Article 9.1: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under Article 1.1(3) [Principles and objectives] of Chapter 1 [General provisions], and Chapters 6 [Labour and social standards], 7 [Environment and climate], and 8 [Other instruments for trade and sustainable development] by delivering a written request to the other Party. The complaining Party shall specify in its written request the reasons and basis for the request, including identification of the measures at issue, specifying the provisions it considers applicable. Consultations must commence promptly after a Party delivers a request for consultations and in any event not later than 30 days after the date of delivery of the request, unless the Parties agree to a longer period.

2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised. Each Party shall endeavour to ensure the participation of personnel of their competent authorities who have expertise in the matter subject to the consultations.

3. In matters relating to the multilateral agreements or instruments referred to in Article 1.1(3) [Principle and objectives], Chapters 6 [Labour and social standards], 7 [Environment and climate], and 8 [Other instruments for trade and sustainable development] the Parties shall take into account available information from the ILO or relevant bodies or organisations established under multilateral environmental agreements. Where relevant, the Parties shall jointly seek advice from such organisations or their bodies, or any other expert or body they deem appropriate.

4. Each Party may seek, when appropriate, the views of the domestic advisory groups referred to in Article INST.7 [Domestic advisory groups] or other expert advice.

5. Any resolution reached by the Parties shall be made available to the public.

Article 9.2: Panel of experts

1. For any matter that is not satisfactorily addressed through consultations under Article 9.1 [Consultations], a Party may, after 90 days from the receipt of a request for consultations under that Article, request that a panel of experts be convened to examine that matter, by delivering a written request to the other Party. The request shall identify the measure at issue, specify and explain how that measure does not conform with the provisions of the relevant Chapter or Chapters in a manner sufficient to present the complaint clearly.

2. The panel of experts shall be composed of three panellists.

3. The Trade Specialised Committee on the Level Playing Field for Open and Fair Competition and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists. Each Party shall name at least five individuals to the list to serve as panellists. The Parties shall also name at least five individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a panel of experts. The Trade Specialised Committee on the Level Playing Field for Open and Fair Competition and Sustainable Development shall ensure that the list is kept up to date and that the number of experts is maintained at a minimum of 15 individuals.

4. The experts proposed as panellists must have specialised knowledge or expertise in labour or environmental law, other issues addressed in the relevant Chapter or Chapters, or in the resolution of disputes arising under international agreements. They must serve in their individual capacities and not

take instructions from any organisation or government with regard to matters related to the dispute. They must not be affiliated with or take instructions from either Party. They shall not be persons who are members, officials or other servants of the Union institutions, of the Government of a Member State, of the Government of the United Kingdom.

5. Unless the Parties agree otherwise within five days from the date of establishment of the panel of experts, the terms of reference shall be:

"to examine, in the light of the relevant provisions, the matter referred to in the request for the establishment of the panel of experts, and to deliver a report, in accordance with this Article that makes findings on the conformity of the measure with the relevant provisions."

6. In respect of matters related to multilateral standards or agreements covered in this Title, the panel of experts should seek information from the ILO or relevant bodies established under those agreements, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO and those bodies.

7. The panel of experts may request and receive written submissions or any other information from persons with relevant information or specialised knowledge.

8. The panel of experts shall make available such information to each Party allowing them to submit their comments within 20 days of its receipt.

9. The panel of experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter including as to whether the responding Party has conformed with its obligations under the relevant Chapter or Chapters and the rationale behind any findings and determinations that it makes. For greater certainty, the Parties share the understanding that if the Panel makes recommendations in its report, the responding Party does not need to follow these recommendations in ensuring conformity with the Agreement.

10. The panel of experts shall deliver to the Parties the interim report within 100 days after the date of establishment of the panel of experts. When the panel of experts considers that this deadline cannot be met, the chairperson of the panel of experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its interim report. The panel of experts shall, under no circumstances, deliver its interim report later than 125 days after the date of establishment of the panel of experts.

11. Each Party may deliver to the panel of experts a reasoned request to review particular aspects of the interim report within 25 days of its delivery. A Party may comment on the other's Party's request within 15 days of the delivery of the request.

12. After considering those comments, the panel of experts shall prepare the final report. If no request to review particular aspects of the interim report is delivered within the time period referred to in paragraph 11, the interim report shall become the final report of the panel of experts.

13. The panel of experts shall deliver its final report to the Parties within 175 days of the date of establishment of the panel of experts. When the panel of experts considers that this time limit cannot be met, its chairperson shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its final report. The panel of experts shall, under no circumstances, deliver its final report later than 195 days after the date of establishment of the panel of experts.

14. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.

15. The Parties shall make the final report available to the public within 15 days of its delivery by the panel of experts.

