CHAPTER IV
IMPLEMENTATION, MONITORING AND ENFORCEMENT

Many policymakers make the mistake of thinking that the really hard part to concluding a PTA consists of being well-prepared and bringing often long and wearisome negotiations to a successful conclusion. Although performing these tasks properly and effectively is difficult, time- and resource-consuming, and obviously centrally important, most seasoned negotiators will agree that the really hard part of any PTA negotiation comes after it has been signed. This is not only because there are a number of legal steps that need to be completed before a negotiated PTA can enter into force (adoption or ratification), but also because the actual task of implementing a PTA and "making good" on the commitments entered into can often be as problematic as the negotiations themselves. This chapter provides a brief look at a number of steps required to implement a PTA per se, including ratification and enacting implementing legislation as well as amending existing laws or passing new ones. Finally, a few of the issues that inevitably arise in the context of monitoring implementation and enforcing the application of a PTA are examined, such as asserting a country's rights under a PTA. As in the previous chapters of this manual, the emphasis is very much, albeit not exclusively, on trade in services and investment.

A. Implementing preferential trade agreements

The brief examination here of the more informal task of getting domestic consensus mobilized in favour of ratifying a recently concluded PTA shows that negotiators cannot afford to be complacent once the signing ceremony is over. Indeed, getting a signed FTA ratified without any deal-breaking hiccups can be a very challenging task. The formal and legal processes by which ratification must take place, if a PTA is ever to become law, and the final diplomatic conventions to be observed prior to a treaty entering into force are also considered.

1. Domestic consensus and implementation of preferential trade agreements

It is not uncommon for trade negotiators to conclude negotiations with their PTA partners and come home with a deal, only to learn that what they have agreed upon in some way either exceeds their negotiating mandate or otherwise attracts political opposition, forcing them to re-open negotiations and/or retract concessions they have already made. There are numerous examples of this, dating back to the former International Trade Organization negotiations in 1947, when the Truman administration decided not to press for ratification of the International Trade Organization treaty due to a lack of support in Congress. A similar situation prevailed two decades later when United States negotiators came home from the Kennedy Round (1964-1967) with a signed agreement on anti-dumping, only to be told by Congress that they had no mandate to negotiate on non-tariff measures. More recently, both the Australia-United States FTA and the Republic of Korea-United States FTA ran into trouble when the time

Box IV.1. Australian opposition to the United States FTA

Labour has set up a parliamentary showdown with the Federal Government over the passage of the United States trade deal, setting an onerous three-part test the deal must pass or risk being blocked in the Senate.

On the eve of the release of the full 900-page text of the agreement, the shadow trade minister, Stephen Conroy, said yesterday that Labour would block the deal if it added any costs to consumers or taxpayers in relation to the pharmaceutical benefits scheme.

The likelihood of such costs could swing on the finer details of the trade deal's appeals process for companies wanting their drugs listed on the PBS as well as complex new intellectual property protection for patents.

The Office of the United States Trade Representative said that under the agreement Australia would adopt "higher standards" for all forms of intellectual property, including patents.

A 1996 Industry Commission report found that extending patents by five years would largely benefit American companies and cost Australian consumers up to A$ 7.4 billion. Pharmaceutical buyers would be particularly affected by such an extension, the report found.

The Trade Minister, Mark Vaile, said yesterday that the final text of the trade deal would not please everyone, but would gain broad community support.

Source: www.smh.com.au/articles/2004/03/01/1078117369335.html (accessed 13 July 2012).

came for the Australian Parliament and Korean Diet, respectively, to ratify the agreements. Box IV.1 documents the rickety course the Australia-United States FTA had when it went before the Australian Parliament, which perceived a potential conflict with one of Australia's key health-care policies – the Pharmaceutical Benefits Scheme (PBS).

Although it is true that even the most carefully negotiated agreements can often come unstuck by what may only be fractious Party politics, the best way for negotiators to minimize such risks is to consult as widely as possible before and during negotiations, and to inform policymakers from different parts of the Government (who will ultimately be asked to implement any commitments made) as well as stakeholders in civil society (including the private sector, both potential winners and losers) who will ultimately be the beneficiaries or have to pay the price of any upcoming liberalization. This reiterates a point made in chapter 1 of this manual on the need to consult as broadly as possible.

