels of government of that/a Party; and

(b) [to] any non-governmental body/ies [in the exercise of powers/when it exercises governmental authority] delegated by central, [regional/provincial or sub-provincial levels of] governments of that Party.^{1 2}

3. For greater certainty, the provisions of this Chapter do/does not bind any/either/a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.³

¹ For greater certainty, "government authority" refers to the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct, through the exercise of lawful authority which would normally be vested in the government. Delegation of governmental authority shall be effected by laws, regulations, or a government order or directive expressly transferring to the person, or authorizing the exercise by the person of, governmental authority.

² *WGI 10: For some RPCs, the 'measures [adopted/maintained] by' are in the Scope article while for some, it is in the definition of measures. RPCs to consider placement.*

³ Other RPCs are considering a similar text and are still reviewing what protection elements and obligations should be covered.

Article XX

DEFINITIONS

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention; ⁴

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

covered investment means, with respect to a Party, an investment in [its] [the] territory of an investor of another Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted according to its laws and regulations.

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

Enterprise means any entity constituted or organised under applicable law whether or not for profit, and whether privately or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party and a branch located in the territory of a Party and carrying out business activities there;

“existing” means in effect on the date of entry into force of this Agreement; ⁵

⁴ *WGI 9: To consider placing ISDS-related definitions in the ISDS Article.*

⁵ *WGI 10: Some RPCs propose to refer this to WGLII. WGI to discuss further.*

freely usable currency means freely usable currency as determined by the International Monetary Fund (IMF) under its Articles of Agreement;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington, March 18, 1965;

Investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment: such as the commitment of capital or other resources, the expectation of gain/s or profit/s, or the assumption of risk. ⁶ Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stocks, and/or other forms of equity participation in a juridical person/an enterprise
- (c) bonds, debentures, other debt instruments and loans (including loans to, or debt securities issued by a Party)⁷;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;

⁶ For greater certainty, donation does not constitute an investment.

⁷ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(g) licences, authorisations, permits, and/or similar rights conferred pursuant to domestic law⁸; and

(h) other tangible or intangible, movable and/or immovable property, and related/other property rights, such as leases, mortgages, liens, and/or pledges;

[but] [The term] investment does not [mean] [include] an order or judgment entered in [a] judicial or administrative action.⁹

investment agreement means a written agreement¹⁰ between a national authority¹¹ of a Party and a covered investment or an investor of any other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

⁸ Whether a particular type of licence, authorisation, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment also depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licences, authorisations, permits, and similar instrument[s] that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the licence, authorisation, permit, or similar instrument [s] has the characteristics of an investment.

⁹ *WGI 10: ASEAN can accept in principle. Other RPCs have similar text. Language and placement to be discussed further.*

¹⁰ "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 35[Governing Law](2). For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

¹¹ For purposes of this definition, national authority means (a) for [], []; and (b) for the People's Republic of China, an agency of an authority at the central [of] government.

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of any Party;

investor of a Party means a Party [/or] a [national/natural person of a Party] or [a juridical person/an enterprise] of a Party that attempts to make, is making, or has made an investment in the territory of another Party;

measure/s, includes any law, regulation, procedure, requirement or practice;

“National” means:

(a) for , []; and

(b) for the People's Republic of China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China.

non-disputing Party means [a/the] Party of the claimant;

“person” means a natural person or an enterprise.

“person of a Party” means a national or an enterprise of a Party.¹²

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

“provincial level of government” means:

(a) for , []; and

¹² *WGI 10: Ch to reconsider “person” and “person of a party”.*

(b) for the People's Republic of China, the provincial level of government.¹³

respondent means the Party that is a party to an investment dispute;

“territory” means:

(a) with/in respect to/of, [].

(b) with respect to the People's Republic of China, areas including the land territory, internal waters, territorial sea and the air space above them, as well as any area beyond its territorial sea within which the People's Republic of China has sovereign rights or jurisdiction in accordance with the international law and Chinese law.¹⁴

“TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement.¹⁵

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.¹⁶

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh on the 15th day of April 1994.

