

高等院校法学教学参考书

国际经济法资料选编

(下册)

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编

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国际经济法资料选编（下）

International Economic Law: Materials (II)

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Members,

Considering that Ministers agreed in the Punta del Este Declaration that “Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade”;

Desiring to promote the expansion and progressive liberalisation of world trade and to facilitate investment across international frontiers so as to increase the economic growth of all trading partners, particularly developing country members, while ensuring free competition;

Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members;

Recognizing that certain investment measures can cause trade-restrictive and distorting effects;

Hereby agree as follows:

Article 1 Coverage

This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as “TRIMs”).

Article 2 National Treatment and Quantitative Restrictions

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.

2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

Article 3 Exceptions

All exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.

Article 4 Developing Country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

Article 5 Notification and Transitional Arrangements

1. Members, within 90 days of the date of entry into force of the WTO Agreement, shall notify the Council for Trade in Goods of all TRIMs they are applying that are not in conformity with the provisions of this Agreement. Such TRIMs of general or specific application shall be notified, along with their principal features.^①

2. Each Member shall eliminate all TRIMs which are notified under paragraph 1 within two years of the date of entry into force of the WTO Agreement in the case of a developed country Member, within five years in the case of a developing country Member, and within seven years in the case of a least-developed country Member.

3. On request, the Council for Trade in Goods may extend the transition period for the elimination of TRIMs notified under paragraph 1 for a developing country Member, including a least-developed country Member, which demonstrates particular difficulties in implementing the provisions of this Agreement. In considering such a request, the Council for Trade in Goods shall take into account the individual development, financial and trade needs of the Member in question.

4. During the transition period, a Member shall not modify the terms of any TRIM which it notifies under paragraph 1 from those prevailing at the date of entry into force of the WTO Agreement so as to increase the degree of inconsistency with the provisions of Article 2. TRIMs introduced less than 180 days before the date of entry into force of the WTO Agreement shall not benefit from the transitional arrangements provided in paragraph 2.

^① In the case of TRIMs applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

与贸易有关的投资措施协定

各成员，

考虑到部长们在《埃斯特角城宣言》中同意“在审查与投资措施的贸易限制作用和扭曲作用有关的 GATT 条款的运用情况之后，谈判应酌情详述为避免此类对贸易的不利影响而可能需要的进一步规定”；

期望促进世界贸易的扩大和逐步自由化，便利跨国投资，以便提高所有贸易伙伴、特别是发展中国家成员的经济增长，同时保证自由竞争；

考虑到发展中国家成员、特别是最不发达国家成员特殊的贸易、发展和财政需要；

认识到某些投资措施可能产生贸易限制作用和扭曲作用；

特此协议如下：

第 1 条 范围

本协定仅适用于与货物贸易有关的投资措施（本协定中称“TRIMs”）。

第 2 条 国民待遇和数量限制

1. 在不损害 GATT1994 项下其他权利和义务的情况下，各成员不得实施任何与 GATT1994 第 3 条或第 11 条规定不一致的 TRIMs。

2. 本协定附件列出一份与 GATT1994 第 3 条第 4 款规定的国民待遇义务和 GATT1994 第 11 条第 1 款规定的普遍取消数量限制义务不一致的 TRIMs 例示清单。

第 3 条 例外

GATT1994 项下的所有例外均应酌情适用于本协定的规定。

第 4 条 发展中国家成员

发展中国家成员有权以 GATT1994 第 18 条、《关于 1994 年关税与贸易总协定国际收支条款的谅解》和 1979 年 11 月 28 日通过的《关于为国际收支目的而采取贸易措施的宣言》（BISD26 册 205 至 209 页）允许该成员偏离 GATT1994 第 3 条和第 11 条规定的程度和方式，暂时偏离第 2 条的规定。

第 5 条 通知和过渡性安排

1. 各成员应在《WTO 协定》生效之日起 90 天内，将其正在实施的、与本协定规定不一致的所有 TRIMs 通知货物贸易理事会。在通知这些普遍或具体适用的 TRIMs 时，应同时说明其主要特征。^①

