Article 16.5
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 16.6
Establishment of Arbitral Tribunals

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against if:

(a) the Party complained against does not enter into consultations under Article 16.4 within 40 days, or within 20 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations; or

(b) the Parties fail to resolve the dispute through consultations under Article 16.4 within 60 days, or within 30 days in cases of urgency, including those which concern perishable goods, 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.

2. Any request to establish an arbitral tribunal in accordance with this Article shall identify the reasons for the request including:

(a) the legal 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; and

(b) the factual basis of the complaint.

Article 16.7
Composition of Arbitral Tribunals

1. An arbitral tribunal shall comprise three arbitrators, who should have relevant technical or legal expertise.

2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall endeavor to agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed in accordance with paragraph 2.

4. If a Party has not appointed the one arbitrator in accordance with paragraph 2, or if the Parties fail to agree on the third arbitrator in accordance with paragraph 3, the arbitrator or arbitrators not yet appointed shall be chosen within 10 days by lot from the candidates proposed in accordance with paragraph 2.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.