Article XX

NATIONAL TREATMENT

1. Each Party shall accord to investors of another/the other Party treatment no less favourable than that it accords, in like circumstances, to its own

¹³ *WGI 10: Ch and In informed that it is necessary for them to define provincial/regional level of government.*

¹⁴ *WGI 10: Submitted as a cross-cutting issue.*

¹⁵ For greater certainty, “TRIPS Agreement” includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement. *WGI 10: To be submitted as a cross-cutting issue.*

¹⁶ *WGI 10: Submitted as a cross-cutting issue.*

investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article XX

MOST FAVOURED NATION TREATMENT

1. Each Party shall accord to investors of [another/any other] Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. Paragraphs 1 and 2 of this Article shall not be construed to oblige any Party to extend to the investors of another Party or covered investments any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.¹⁷

¹⁷ China will delete and place in their Reservation List.

4. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution procedures or mechanisms such as those included in Section B of this Chapter.

Article XX
TREATMENT OF INVESTMENT /
MINIMUM STANDARD OF TREATMENT

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments.

3. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:¹⁸

(a) fair and equitable treatment refers to the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process of law and;

(b) full protection and security refers to the requirements on each/a Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, [does/shall] not establish that there has been a breach of this Article.

¹⁸ WGI 10: *Ch to revert on “additional substantive rights”.*

Article XX

PROHIBITION OF PERFORMANCE REQUIREMENTS¹⁹

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of [any other/another/a] Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking:²⁰

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content of goods;²¹
- (c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from person/s in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. [No/Neither] Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement/s:

¹⁹ *WGI 9: Most AFPs prefer to include some TRIMs plus elements.*

²⁰ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

²¹ *RPCs to revert on inclusion “of goods”.*

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3.

- (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
- (b) Paragraph 1(f) shall not apply:
 - (i) When a Party authorises use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
 - (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.²²
- (c) Paragraphs 1(a), 1(b), and 1(c), and 2(a) and 2(b), shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
- (d) Paragraphs 2(a) and 2(b) [shall/do] not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

²² The Parties recognise that a patent does not necessarily confer market power.

4. For greater certainty, paragraphs 1 and 2 shall/do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

Article XX

SENIOR MANAGEMENT AND BOARD OF DIRECTORS AND ENTRY OF PERSONNEL

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. [A Party] may require that a majority of the board of directors, or any committee thereof, of [a juridical person/an enterprise] of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

3. Subject to its measures relating to public health and safety and national security applicable to the entry and sojourn, a Party shall permit natural persons who have the nationality of another Party and,

- (a) attempt to make, are making, or have made an investment in its territory; or
- (b) are employed by any persons who attempt to make, are making, or have made an investment in its territory, or are employed by any enterprise that is a covered investment, or an affiliate or subsidiary thereof, in a capacity that is managerial, executive or that requires specialized knowledge, to enter and stay temporarily in its territory.²³

Article XX

RESERVATIONS / NON-CONFORMING MEASURES

²³ *Ch prefers to include this in the Inv. Chapter but will consult with its Services counterpart.*

1. Article/s (Most-Favoured-Nation Treatment), (Performance Requirements) and (Senior Management and Boards of Directors), shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government as set out by that Party in its Schedule of Reservations in [Annex 1/List 1/3];
 - (ii) the [regional/provincial] level of government as set out by that Party in its Schedule of Reservations to [Annex 1/in List 1]]; or
 - (iii) the local level of government.²⁴
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a)/(i); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a)/(i) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles (National Treatment), (Most-Favoured-Nation Treatment), (Performance Requirements) and (Senior Management and Boards of Directors).

2. Article/s (National Treatment), (Most-Favoured-Nation Treatment), (Performance Requirements), and Paragraphs 1 and 2 of (Senior Management and Boards of Directors and Entry of Personnel), shall not apply to any reservation for measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in [its Schedule to Annex II/List 2].

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule [to/in] Annex II, require an investor of [any/the other/another] Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles (National Treatment) and (Most Favoured Nation Treatment) do not apply to any measure that is an exception to, or derogation from, [a

²⁴ *WGI 9: To revisit levels of government to be covered in the Scope of the Chapter*

Party's/the] obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.²⁵

5. Nothing in this Chapter shall apply to any measure of any Party in respect of government procurement.

6. Articles (National Treatment), (Most Favoured Nation Treatment) and (Senior Management and Board of Directors and Entry of Personnel) do not apply to: subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

7. Nothing in this Chapter shall apply to any measure of any Party in respect of cultural industries. For purpose of this Article, "cultural industries" means natural persons or enterprises engaged in any of the following activities:

- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but does not include the sole activity of printing or typesetting any of the foregoing;
- (b) the publication, production, distribution, sale or exhibition of film or video recordings;
- (c) the publication, production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, production, distribution, sale or exhibition of music in print or machine readable form;
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio stations, television stations, radio frequencies, television channels, radio and/or television

²⁵ WGI 9: *May have to wait for developments within the IP WG to finalise the text for this provision*

transmission and coverage networks, and the production and operation of radio and television programmes; or

- (f) Cultural information services such as news, publication, audiovisual programs, audio and video products, and games that are provided through Internet.²⁶

Article XX

TRANSFERS AND ANNEX ON TRANSFERS

1. Each Party/Member State shall [allow/permit] all transfers/funds relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers/funds include²⁷:
 - (a) contributions to capital,
 - (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees;
 - (d) payments made under a contract, including a loan agreement;
 - (e) payments made [in accordance/pursuant] to [Article (Compensation for Losses)] and Article (Expropriation);
 - (f) payments arising out of the settlement of a dispute; and

²⁶ *Ch to revert back on this provision including its coverage*

²⁷ Any transfer obligation provided in this article does not, in any situation and in any form, affect each Party's ability to administer foreign exchange under current account and capital account, including to impose necessary formality requirements.

(g) earnings and remuneration of a national of a Party who works in connection with a covered investment in the territory of another Party.

2. Each Party shall [allow/permit] such transfers relating to a/the covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer in the market of that Party²⁸.

3. Each Party shall permit returns in kind relating to a covered investment to be made as [authorized/authorised] or specified in a written agreement between the Party and a covered investment or an investor of [any other/another] Party.

4. Notwithstanding Paragraphs 1 [and 2/through 3], a Party/Host State may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws, regulations and rules relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

²⁸ For greater certainty, paragraph 2 does not require that the market rate of exchange in the territory of a Party be unaffected by any government intervention.

Article XX

SPECIAL FORMALITIES AND DISCLOSURE OF INFORMATION

1. Nothing in Article (National Treatment) or (Most Favoured Nation Treatment) shall be construed to prevent a Party/Host State from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, [including a/such as a] requirement that covered investments be legally constituted under [the/its] laws or regulations of the Party/Host State, provided that such formalities do not substantially/materially impair the protections afforded by a Party/Host State to investors of another Party/Member State and [their] covered investments [pursuant to/in accordance with] this Chapter/Agreement.

2. Notwithstanding Article (National Treatment) and/or (Most Favoured Nation Treatment), a Party/Host State may require an investor of another Party/Member State, or [a/its] covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party/Host State shall protect [such/any] confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party/Host State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law/s.

Article XX

COMPENSATION IN CASES OF STRIFE/TREATMENT IN CASE OF ARMED CONFLICT OR CIVIL STRIFE

1. Notwithstanding Article (XX)(subsidies and grants)], each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph suffers a loss in the territory of [the other/any other/another] Party resulting from:

- (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
- (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor with restitution, compensation, or both as appropriate, for such loss. Any compensation, shall be made in accordance with Article [Expropriation and Compensation] paragraphs 2 through 4, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article (National Treatment) but for Article Non-Conforming Measures.

Article XX SUBROGATION

1. If a Party/Member State or a/an/any statutory body, governmental agency or institution, or corporation designated by the Party/Member State makes a payment to an investor/s of the Party/Member State under a guarantee, a contract of insurance or other form of indemnity that it has granted into with respect to a covered investment the other Party/Member State in whose territory the covered investment was made, shall recognise the subrogation or transfer of any right/s with respect to the investment but for the subrogation, including any rights under Section B, and the investor shall be precluded from pursuing such right to the extent of the subrogation.

Article XX
EXPROPRIATION AND COMPENSATION

1. No Party may expropriate or nationalise a covered investment/s either directly or through measures equivalent to expropriation or nationalisation (“expropriation”) except:

(a) for a public purpose;

(b) in/on a non-discriminatory manner;

(c) On payment of compensation in accordance with this Article and

(d) in accordance with applicable legal procedure of that Party and due process of law.

2. The compensation referred to in Paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated [investment immediately before the expropriation took place (“the date of expropriation”), or when the expropriation occurred, whichever is applicable;

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus simple interest at the contemporary LIBOR for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
- (b) simple interest at the contemporary LIBOR for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

Annex on Expropriation

The Parties confirm their shared understanding that:

1. Article [Expropriation and Compensation] is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Article (Expropriation and Compensation] addresses two situations. The first is

- a. direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

- b. The second situation addressed by Article XX (Expropriation and Compensation) is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - c. The determination of whether an action or series of actions by a Party in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or a series of actions 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;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;
 - (iii) the character and objective of the government action
4. Except in rare circumstances, non-discriminatory regulatory actions by a Party to protect legitimate public welfare objectives, such as public morals, public health, safety, and the environment, do not constitute indirect expropriation/s.