When it comes to consulting stakeholders during the course of ongoing negotiations, policymakers will have to weigh up the benefits of doing so against the inevitable need for a certain degree of confidentiality. Trade negotiations must, by their very nature, be subject to a certain degree of secrecy; however, if negotiators shroud their activities in too much secrecy, this is likely to create a sense of unease on the part of those who fear they will have to bear the brunt of any liberalization and they are likely to make their unease felt to their own parliamentary representatives.

2. Legal verification and parliamentary ratification

The ease with which a PTA is ratified will be a function of the underlying political realities and the legal system of the implementing State, i.e., whether its legal system is monist, dualist or a mix of the two. It may also depend on the scope that the State's laws

grants to private actors to challenge the constitutionality of international treaties or implementing legislation. All of these factors will influence the speed with which a PTA may enter into force. An election between the date on which a PTA is signed and the date on which it is submitted to Parliament for ratification can also spell trouble for the agreement's eventual passage into law. Electoral politics and legal challenges are something that negotiators will not typically be able to take into account when preparing for, and conducting, negotiations, although they must clearly have a sophisticated understanding of the prevailing domestic political constraints and the constitutional framework that underlies their negotiating mandate.

Even before a PTA or enacting legislation is submitted to Parliament for ratification or adoption, the text of the agreement must be submitted in full for review by government lawyers, usually at the Ministry of Justice or its equivalent, who are ultimately charged with representing the country if it becomes liable under international law. This is a process commonly referred to as "legal scrubbing" and can take several months if it is to be done properly. This timeframe can be shortened considerably if the lawyers are constantly given updated negotiating texts as they are concluded, or if they are themselves embedded in the negotiating team and attached to each negotiating group. In any event, once the lawyers have given the green light, it is up to legislative affairs experts to draft the ratifying bill or enacting legislation for submission to parliament. This is again likely to be someone from the Ministry of Justice, but the Office of the President or Prime Minister might have its own lawyers that produce drafts of this type of legislation. Box IV.2 contains an excerpt, from a training manual produced by the Government of Australia on FTA negotiations, where the process by which international treaties become law in Australia is discussed.

What is interesting to note in the example of the Australian procedures cited in box IV.2 is that even after the agreement has been signed, there is still a large amount of analytical work to be done, i.e., an examination of whether the agreement is in the national interest as well as a study of the agreement's likely impact on various stakeholders and the community as a whole. Some might argue that such an analysis essentially provides an opportunity for Parliament (for whose benefit these studies are conducted) to second-guess the executive, which will have done its own analysis on the term of the PTA it ultimately signed.

Box IV.2. Australia's treaty approval process under domestic law

The Australian treaty approvals process includes the following main steps for all treaty actions, i.e., creating a new treaty, amending an existing one or abrogating a treaty:

- Preparation of a National Interest Analysis that sets out the advantages and disadvantages to Australia of becoming, or not becoming, a party to the treaty, including significant quantifiable and foreseeable economic and/or environmental effects of the treaty. Among several other points, the National Interest Analysis must detail what consultations have taken place with the States and Territories, and with community and other interested partners;
- Preparation of a Regulatory Impact Statement that includes an assessment of the impact of the proposed regulation (i.e., the treaty) and alternatives on different groups and the community as a whole;
- Tabling the treaty before Parliament for 20 sitting days and consideration of the proposed treaty action by the Joint Standing Committee on Treaties. If Parliament is in recess, several weeks or even months may elapse before this criterion has been met;
- Preparation and passage of the enabling legislation. The timing of this depends on the complexity of the proposed legislation, the timetable of parliamentary sittings and the demands of other business before Parliament.

Source: Goode, 2005.

Nevertheless, conducting a subsequent analysis of the type mentioned allows policymakers and legislators to thoroughly assess the implications of signing the proposed PTA; from this perspective, this is likely to prove beneficial and raises the legitimacy of the negotiated agreement once it enters into force.

