

- (ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required where a disputing Party has deprived the disputing investor of control of an enterprise.

4. In addition to satisfying the conditions precedent listed in paragraph 2, a disputing investor may submit a claim to arbitration under Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) with respect to a taxation measure only if:

- (a) the disputing investor provides a copy of the notice of claim to the taxation authorities of the Parties; and
- (b) six months after receiving notification of the claim by the disputing investor, the taxation authorities of the Parties fail to reach a joint determination that the measure does not breach the relevant provisions of this Agreement.

5. If, in connection with a claim by a disputing investor of a Party or a dispute between the Parties, an issue arises as to whether a measure of a Party is a taxation measure, a Party may refer the issue to the taxation authorities of the Parties. A decision of the taxation authorities shall bind any Tribunal formed pursuant to Section C (Settlement of Disputes between an Investor and the Host Party) or arbitral panel formed pursuant to Section D (State-to-State Dispute Settlement Procedures). A Tribunal or arbitral panel seized of a claim or a dispute in which the issue arises may not proceed pending receipt of the decision of the taxation authorities. If the taxation authorities have not decided the issue within six months of the referral, the Tribunal or arbitral panel shall itself decide the issue.

6. The taxation authorities seized of an issue under paragraphs 4 and 5 may agree to modify the time period allowed for their consideration of the issue.