Article XX

Investor-State Dispute Settlement

Article Consultation(s)

1. In the event of an investment dispute, after two months since the occurrence of the measure or event giving rise to the dispute, the claimant may deliver to the respondent a written request for consultations. The request shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical

person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;

(b) for each claim, identify the provision of this Chapter or the investment agreement alleged to have been breached and any other relevant provisions;

(c) for each claim, identify the measures or events giving rise to the claim;

(d) for each claim, indicate whether the claim is made on its own behalf or on behalf of the enterprise;

(e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and

(f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall initially seek to resolve the dispute through consultations.

3. If the disputing parties reach a mutually agreed solution to a dispute or certain claims thereof formally raised under this Section, they shall abide by and comply with the mutually agreed solution reached under this Article without delay.

ARTICLE X.X

Submission of a Claim to Arbitration

1. In the event that an/a investment dispute cannot be settled by consultation(s) under Article X.28 (Consultations) within 120 days after the date of receipt of the request for consultations,

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached

- A. an obligation under Articles X.3 (National Treatment) and X.4 (Most-Favored Nation Treatment) provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;
 - B. an obligation under Article X.5 (Minimum Standard of Treatment), Article X.7 (Senior Management and Boards of Directors and Entry of Personnel), Article X.9 (Expropriation and Compensation), Article X.10 (Compensation for Losses) and Article X.11 (Transfers); or
 - C. an investment agreement; and
- (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach²⁹; and
- (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim
- (i) that the respondent has breached
 - A. an obligation under Articles X.3 (National Treatment) and X.4 (Most-favored nation treatment) provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;
 - B. an obligation under Articles Article X.5 (Minimum Standard of Treatment), Article X.7 (Senior Management and Boards of Directors and Entry of Personnel), Article X.9 (Expropriation and Compensation), Article X.10 (Compensation for Losses) and Article X.11 (Transfers); or
 - C. an investment agreement; and

²⁹ For greater certainty, the loss or damage incurred by the claimant that forms the subject matter of a claim under sub-paragraph (a) shall not include reflective loss or damage suffered by the claimant because of loss or damage caused to an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly by reason of, or arising out of the alleged breach by the respondent.

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach, provided that a claimant may submit pursuant to subparagraph (a)(i)(c) or (b)(i)(c) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. A claimant cannot submit or continue to pursue a claim under this Section where the investment of the claimant in the territory of the respondent is held indirectly by an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or event under any agreement between the respondent and that non-Party.

3. A claimant may submit a claim referred to in paragraph 1:

- (a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention and the claimant waives its right to request annulment of the award with the Secretary-General in accordance with the ICSID Convention Article 52;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules; or
- (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. Where a claim is submitted to arbitration under paragraph 3(b), (c) and (d) (except where a claim is submitted to any other arbitration institution under paragraph 3(d)), the disputing parties and the tribunal constituted thereunder shall request ICSID to provide administrative services for the arbitration proceedings. All Parties shall endeavor to make proper institutional arrangements with ICSID to accommodate such requests following the entry into force of this Agreement.

5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or
- (d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent provided that no claim shall be deemed submitted under this Section if that claim is asserted by the claimant for the first time after such notice of arbitration is submitted.
- (e) A counterclaim asserted by the respondent within 180 days after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

6. A notice of arbitration shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter or the investment agreement alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measure or event giving rise to the claim;
- (d) for each claim, indicate whether the claim is made on its own behalf or on behalf of the enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and
- (f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

7. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

8. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Chapter provided that, in the case of arbitration under the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

Article X30

Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Chapter. Failure to meet any of the conditions and limitations provided for in Article X.31 (Conditions and Limitations on Consent of Each Party) shall nullify that consent.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre and the ICSID Additional Facility Rules for written consent of the parties to the dispute).