3. Services trade-related aspects of implementation in particular sectors

There are various services-specific aspects of implementing negotiated outcomes. Similar to several other agreements that formed part of the Uruguay Round Single Undertaking, GATS imposed its own burden on countries in terms of amending existing domestic laws or enacting new legislation as well as establishing the proper institutional structures required to implement the agreement properly (Marconini and Sauvé, 2010). Particularly in some sectors such as telecommunications, some important additional commitments contained in the Telecoms Reference Paper (not part of the Single Undertaking, but adopted nonetheless in one form or another by almost all WTO accession countries since 1995) imposed a heavy burden. Because only a limited number of developing countries participated in the so-called "overtime negotiations" – which culminated in 1997 in additional market opening rules and commitments in the basic telecommunications sector (as well as financial services) – a number of North-South PTAs have seen the developing country partner making commitments that are very close, or even identical, to those set out in the Telecoms Reference Paper. This is by no means a worrisome development, since the Reference Paper contains what are widely perceived as sound pro-competitive regulatory principles designed to effectively foster competition in the wake of trade and investment liberalization. The only questionable angle to this trend (if any) is the extent to which developing countries have truly implemented these additional commitments.[29]

Other examples abound in other sectors. In distribution services, for example, many countries have zoning or other regulations that effective impede market access for global retailers, whose business model is often predicated on the establishment and operation of large outlets close to residential areas. Any meaningful market access commitments to open up the retail distribution sector would necessarily have to be accompanied by changes to restrictive zoning laws or any other laws that prevent or impede the construction and operation of these stores, or the entry into retailing services by foreign suppliers.

Competition policy is another good example of a regulatory implementation issue that affects many sectors, but services more acutely (due to the imbalances in market power and information asymmetries that are prevalent on many services markets). Many developing countries have resisted multilateral trade rules on competition policy, but have then agreed to them in PTAs with developed country partners. In fact, many developing countries entered into PTA commitments to enforce competition rules before they had even set up commensurate legal frameworks (i.e., adopted a competition law) or established proper and effective institutional structures (i.e., a competition regulator). An excerpt from the competition provisions of the 2005 Closer Economic Partnership Agreement between New Zealand and Thailand is given in box IV.3.

Even a casual reading of the above provisions leads to the conclusion that the Parties to this PTA have entered into relatively broad commitments on competition policy – although Article 11.10 carves these provisions out from the agreement's dispute settlement chapter.

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[29] To name just one example of this, under the 2011 Trade Promotion Agreement between Panama and the United States (which has been signed but not yet implemented), Panama has agreed "to a pro-competitive regulatory framework that builds upon the WTO Basic Telecommunications Reference Paper. This is a significant achievement given that Panama took no specific telecommunications commitments at the WTO and therefore never adopted the Reference Paper". See www.ustr.gov/about-us/press-office/fact-sheets/2011/may/telecommunications-us-%E2%80%93-panama- trade-promotion-agreement (accessed 13 July 2012).

Box IV.3. Competition provisions of the 2005 New Zealand-Thailand CEPA

Chapter 11: Competition Policy

Article 11.1 Objectives and Definitions

1. The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of:

   (a) Fair competition;

   (b) The APEC principles of non-discrimination, comprehensiveness, transparency and accountability as contained in the 1999 APEC Economic Leaders Declaration (the APEC Principles); and

   (c) The curtailment of anti-competitive practices.

2. For the purposes of this Chapter, "anti-competitive practices" means conducting of business or transactions that adversely affect competition, such as:

   (a) Anti-competitive horizontal arrangements between competitors;

   (b) Misuse of market power, including predatory pricing;

   (c) Anti-competitive vertical arrangements; and

   (d) Anti-competitive mergers and acquisitions.

[…]

Article 11.3 Promotion of Competition

Each Party shall promote competition by:

(a) Addressing anti-competitive practices in its territory and by adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices;

(b) Using its best efforts to reduce transaction costs and compliance costs for business;

(c) Applying the APEC Principles to all forms of commercial activity in a manner that does not discriminate between or among economic entities in like circumstances; and

(d) Promoting effective coordination on competition policy and law between the Parties.

Source: www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Thailand/ Closer-Economic-Partnership-Agreement-text/0-cep-chapter11.php (accessed 13 July 2013).