2. 每一成员均应取消根据第 1 款进行通知的所有 TRIMs，发达国家成员应在《WTO 协定》生效之日起 2 年内取消，发展中国家成员应在 5 年内取消，最不发达国家成员应在 7 年内取消。

3. 如一发展中国家成员，包括一最不发达国家成员可证明其在实施本协定规定方面存在特殊困难，则货物贸易理事会可应请求延长其取消根据第 1 款进行通知的 TRIMs 的过渡期。在考虑该请求时，货物贸易理事会应考虑所涉成员特殊的发展、财政和贸易需要。

4. 在过渡期内，一成员不得修改根据第 1 款进行通知的任何 TRIMs 的条件，使之不同于《WTO 协定》生效之日起通行的条件，从而增加其与第 2 条规定不一致的程度。在《WTO 协定》生效之日前 180 天内采用的 TRIMs 不能获得第 2 款规定的过渡期安排的利益。

^① 如 TRIMs 是根据酌定权实施的，则其每一次具体适用均应通知。但可能损害特定企业合法商业利益的信息不必披露。

5. Notwithstanding the provisions of Article 2, a Member, in order not to disadvantage established enterprises which are subject to a TRIM notified under paragraph 1, may apply during the transition period the same TRIM to a new investment(i)where the products of such investment are like products to those of the established enterprises, and (ii) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Any TRIM so applied to a new investment shall be notified to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

Article 6 Transparency

1. Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994, in the undertaking on “Notification” contained in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

2. Each Member shall notify the Secretariat of the publications in which TRIMs may be found, including those applied by regional and local governments and authorities within their territories.

3. Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member. In conformity with Article X of GATT 1994 no Member is required to disclose information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 7 Committee on Trade-Related Investment Measures

1. A Committee on Trade-Related Investment Measures (referred to in this Agreement as the “Committee”) is hereby established, and shall be open to all Members. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.

2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.

3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods.

Article 8 Consultation and Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9 Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the WTO Agreement, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

ANNEX ILLUSTRATIVE LIST

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise’s purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

5. 尽管有第 2 条的规定，但是一成员为不使受根据第 1 款进行通知的一项 TRIM 约束的已建企业处于不利地位，在 (i) 该新投资的产品与已建企业的产品属同类产品，且 (ii) 在有必要避免扭曲新投资与现有企业之间竞争条件的情况下，仍可在过渡期内对新投资实施相同的 TRIM。任何如此对新投资实施的 TRIM 均应通知货物贸易理事会。该 TRIM 的条件在竞争效果上应与适用于已建企业的 TRIM 的条件相同，并应同时终止。

第 6 条 透明度

1. 对于 TRIMs，各成员重申它们在 GATT1994 第 10 条中、在 1979 年 11 月 28 日通过的《关于通知、磋商、争端解决和监督的谅解》包含的关于“通知”的承诺中以及在 1994 年 4 月 15 日通过的《关于通知程序的部长决定》中，就透明度和通知所承诺的义务。

2. 每一成员均应通知秘书处刊载 TRIMs 的出版物，包括其领土内地区及地方政府和主管机关实施的 TRIMs。

3. 每一成员应对另一成员就与本协定有关的任何事项提出的提供信息的请求给予积极考虑，并提供充分的磋商机会。根据 GATT1994 第 10 条，不要求任何成员披露会妨碍执法或违背公共利益或损害特定公私企业合法商业利益的信息。

第 7 条 与贸易有关的投资措施委员会

1. 特此设立与贸易有关的投资措施委员会（本协定中称“委员会”），对所有成员开放。委员会应选举自己的主席和副主席，每年应至少召开一次会议，或在任何成员请求下召开会议。

2. 委员会应履行货物贸易理事会所指定的职责，并为各成员就与本协定运用和执行有关的任何事项进行磋商提供机会。

3. 委员会监督本协定的运用和执行，并每年就此向货物贸易理事会报告。

第 8 条 磋商和争端解决

由《争端解决谅解》详述和适用的 GATT1994 第 22 条和第 23 条的规定适用于本协定项下的磋商和争端解决。

第 9 条 货物贸易理事会的审议

在不迟于《WTO 协定》生效之日后 5 年，货物贸易理事会应审议本协定的运用情况，并酌情建议部长级会议修正本协定的文本。在审议过程中，货物贸易理事会应考虑本协定是否应补充有关投资政策和竞争政策的规定。

