(b) if the Parties fail to resolve the matter through the consultations under Article 208 within 50 days or within 30 days in cases of urgency, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

Note: For greater certainty, no request for the establishment of an arbitral tribunal based only on nullification or impairment of benefits without allegation of non-compliance with the obligations of this Agreement shall be accepted.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify the reason of the request, the measure or other issue referred to and the legal and factual basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions of the applicable international law.

3. Unless otherwise agreed by the Parties, the arbitral tribunal shall be selected and carry out its functions in a manner consistent with the provisions of this Chapter.

Article 210
Composition of the Arbitral Tribunal

1. The Parties shall apply the following procedures in establishing an arbitral tribunal:

(a) the arbitral tribunal shall comprise three members;

(b) within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, each Party shall appoint one arbitrator who may be its national, propose up to four candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal pursuant to subparagraph (e), and notify the other Party in writing of the appointment and its proposed candidates;

(c) the Parties shall endeavor to agree on and appoint the third arbitrator who shall be the chair within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, from among the candidates proposed pursuant to subparagraph (b);

(d) if a Party has not appointed the one arbitrator pursuant to subparagraph (b), or if the Parties fail to agree on the third arbitrator pursuant to subparagraph (c), the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to subparagraph (b);

(e) the chair of the arbitral tribunal shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be or have been employed by either Party, nor have dealt with the subject raised on the dispute in any capacity; and

(f) the date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

2. If an arbitrator appointed under this Article resigns or otherwise becomes unable to act, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the replacement arbitrator is appointed.