B. Monitoring and enforcing implementation of preferential trade agreements

Most PTAs establish some form of institutional mechanism, the job of which is to meet regularly and discuss implementation issues. In addition to such official channels, private sector interests will normally alert policymakers relatively quickly if they think their interests are being prejudiced in a manner that does not conform to the PTA partner's treaty commitments. The task of any negotiator is to ensure that these consultative mechanisms meet often enough and/or are easy enough to convene that any

implementation issue may be brought to the PTA partner's attention with sufficient timelines, and can be discussed and dealt with by counterparts who have both sufficient technical knowledge as well as the requisite authority to be able to instigate change where it is required. Subsection 1 below examines how some of these mechanisms relate to trade in services. Subsection 2 examines dispute settlement provisions in PTAs and how they relate to trade in services

Whether or not a PTA has genuinely effective provisions allowing for the resolution of trade disputes tends to be a variable of the operability of these provisions, which is itself more a question of political will and legal drafting than any other factor. In general, US PTAs tend to feature more detailed rules on enforcement than those with other developed country partners (Horn, Mavroidis and Sapir, 2009). In terms of their procedural specifics and the language in which such provisions are couched, many PTAs rely heavily on the *acquis* that has evolved over the course of more than 60 years of multilateral dispute settlement in the GATT and the WTO, and thus follow the latter's Dispute Settlement Understanding to various degrees (Porges, 2011).

1. Monitoring mechanism for preferential trade agreements

Some PTAs set out institutional provisions in a dedicated chapter, section or even a single article.[30] Others establish different monitoring mechanisms on a chapter-by-chapter basis or in the context of the relevant substantive provisions such mechanisms are designed to oversee. The Japanese PTA template is one example of a set of agreements containing relatively detailed institutional provisions, with articles governing their establishment and operation in both the main agreement text and the implementation agreements that typically accompany Japanese PTAs.

Box IV.4 contains two general institutional provisions establishing bodies to monitor implementation of various substantive aspects of the 2007 Economic Partnership Agreement between Japan and Indonesia. Box IV.5 contains the specific institutional provisions of the same EPA as set out in the services chapter.

Comparing the texts from the two articles on the establishment of a sub-committee (the general institutional provision and that from the services chapter), the latter seems to be, by and large, a restatement of the former. It is worth noting that although the provisions in the Japanese FTA/EPA template seem to set out what appear to be quite detailed institutional and monitoring provisions (as cited here), it is not immediately clear from the text of the agreement how easy it is to convene a meeting of the various bodies. As noted above in chapter III, the Japan-Philippines EPA had quite detailed provisions setting out consultation mechanisms for the implementation and exchange of information between various sectors singled out for heightened cooperation between the two partners. These arrangements will certainly double as a form of implementation mechanism, but their utility is limited to the substantive sectors that form their focus.

In practice, any perceived lack of implementation that harms the export interests of one Party will be brought to the attention of the other Party by the usual diplomatic channels. The chances of obtaining the desired outcome when exchanges are being handled by the Ministry of Foreign Affairs is usually limited, since that Ministry has little or no authority to coerce other regulatory agencies to comply with international treaty obligations. More often than not, the only effective way to get the other Party to respond with the desired vigour and urgency to any perceived failure to implement its obligations under a PTA is to initiate formal dispute settlement proceedings, a topic dealt with in the next subsection.

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[30] See, for example, the 2002 FTA between Singapore and the European Free Trade Association, where the majority of the institutional provisions are contained in Part VIII, in a single article (Article 55).

Box IV.4. General institutional provisions of the 2007 Japan-Indonesia EPA

Article 14: Joint Committee

1. A joint committee (hereinafter referred to as "the Joint Committee") shall be hereby established.
2. The functions of the Joint Committee shall be:
   (a) Reviewing and monitoring the implementation and operation of this Agreement;
   (b) Considering and recommending to the Parties any amendments to this Agreement;
   (c) Supervising and coordinating the work of all sub-committees established under this Agreement;
   (d) Adopting:
      (i) The Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin, referred to in Article 27 and Article 50, respectively; and
      (ii) Any necessary decisions;
   (e) Carrying out other functions as the Parties may agree.
3. The Joint Committee:
   (a) Shall be composed of representatives of the Governments of the Parties; and
   (b) May establish and delegate its responsibilities to sub-committees.
4. The Joint Committee shall establish its rules and procedures.
5. The Joint Committee shall meet as such times as may be agreed by the Parties. The venue of the meeting shall be alternately in Japan and Indonesia, unless the Parties agree otherwise.

Article 15: Sub-Committees

1. The following sub-committees shall be hereby established:
   (a) Sub-Committee on Trade in Goods;
   (b) Sub-Committee on Rules of Origin;
   (c) Sub-Committee on Customs Procedures;
   (d) Sub-Committee on Investment:
   (e) Sub-Committee on Trade in Services;
   (f) Sub-Committee on Movement of Natural Persons;
   (g) Sub-Committee on Energy and Mineral Resources;
   (h) Sub-Committee on Intellectual Property;

Box IV.4. General institutional provisions of the 2007 Japan-Indonesia EPA *(continued)*

(i) Sub-Committee on Government Procurement;

(j) Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence;

(k) Sub-Committee on Cooperation.

