

## ANNEX C.21

**Conditions Precedent to Submission of a Claim to Arbitration:  
Party-Specific Requirements**

Where the claim concerns a measure of China:

1. Upon receipt of the Notice of Intent or at any time prior, China shall require that an investor make use of the domestic administrative reconsideration procedure. If the investor considers that the dispute still exists four months<sup>11</sup> after the investor has applied for the administrative reconsideration, or where no such remedies are available, the investor may submit its claim to arbitration.
2. An investor who has initiated proceedings before any court of China with respect to the measure of China alleged to be a breach of an obligation under Part B may only submit a claim to arbitration under Article 20 if the investor has withdrawn the case from the national court before judgment has been made on the dispute. This requirement does not apply to the domestic administrative reconsideration procedure referred to in paragraph 1.

Where the claim concerns a measure of Canada:

3. The investor and, where the claim is for loss or damage to an interest in an enterprise of Canada that is a juridical person that the investor owns or controls directly or indirectly, the enterprise shall waive their right to initiate or continue before any administrative tribunal or court under the law of any Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of Canada that is alleged to be a breach referred to in Article 20, 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 Canada.
4. The waiver required under paragraph 3 shall be delivered to Canada and shall be included in the submission of a claim to arbitration. A waiver from the enterprise shall not be required if Canada has deprived a disputing investor of control of an enterprise.

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<sup>11</sup> The time limit of "four months" in this paragraph is based on the relevant provisions of the *Law of the People's Republic of China on Administrative Reconsideration* (adopted at the 9th Meeting of the Standing Committee of the Ninth National People's Congress on April 29, 1999) on the date of the entry into force of this Agreement. In the event that China revises the relevant provisions on the time limit for the administrative reconsideration stipulated in the *Law of the People's Republic of China on Administrative Reconsideration* in the future, China shall, in a timely manner, provide Canada with relevant information and may request consultations with Canada pursuant to Article 18 of this Agreement.