16. If the final report of the panel of experts determines that a Party has not conformed with its obligations under the relevant Chapter or Chapters, the Parties shall, within 90 days of the delivery of the final report, discuss appropriate measures to be implemented taking into account the report of the panel of experts. No later than 105 days after the report has been delivered to the Parties, the respondent Party shall inform its domestic advisory groups established under Article INST.7 [Domestic advisory groups] and the complaining Party of its decision on any measures to be implemented.

17. The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development shall monitor the follow-up to the report of the panel of experts. The domestic advisory groups of the Parties established under Article INST.7 [Domestic advisory groups] may submit observations to the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development in that regard.

18. When the Parties disagree on the existence of, or the consistency with, the relevant provisions of any measure taken to address the non-conformity, the complaining Party may deliver a request, which shall be in writing, to the original panel of experts to decide on the matter. The request shall identify any measure at issue and explain how that measure is not in conformity with the relevant provisions in a manner sufficient to present the complaint clearly. The panel of experts shall deliver its findings to the Parties within 45 days of the date of the delivery of the request.

19. Except as otherwise provided for in this Article, Article INST.14(1) [Arbitration procedure], Article INST.29 [Arbitration tribunal decisions and rulings], Article INST.30 [Suspension and termination of the arbitration proceedings], Article INST.31 [Mutually agreed solution], Article INST.32 [Time periods], Article INST.34 [Costs], Article INST.15 [Establishment of an arbitration tribunal], or Article INST.28 [Replacement of arbitrators] as well as ANNEX INST [Rules of Procedure for Dispute Settlement] and ANNEX INST-X [Code of Conduct for Arbitrators], shall apply *mutatis mutandis*.

Article 9.3: Panel of experts for non-regression areas

1. Article 9.2 [Panel of experts] shall apply to disputes between the Parties concerning the interpretation and application of Chapter 6 [Labour and Social Standards] and Chapter 7 [Environment and Climate].

2. For the purposes of such disputes, in addition to the Articles listed in Article 9.2(19) [Panel of experts], Article INST.24 [Temporary remedies] and Article INST.25 [Review of any measure taken to comply after the adoption of temporary remedies] shall apply mutatis mutandis.

3. The Parties recognise that, where the responding Party chooses not to take any action to conform with the report of the panel of experts report and with this Agreement, any remedies authorised under Article INST.24 [Temporary remedies] continue to be available to the complaining Party.

Article 9.4: Rebalancing

1. The Parties recognise the right of each Party to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control,

in a manner consistent with each Party's international commitments, including those under this Agreement. At the same time, the Parties acknowledge that significant divergences in these areas can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of this Agreement.

2. If material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties in the areas referred to in paragraph 1, either Party may take appropriate rebalancing measures to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement. A Party's assessment of these impacts shall be based on reliable evidence and not merely on conjecture or remote possibility.

3. The following procedures shall apply to rebalancing measures taken under paragraph 2:

(a) The concerned Party shall, without delay, notify the other Party through the Partnership Council of the rebalancing measures it intends to take , providing all relevant information. The Parties shall immediately enter into consultations. Consultations shall be deemed concluded within 14 days from the date of delivery of the notification, unless they are jointly concluded before that time limit.

(b) If no mutually acceptable solution is found, the concerned Party may adopt rebalancing measures no sooner than five days from the conclusion of the consultations, unless the notified Party requests within the same five day period, in accordance with Article INST.14(2) [Arbitration procedure][64], the establishment of an arbitration tribunal by means of a written request delivered to the other Party in order for the arbitration tribunal to decide whether the notified rebalancing measures are consistent with paragraph 2 of this Article.

(c) The arbitration tribunal shall deliver its final ruling within 30 days from its establishment. If the arbitration tribunal does not deliver its final ruling within that time period, the concerned Party may adopt the rebalancing measures no sooner than three days after the expiry of that 30 day time period. In that case, the other Party may take countermeasures proportionate to the adopted rebalancing measures until the arbitration tribunal delivers its ruling. Priority shall be given to such countermeasures as will least disturb the functioning of this Agreement. Point (a) shall apply mutatis mutandis to such countermeasures, which may be adopted no sooner than three days after the conclusion of consultations.

(d) If the arbitration tribunal has found the rebalancing measures to be consistent with paragraph 2, the concerned Party may adopt the rebalancing measures as notified to the other Party.

(e) If the arbitration tribunal has found the rebalancing measures to be inconsistent with paragraph 2, the concerned Party shall, within three days from the delivery of the ruling, notify the complaining Party of the measures[65] it intends to adopt to comply with the ruling of the arbitration tribunal. Articles INST.23(2) [Compliance review], INST.24 [Temporary remedies][66]

[64] For greater certainty, in this case the Party shall not have prior recourse to consultations in accordance with Article INST.13 [Consultations].