2. A sub-committee shall:

(a) Be composed of representatives of the Governments of the Parties and may, by mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed;

(b) Be co-chaired by officials of the Governments of the Parties.

3. A sub-committee shall meet at such times and venues as may be agreed upon by the Parties.

4. A sub-committee may, as necessary, establish its rules and procedures.

5. A sub-committee may establish and delegate its responsibilities to working groups.

Source: www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf (accessed 13 July 2012).

Box IV.5. Specific institutional provisions of the 2007 Japan-Indonesia EPA

Economic Partnership Agreement

Chapter 6: Trade in Services

Article 91: Sub-Committee on Trade in Services

For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:

(a) Reviewing and monitoring the implementation and operation of this Chapter;

(b) Discussing any issues related to this Chapter;

(c) Reporting the findings of the Sub-Committee to the Joint Committee; and;

(d) Carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Source: www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf (accessed 13 July 2012).

2. Dispute settlement and preferential trade agreements

Dispute settlement provisions in PTAs generally tend to fall into one of three broad categories, i.e., "diplomatic dispute settlement; systems based on a standing tribunal; and referral to an ad hoc arbitral panel, as in the WTO" (Porges, 2011). Although there is still some preference for purely diplomatic resolution procedures (since these give the greatest degree of policy space and flexibility to policymakers), most North-South PTAs will ideally seek to incorporate rules that allow for referral to an ad hoc arbitral panel. This is due mainly to the naturally inherent economic power asymmetries and the fact that the use of this form of dispute settlement is perceived to have overwhelmingly proven its effectiveness in the WTO context. In addition, most negotiators will have at least passing familiarity with the WTO dispute settlement procedures, and will thus feel a certain degree of ease in adopting rules in the context of a PTA that are based on those procedures. Some regional economic integration initiatives, including the European Union, have opted for the establishment of permanent dispute resolution institutions; however, the cost of doing so can be significant and – aside from the European Union experience – has not always proven to be a sound and economically efficient use of scarce financial and other resources.

Negotiators must also be conscious of the fact that – regardless of the system that is chosen for resolving disputes (political/diplomatic versus adjudication) – because trade disputes concern the actions of sovereign States (or at least separate customs territories possessing full autonomy in conducting their external commercial relations), forcing the "losing" Party (or the Party deemed to have committed a breach of its treaty obligations) to comply with a ruling is more often than not a negotiated outcome rather than an act of explicit coercion.[31] For this reason, there are other factors that are likely to affect just how binding and rigorous a given PTA's dispute settlement provisions are, and how effective a remedy they represent in any grievances that may arise. These factors include how much control each Party to a PTA exercises over the different stages of an eventual dispute, and the possibilities afforded either Party for blocking progress of the dispute resolution procedures.

Another important factor is the mechanism by which any findings of compliance or non-compliance are to be adopted, and whether the adoption of such findings can effectively be vetoed by the losing Party. Finally, and perhaps most importantly, negotiators much consider the possible remedies that dispute settlement rules under a PTA may afford an aggrieved Party who has effectively "won" its case (i.e., obtained a ruling in its favour). A suspension of concessions or even payments of monetary awards are two of several options to be considered.

Negotiators also need to be aware of the possibility of carving out certain PTA provisions from the scope of dispute settlement rules as well of the costs and benefits of doing so. Some PTAs carve out contingency protection measures from the applicability of dispute settlement rules – a questionable practice because it effectively denies exporters any remedy if they feel their goods are being unfairly targeted by such measures. In other PTAs, Aid for Trade, competition policy and selected aspects of investment disciplines may be expressly excluded from the chapter on dispute settlement. This may yet again have unfortunate consequence of denying the developing country partner any remedy if it feels the developed country partner is not living up to its commitments.