附件 例示清单

1. 与 GATT1994 第 3 条第 4 款规定的国民待遇义务不一致的 TRIMs 包括根据国内法律或根据行政裁定属强制性或可执行的措施，或为获得一项利益而必须遵守的措施，且该措施：

(a) 要求企业购买或使用国产品或自任何国内来源的产品，无论按照特定产品、产品数量或价值规定，还是按照其当地生产在数量或价值上所占比例规定；或

(b) 要求企业购买或使用的进口产品限制在与其出口的当地产品的数量或价值相关的水平。

2. 与 GATT1994 第 11 条第 1 款规定的普遍取消数量限制义务不一致的 TRIMs 包括根据国内法律或行政裁定属强制性或可执行的措施，或为获得一项利益而必须遵守的措施，且该措施：

(a) 普遍限制企业对用于当地生产或与当地生产相关产品的进口，或将进口限制在与其出口的当地产品的数量或价值相关的水平；

(b) 通过将企业可使用的外汇限制在与可归因于该企业外汇流入相关的水平，从而限制该企业对用于当地生产或与当地生产相关产品的进口；

(c) 限制企业产品出口或供出口产品的销售，无论是按照特定产品、产品数量或价值规定，还是按照当地产品在数量或价值上所占比例规定。

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

PREAMBLE

The Contracting States

Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention (popularly called "Washington Convention"-Note of the Site) and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

CHAPTER I International Centre for Settlement of Investment Disputes

Section 1 Establishment and Organization

Article 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre) .

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2 The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank) . The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3 The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

Section 2 The Administrative Council

Article 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be ex officio its representative and its alternate respectively.

Article 5 The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:

关于解决各国和其他国家的国民之间的投资争端的公约

(1965 年 3 月 18 日在华盛顿开放签字)

序言

各缔约国，
考虑到对经济发展进行国际合作的必要性和私人国际投资在这方面的作用；
注意到各缔约国和其他缔约国的国民之间对此项投资经常发生争端的可行性；
承认虽然此种争端通常将遵守各国的法律程序，但在某些情况下，采取国际解决方法可能是适当的；
特别重视提供国际调停或仲裁的便利，各缔约国和其他缔约国国民如果有此要求，可以将此种争端交付国际调停或仲裁；
愿意在国际复兴开发银行的赞助下建立此种便利；
承认双方同意借助此种便利将此种争端交付调停或仲裁，即构成有约束力的协议，该协议特别需要对调停人的任何建议给予适当考虑，对任何仲裁裁决予以遵守；
及宣告不能仅仅由于缔约国批准、接受或认可本公约这一事实而不经其同意就认为该缔约国具有将任何特定的争端交付调停或仲裁的义务；
议定下列各条：

第一章 解决投资争端的国际中心

第一节 建立和组织

第一条

一、兹建立解决投资争端的国际中心（以下称为“中心”）。
二、中心的宗旨是依照本公约的规定为各缔约国和其他缔约国的国民之间的投资争端，提供调停和仲裁的便利。

第二条 中心的所在地应设在国际复兴开发银行（以下称为“银行”）的主要办公处。该所在地可以根据行政理事会经其成员的 2/3 多数作出的决定迁往另一地点。

第三条 中心应设有一个行政理事会和一个秘书处，并应有一个调停人小组和一个仲裁人小组。

第二节 行政理事会

第四条

一、行政理事会由每一缔约国各派代表一人组成。在首席代表未能出席会议或不能执行任务时，可以由副代表担任代表。

二、如无相反的任命，一个缔约国所指派的银行的董事和候补董事应当然地成为各该国的代表和副代表。

第五条 银行行长应为行政理事会的当然主席（以下称为“主席”），但无表决权。在他缺席或不能执行任务时在银行行长职位出缺时，应由暂时代理行长的人担任行政理事会主席。

第六条

一、行政理事会在不损害本公约其他条款赋予它的权力和职能的情况下，应：

- (a) adopt the administrative and financial regulations of the Centre;
- (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
- (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules) ;
- (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
- (e) determine the conditions of service of the Secretary-General and of any deputy Secretary-General;
- (f) adopt the annual budget of revenues and expenditures of the Centre;
- (g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs(a),(b),(c)and(f)above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8 Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