X31

Conditions and Limitations on Consent of Each Party

1. Subject to Article X.40 (Appellate Review) No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article X 29 Submission of a Claim to Arbitration (1) and knowledge that the claimant (for claims brought under Article X29 (Submission of a Claim to Arbitration)(1)(a) or the enterprise (for claims brought under Article X29

(Submission of a Claim to Arbitration)(1)(b) has incurred loss or damage, provided that in no event may a claim be submitted to arbitration under this Section after four years since the occurrence of the measures and/or events giving rise to the breach alleged under Article X.29 (Submission of a Claim to Arbitration)(1).

2. No claim may be submitted to arbitration under this Section unless:

- (a) the claimant has complied with rules and procedures set forth in Article X.28 (Consultations) and X.29 (Submission of a Claim to Arbitration);
- (b) the claim has been explicitly included in the request for consultations submitted by the claimant in accordance with Article X.28 (Consultations);
- (c) the claimant consents in writing to arbitration in accordance with the procedures set out in this Chapter, including, in particular, the appellate review arrangements set forth under Article X.40 (Appellate Review); and,
- (d) the notice of arbitration is accompanied,
 - (i) for claims submitted to arbitration under Article X.29 (Submission of a Claim to Arbitration)(1)(a) by the claimant's written waiver, and
 - (ii) for claims submitted to arbitration under Article X.29 [Submission of a Claim to Arbitration] (1)(b), by the claimant's and the enterprise's written waivers, and written waiver by all persons through which the claimant owns or controls the enterprise, of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure or event alleged to constitute a breach referred to in Article X.29 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(d)(ii), a waiver from the enterprise shall not be required only if the respondent has deprived the claimant of its control of the enterprise.

4. Notwithstanding paragraph 2(d), the claimant (for claims brought under Article X29 (Submission of a Claim to Arbitration)(1)(a) and the claimant or the enterprise (for claims brought under Article X29 (Submission of a Claim to Arbitration)(1)(b)) may in accordance with the laws of the respondent, initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

ARTICLE X.32

Constitution of the Tribunal

1. Unless the disputing parties have agreed to appoint a sole arbitrator, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the chairperson appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If the disputing parties agree to appoint a sole arbitrator, the disputing parties shall seek to agree on the sole arbitrator.

4. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion, the remaining arbitrators from the list established pursuant to paragraph 5 below.

5. The Committee for the Settlement of Investor-State Disputes shall no later than the entry into force of this Agreement, establish a list of individuals who are willing and able to serve as arbitrators. The Committee for Investor-State Dispute Settlement shall ensure that at all times the list includes at least X individuals.

6. All arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organization or government with regard to matters related to the dispute, or be affiliated with the government of either Party or any disputing party, and shall comply with Annex XX (code of conduct) to be formulated by the Parties.

7. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

- (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a claimant referred to in Article X.29 (Submission of a Claim to Arbitration)(1)(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and]
- (c) a claimant referred to in Article X.29 (Submission of a Claim to Arbitration)(1)(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

ARTICLE X.33:
Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article X.29 (Submission of a Claim to Arbitration)(3). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules.

2. Each Party may make oral and written submissions to the tribunal regarding the interpretation of this Chapter.

3. Subject to paragraph 2, without written consent of the disputing parties, the tribunal shall have no authority to accept or consider *amicus curiae* submissions from a person or entity that is not a disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article X.39 (Awards of First Instance).

- (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor/e.
- (c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in article 20 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
- (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's

competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor/e, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. Without prejudice to Article X.13 (Subrogation), A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant or the enterprise referred to in Article X.29 (Submission of a Claim to Arbitration)(1)(b) has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an indemnity, insurance or guarantee contract.

ARTICLE X34

Transparency of Arbitral Proceedings

1. Subject to paragraphs 3 and 5, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party:
 - (a) the request for consultations;
 - (b) the notice of arbitration;
 - (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article X38 (Consolidation)
 - (d) minutes or transcripts of hearings of the tribunal, where available; and
 - (e) orders, awards, and decisions of the tribunal.

2. Subject to paragraphs 3 and 5, the respondent:
 - (a) Neither the disputing parties nor the tribunal shall disclose to the Parties or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
 - (b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
 - (c) A disputing party shall within 7 days after it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version may be provided to the Parties and made public in accordance with paragraph[s] 1 and 2.