[65] Such measures may include withdrawal or adjustment of the rebalancing measures, as appropriate

[66] Suspension of obligations under Article INST.24 [Temporary remedies] shall be available only if rebalancing measures have in fact been applied.

and INST.25 [Review of any measure taken to comply after the adoption of temporary remedies] shall apply mutatis mutandis, if the complaining Party considers that the notified measures are not in compliance with the ruling of the arbitration tribunal. The procedures under Articles INST.23(2) [Compliance review], INST.24 [Temporary measures] and INST.25 [Review of any measure taken to comply after the adoption of temporary remedies] shall have no suspensive effect on the application of the notified measures pursuant to this paragraph.

(f) If rebalancing measures were adopted prior to the arbitration ruling in accordance with point (c), any countermeasures adopted pursuant to that point shall be withdrawn immediately, and in no case later than five days, after delivery of the ruling of the arbitration tribunal.

(g) A Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from taking measures pursuant to paragraphs 2 and 3, including when those measures consist of suspension of obligations under this Agreement.

(h) If the notified Party does not submit a request pursuant to point (b) within the time period laid down therein, that Party may without having prior recourse to consultations in accordance with Article INST.13 [Consultations] initiate the arbitration procedure referred to in Article INST.14 [Arbitration procedure]. An arbitration tribunal shall treat the issue as a case of urgency for the purpose of Article INST.19 [Urgent proceedings].

4. In order to ensure an appropriate balance between the commitments made by the Parties in this Agreement on a more durable basis, either Party may request, no sooner than four years after the entry into force of this Agreement, a review of the operation of Heading One [Trade] of this Agreement. The Parties may agree that other Headings of this Agreement may be added to the review.

5. Such a review shall commence at a Party's request, if that Party considers that measures under paragraphs 2 or 3 have been taken frequently by either or both Parties, or if a measure that has a material impact on the trade or investment between the Parties has been applied for a period of 12 months. For the purposes of this paragraph, the measures in question are those which were not challenged or not found by an arbitration tribunal to be strictly unnecessary pursuant to point (d) or (h) of paragraph 3. This review may commence earlier than four years after the entry into force of this Agreement.

6. The review requested pursuant to paragraph 4 or 5 shall begin within three months of the request and be completed within six months.

7. A review on the basis of paragraphs 4 or 5 may be repeated at subsequent intervals of no less than four years after the conclusion of the previous review. If a Party has requested a review under paragraphs 4 or 5, it may not request a further review under either paragraph 4 or 5 for at least four years from the conclusion of the previous review or, if applicable, from the entry into force of any amending agreement.

8. The review shall address whether the Agreement delivers an appropriate balance of rights and obligations between the Parties, in particular with regard to the operation of Heading One [Trade], and whether, as a result, there is a need for any modification of the terms of this Agreement.

9. The Partnership Council may decide that no action is required as a result of the review. If a Party considers that following the review there is a need for an amendment of this Agreement, the Parties shall use their best endeavours to negotiate and conclude an agreement making the necessary amendments. Such negotiations shall be limited to matters identified in the review.

10. If an amending agreement referred to in paragraph 9 is not concluded within one year from the date the Parties started negotiations, either Party may give notice to terminate Heading One [Trade] or any other Heading of the Agreement that was added to the review, or the Parties may decide to continue negotiations. If a Party terminates Heading One [Trade], Heading Three [Road transport] shall be terminated on the same date. The termination shall take effect three months after the date of such notice.

11. If Heading One [Trade] is terminated pursuant to paragraph 10, Heading Two [Aviation] shall be terminated at the same date, unless the Parties agree to integrate the relevant parts of Title XI [Level playing field for open and fair competition and sustainable development] in Heading Two [Aviation].

12. Title I [Dispute settlement] of Heading Six [Dispute settlement and horizontal arrangements] does not apply to paragraphs 4 to 9.

TITLE XII: EXCEPTIONS

Article EXC.1: General exceptions

1. Nothing in Chapter one [National Treatment and market access for goods] and Chapter five of Title I of Heading One of Part two [Customs and trade facilitation], Title VIII of Heading One of Part two [Energy and raw materials], Chapter four of Title XI of Heading One of Part two [State-owned enterprises], Title III of Heading One of Part two [Digital trade] and Chapter two of Title II of Heading One of Part two [Investment liberalisation] shall be construed as preventing a Party from adopting or maintaining measures compatible with Article XX of GATT 1994. To that end, Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalization or trade in services, nothing in Title VIII of Heading One of Part two [Energy and raw materials], Chapter four of Title XI of Heading One of Part two [State-owned enterprises], Title III of Heading One of Part two [Digital trade], Title II of Heading One of Part two [Services and Investment] and Title IV of Heading One of Part two [Capital movements, payments, transfers and temporary safeguard measures] shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order[67];

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:

  (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

[67] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.