Section 3 The Secretariat

Article 9 The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11 The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

Section 4 The Panels

Article 12 The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

- (一) 通过中心的行政和财政条例；
- (二) 通过着手采取调停和仲裁的程序规则；
- (三) 通过调停和仲裁的程序规则（以下称为“调停规则和仲裁规则”）；
- (四) 批准同银行达成的关于使用其行政设施和服务的协议；
- (五) 确定秘书长和任何副秘书长的服务条件；
- (六) 通过中心的年度收支预算；
- (七) 批准关于中心的活动的年度报告。

上述（一）、（二）、（三）和（六）项中的决定，应由行政理事会成员的 2/3 多数票通过。

二、行政理事会可以设立它认为必需的委员会。

三、行政理事会还应执行它确定为履行本公约规定所必需的其他权力和任务。

第七条

一、行政理事会应举行一次年度会议和理事会可能决定的，或经理事会至少 5 个成员国的请求由主席或由秘书长召开的其他会议。

二、行政理事会每个成员享有一个投票权；除本公约另有规定外，理事会所有的事项应以多数票作出决定。

三、行政理事会任何会议的法定人数应为其成员的多数。

四、行政理事会可由其成员的 2/3 多数的决定建立一种程序，根据该程序主席可以不召开理事会会议而进行理事会的表决。该项表决只有理事会的多数成员在上述程序规定的限期内投票，才能认为有效。

第八条 对行政理事会成员和主席的服务，中心不付给报酬。

第三节 秘书处

第九条 秘书处由秘书长一人、副秘书长一人或数人以及工作人员组成。

第十条

一、秘书长或任何副秘书长由主席提名，经行政理事会根据其成员的 2/3 多数票选举产生，任期不超过 6 年，可以连任。主席在同行政理事会成员磋商后，对上述每一职位得提出一个或几个候选人。

二、秘书长和副秘书长的职位同执行任何政治任务是不相符的。秘书长或任何副秘书长除经行政理事会批准外，不得受雇于其他任何人，或从事其他任何职业。

三、在秘书长缺席或不能执行任务时，或在秘书长职位出缺时，由副秘书长担任秘书长。如果有一个以上的副秘书长，应由行政理事会在事前决定他们担任秘书长的次序。

第十一条 秘书长是中心的法律代表和主要官员，并依照本公约的规定和行政理事会通过的规则负责其行政事务，包括任命工作人员。他应执行书记官的任务，并有权认证根据本公约作出的仲裁裁决并核证其副本。

第四节 小组

第十二条 调停人小组和仲裁人小组各由合格的人员组成，他们应根据以下规定指派，并愿意提供服务。

第十三条

一、每一缔约国可以向每个小组指派 4 人，他们可以是，但不一定是该缔约国国民。

二、主席可以向每个小组指派 10 人，向一个小组指派的人员应具有不同的国籍。

Article 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

Article 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Section 5 Financing the Centre

Article 17 If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6 Status, Immunities and Privileges

Article 18 The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute legal proceedings.

Article 19 To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20 The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21 The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat

(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22 The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

(1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

第十四条

一、指派在小组服务的人员应具有高度的道德品质，并且在法律、商务、工业或金融方面有公认资格，他们可以被信赖作出独立的判断。对仲裁人小组的人员而言，在法律方面的资格尤其重要。

二、主席指派在小组中服务的人员时，还应适当注意保证世界上各种主要法律体系和主要的经济活动方式在小组中具有代表。

第十五条

一、小组成员的服务期限为 6 年，可以连任。

二、遇有一个小组的成员死亡或辞职时，指派该成员的机构有权指派另一人在该成员剩余的任期内服务。

三、小组成员应继续任职，直至其继任人被指派时为止。

第十六条

一、一个人可以在两个小组服务。

二、如果一个人被一个以上的缔约国，或被一个或一个以上的缔约国和主席指派在同一个小组服务，则应认为他是被首先指派他的机构所指派；或者如果其中一个指派他的机构是他国籍所属的国家，则应认为他是被该国所指派。