Another issue that negotiators must consciously take a position on when developing dispute settlement rules is the scope of possible complaints, i.e., the grounds for invoking these procedures. Will they also be applicable to disagreements on interpretations of certain provisions? Will they be limited to allegations of a specific violation, or will dispute settlement also be

[31] Whereas it may be true that overwhelming economic power asymmetries may make coercion a possibility for the more powerful PTA party, exercising such power is likely to undermine the cooperative spirit that the PTA is intended to embody.

available for so-called non-violation or even situational complaints? Most PTAs opt for some variation on the terms "nullification or impairment of concessions" or "denial of benefits". Another issue that negotiators must take into account in this context is that of delimiting the application of dispute settlement procedures under a PTA and those of WTO. This involves the question of when must Parties seek recourse under a PTA and when are they allowed to bring a dispute before WTO. This may be especially relevant in the case of overlapping commitments, i.e., commitments made by a Party in a PTA that mirror or are identical to those it has made under WTO. Such occurrences are far from uncommon in services trade. Therefore, negotiators need to be wary of any commitment that would close off the option of initiating dispute settlement in one forum of another.

Box IV.6 contains text from the dispute settlement provisions of PACER. The attentive reader will notice that, in reality, these provisions constitute little more than a consultative mechanism. This is strongly in keeping with the political/diplomatic route for resolving disputes. In the PACER context, such a choice is probably more than adequate, given the very limited ambitions this agreement represents. PACER is, in effect, little more than an agreement to conduct future negotiations towards closer economic integration, and it merely aims to set some ground rules for such future negotiations.

Other agreements contain much more detailed rules and procedures, modelled on those developed for WTO during the Uruguay Round. Box IV.7 summarizes the relevant institutional and dispute settlement provisions of the 2000 PTA between Mexico and Israel.

Box IV.6. Dispute settlement in the Pacific Agreement on Closer Economic Relations

Article 15 consultations

If a Party considers that:

(a) An obligation under this Agreement has not been, or is not being, fulfilled;

(b) Any benefit conferred upon it by this Agreement is being, or may be, denied;

(c) The achievement of any objective of this Agreement is being, or may be, frustrated;

(d) A change in circumstance necessitates, or might necessitate, an amendment to this Agreement;

it may notify any other Party, through the Forum Secretariat, of its wish to enter into consultations. The Party so requested shall enter into consultations in good faith and as soon as possible, with a view to seeking a mutually satisfactory solution.

Source: www.forumsec.org.fj/resources/uploads/attachments/documents/PACER.pdf (accessed 17 July 2012).

In summary, there are many questions that negotiators need to consider when drafting dispute settlement rules, and these will ultimately be influenced by the Parties' ambitions, the intensity and nature of economic integration that the PTA aims to achieve as well as the prevailing economic power asymmetries between PTA partners. There are no strictly right or wrong choices here per se, merely those that best meet the mutual objectives of the Parties concerned.

Box IV.7. Institutional and dispute settlement provisions in the 2000 Mexico-Israel FTA

Chapter 10 of the FTA contains the relevant institutional and dispute settlement provisions. A Free Trade Commission is established to administer implementation of the agreement, and assumes the roles played by the WTO's Ministerial Conference, General Council and Dispute Settlement Body (Article 10-01).

Recourse to the agreement's dispute settlement mechanisms is provided on several grounds, including with regard to the interpretation and application of the agreement in addition to violations of the agreement and nullification and impairment (Article 10-03).

The FTA contains some guiding principles for a situation in which a Party has the option of initiating a dispute settlement procedure under both the WTO and the FTA. Although the agreement seems to have a bias towards settling disputes under its own rules, it does not preclude doing so under the WTO where this option is available, and merely requires the Parties to notify and consult with each other before resorting requesting the establishment of a panel under Article 6 of the WTO Dispute Settlement Understanding (Article 10-04).

Consultations and the initiation of procedures are set up largely in accordance with existing practice at the WTO, with the above mentioned Free Trade Commission playing the role of the WTO's Dispute Settlement Body. But if the aggrieved Party is not satisfied, it may escalate the matter and request the establishment of an arbitral panel (Articles 10-05, 10-07, 10-08).

The panel works under similar time limits as WTO panels, and has up to 90 days to issue an initial report (similar to the WTO's interim report), after which it has a further 60 days to issue a final report (Articles 10-12 and 10-13). After the final report has been issued, the onus is on the Parties to agree on how to implement its findings (Article 10-14). If this is not achieved, the agreement provides that the aggrieved Party may suspend benefits under the FTA in much the same way as this is foreseen under the DSU Article 10-15).

Source: Notes by the authors based on www.worldtradelaw.net/fta/agreements/isrmexfta.pdf (accessed 17 July 2012).