ARTICLE X.35

Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article X29 (Submission of a Claim to Arbitration) (1)(a)(i)(A) or (B) or Article X29 (Submission of a Claim to Arbitration)](1)(b)(i)(A) (B), the tribunal shall decide the issues in dispute in accordance with this Chapter as clarified in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties. Where relevant and appropriate, the tribunal shall also take into consideration the law of the respondent.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article X29 (Submission of a Claim to Arbitration)(1)(a)(i)(C), or Article X.29 (Submission of a Claim to Arbitration) (1)(b)(i)(C), the tribunal shall apply:

- (a) the rules of law specified in the pertinent investment agreement, or as the disputing parties may otherwise agree; or
- (b) if the rules of law have not been specified or otherwise agreed:

- (i) the law of the respondent, including its rules on the conflict of laws;³⁰ and
- (ii) such rules of customary international law as may be applicable.

3. A joint decision of the Parties, acting through the Committee for the Settlement of Investor-State Disputes, declaring their interpretation of a provision of this Chapter shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

ARTICLE X.36

Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I, II, or III, the tribunal shall, on request of the respondent, request the interpretation of the Parties on the issue. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 90 days of delivery of the tribunal's request.

2. A joint decision issued under paragraph 1 by the Parties, acting through the Committee for the Settlement of Investor-State Disputes, shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision. If the Parties fail/s to issue such a decision within 90 days, the tribunal shall decide the issue. In such a case, the tribunal shall draw no inference from the fact that the Parties fail to issue such a decision.

3. A joint decision issued under paragraph 1 by the Parties shall also be binding on the tribunal of any dispute subsequent to the date of the joint decision to the extent applicable and not modified by another joint decision issued pursuant to paragraph 1 subsequent to the first said joint decision.

³⁰ The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article X37
Expert Reports

1. Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

ARTICLE X.38
Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article X.29 (Submission of a Claim to Arbitration) (1) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General from the list of chairpersons established pursuant to Article X.32 (Constitution of the Tribunal)(5).

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed from the list of arbitrations established pursuant to Article X.32 (Constitution of the Tribunal) (5).

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article X29 (Submission of a Claim to Arbitration)(1) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article X32 (Constitution of the Tribunal) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
 - (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article X29 (Submission of a Claim to Arbitration)(1) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Chapter, provided that, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

9. A tribunal established under Article X32 (Constitution of the Tribunal) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article X32 (Constitution of the Tribunal) be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE X.39

Awards of First Instance

Where a Tribunal makes an award against a respondent, the Tribunal may award, separately or in combination, only monetary damages and restitution of property, but the respondent may pay monetary damages in lieu of restitution. A Tribunal may not

award punitive damages. A disputing Party shall abide by and comply with an arbitral award.

1. Where a tribunal makes a/an award against a respondent, the tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest; and
 - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.
 - (c) A tribunal may also award costs and attorney's fees in accordance with this Chapter and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 29 (Submission of a Claim to Arbitration)(1)(b):
 - (a) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law provided that such relief does not grant or result in duplicated remedies to any person in light of the award rendered.

3. A tribunal may not award punitive damages.

ARTICLE X.40
Appellate Review

(To be proposed)

ARTICLE X.41
Awards of Finality

(To be proposed)

ARTICLE X.42
Annexes and Footnotes

The Annexes and footnotes shall form an integral part of this Chapter.

ARTICLE X.43
Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex X-C] A Party shall promptly make publicly available and notify to the other Parties any change to the place referred to in that annex.

Annex X.C
Service on Documents on a Party

Notices and other documents shall be served on [the []/Japan/Korea] by delivery to:

Notices and other documents shall be served on the People's Republic of China by delivery to:

Department of Treaty and Law
Ministry of Commerce of the People's Republic of China
2 Dong Chang'an Avenue
Beijing, 100731
People's Republic of China

ARTICLE X.44:
Committee for the Settlement of Investor-State Disputes³¹

1. The Committee for the Settlement of Investor-State Disputes:
 - (a) shall establish a list of arbitrators pursuant to Article X.32 [Constitution of the Tribunal] (5);

³¹ The establishment of the Committee shall be adapted to the institutions established by the Agreement.

- (b) may, pursuant to Article X.35 [Governing Law] (3) or Article X.36 [Interpretation of Annexes], adopt a joint decision of the Parties, declaring their interpretation of a provision of this Chapter or an entry set out in Annex I, II, or III, as the case may be;
- (c) shall, pursuant to Article X.40 [Appellate Review], establish the Appellate Body and formulate the rules and procedures of the Appellate Body; and
- (d) may propose amendments to Section B in the light of experience of their operation.