三、所有的指派应通知秘书长，并从接到通知之日起生效。

第五节 中心的经费

第十七条 如果中心的开支不能以使用其设施的收费或其他收入来偿付，则属于银行成员的缔约国应各按其认购的银行资本股份的比例，而不属于银行成员的缔约国则按行政理事会通过的规则来负担超支部分。

第六节 地位、豁免和特权

第十八条 中心具有完全的国际法律人格。中心的法律能力应包括：

- (一) 缔结契约的能力；
- (二) 取得和处理动产和不动产的能力；
- (三) 起诉的能力。

第十九条 为使中心能完成其任务，它在各缔约国领土内应享有本节规定的豁免和特权。

第二十条 中心及其财产和资产享有豁免一切法律诉讼的权利，除非中心放弃此种豁免。

第二十一条 主席、行政理事会成员，担任调停人或仲裁人或按照第五十二条第三款任命的委员会成员的人以及秘书处的官员和雇员：

- 一、对他们在执行任务时所作的行为，享有豁免法律诉讼的权利，除非中心放弃此种豁免；
- 二、如不是当地的国民，则应享有缔约国给予其他缔约国相应级别的代表、官员和雇员在豁免移民限制、外人登记要求和国民兵役义务方面的同等权利，在外汇限制方面的同等便利以及有关旅行便利的同等待遇。

第二十二条 第二十一条的规定应适用于根据本公约作为当事人、代理人、法律顾问、律师、证人或专家而在诉讼中出席的人，但该条第二款只适用于他们在诉讼所在地的停留和往返旅程。

第二十三条

一、中心的档案不论其在何处，应不可侵犯。

二、关于官方通讯，各缔约国给予中心的待遇不得低于给予其他国际组织的待遇。

Article 24

(1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II Jurisdiction of the Centre

Article 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) "National of another Contracting State" means:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26 Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Article 27

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III Conciliation

Section 1 Request for Conciliation

Article 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

第二十四条

一、中心、其资产、财产和收入以及本公约许可的业务活动和交易应免除一切税捐和关税。中心还应免除征收或偿付任何税捐或关税的义务。

二、除当地的国民外，对中心付给行政理事会主席或成员的津贴，或付给秘书处官员或雇员的薪金、津贴或其他报酬，均不得征税。

三、对担任调停人或仲裁人或依照第五十二条第三款所任命的委员会成员的人在本公约规定的诉讼中所得到的报酬或津贴，均不得征税，如果此项征税的惟一法律依据是中心的地点或诉讼的所在地或付给报酬或津贴的地点。

第二章 中心的管辖

第二十五条

一、中心的管辖适用于缔约国（或缔约国指派到中心的该国的任何组成部分或机构）和另一缔约国国民之间直接因投资而产生的任何法律争端，而该项争端经双方书面同意提交给中心。当双方表示同意后，不得单方面撤消其同意。

二、“另一缔约国国民”系指：

（一）在双方同意将争端交付调停或仲裁之日以及在根据第二十八条第三款或第三十六条第三款将请求予以登记之日，具有作为争端一方的国家以外的某一缔约国国籍的任何自然人，但不包括在上述任一日期也具有作为争端一方的缔约国国籍的任何人士；

（二）在争端双方同意将争端交付调停或仲裁之日，具有作为争端一方的国家以外的某一缔约国国籍的任何法人，以及在上述日期具有作为争端一方的缔约国国籍的任何法人，而该法人因受外国控制，双方同意为了本公约的目的，应看作是另一缔约国国民。

三、某一缔约国的组成部分或机构表示的同意，须经该缔约国批准，除非该缔约国通知中心不需要予以批准。

四、任何缔约国可以在批准、接受或认可本公约时，或在此后任何时候，把它将考虑或不考虑提交给中心管辖的一类或几类争端通知中心，秘书长应立即将此项通知转送给所有缔约国。此项通知不构成第一款所要求的同意。

第二十六条 除非另有规定，双方同意根据本公约交付仲裁，应视为同意排除任何其他补救办法而交付上述仲裁。缔约国可以要求用尽当地各种行政或司法补救办法，作为其同意根据本公约交付仲裁的一个条件。

第二十七条

一、缔约国对于它本国的一个国民和另一缔约国根据本公约已同意交付或已交付仲裁的争端，不得给予外交保护或提出国际要求，除非该另一缔约国未能遵守和履行对此项争端所作出的裁决。

二、在第一款中，外交保护不应包括纯粹为了促进争端的解决而进行的非正式的外交上的交往。

第三章 调停

第一节 请求调停

第二十八条

一、希望采取调停程序的任何缔约国或缔约国的任何国民，应就此向秘书长提出书面请求，由秘书长将该项请求的副本送交另一方。

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2 Constitution of the Conciliation Commission

Article 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2)(a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

Section 3 Conciliation Proceedings

Article 32

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33 Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35 Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

二、该项请求应包括关于发生争端的问题的材料、双方的身份以及它们同意依照采取调停和仲裁的程序规则进行调停等内容。

三、秘书长应登记此项请求，除非他根据请求中所包括的材料，发现此项争端显然在中心的管辖范围之外。他应立即将登记或拒绝登记之事通知双方。

第二节 调停委员会的组成

第二十九条

一、调停委员会（以下称为“委员会”）应在依照第二十八条提出的请求予以登记之后尽速组成。

二、（一）委员会应由双方同意任命的惟一的调停人或任何非偶数的调停人组成。

（二）如双方对调停人的人数和任命的方法不能取得协议，则委员会应由三名调停人组成，由每一方各任命调停人一名，第三人由双方协议任命，并担任委员会主席。

第三十条 如果在秘书长依照第二十八条第三款发出关于请求已予以登记的通知后 90 天内，或在双方可能同意的其他期限内未能组成委员会，主席经任一方请求，并尽可能同双方磋商后，得任命尚未任命的调停人或数名调停人。

第三十一条

一、除主席根据第三十条进行任命的情况外，可以从调停人小组以外来任命调停人。

二、从调停人小组以外任命的调停人应具备第十四条第一款所述的品质。

第三节 调停程序

第三十二条

一、委员会应是其本身权限的决定人。

二、争端一方提出的反对意见，认为该争端不属于中心的管辖范围，或因其他原因不属于委员会权限范围，应由委员会加以考虑，并决定是否将其作为先决问题处理，或与该争端的是非曲直一并处理。

第三十三条 任何调停程序应依照本节规定，以及除双方另有协议外，依照双方同意调停之日有效的调停规则进行。如发生任何本节或调停规则或双方同意的任何规则未作规定的程序问题，则该问题应由委员会决定。

第三十四条

一、委员会有责任澄清双方发生争端的问题，并努力使双方对共同可接受的条件达成协议。为此目的，委员会可以在程序进行的任何阶段，并可随时向双方建议解决的条件。双方应同委员会进行真诚的合作，以使委员会能执行其任务，并对委员会的建议予以最认真的考虑。

二、如果双方达成协议，委员会应制定一项报告，指出发生争端的问题，并载明双方已达成协议。如果在程序进行的任何阶段，委员会认为双方已不可能达成协议，则它应结束此项程序并制定一项报告，指出已将争端提交调停，并载明双方未能达成协议。如果一方未能出席或参加上述程序，委员会应结束此项程序并制定一项报告，指出该方未能出席或参加。

第三十五条 除争端双方另有协议外，参加调停程序的任何一方均无权在其他任何程序中，不论是在仲裁员面前或在法院或其他机构，引用或依仗参加调停程序的另一方所表示的任何意见或所作的声明或承认或提出的解决办法，也不得引用或依仗委员会提出的报告或任何建议。

CHAPTER IV Arbitration

Section I Request for Arbitration

Article 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2 Constitution of the Tribunal

Article 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2)(a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article 38 If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39 The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

Section 3 Powers and Functions of the Tribunal

Article 41

(1) The Tribunal shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.