

Chapter 14

Dispute Settlement

Article 140: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

Article 141: Scope of Application¹⁸

Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement and wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 142: Choice of Forum

1. Where a dispute arises under this Agreement and under other agreements including another free trade agreement to which both Parties are Party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Without prejudice to the Party's rights and obligations under the WTO Agreement, once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the dispute settlement provisions under those agreements in respect of that matter, unless both Parties agree otherwise.

Article 143: Consultations

1. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article.
2. A Party may request consultations with the other Party with respect to any measure or other matter that it considers may affect the operation of this Agreement. The request for consultations shall be submitted in writing and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the other Party.

¹⁸ The Parties agree that this Chapter does not apply to proposed measures and/or non violation complaints (nullification or impairment of a benefit in cases where there is no violation of the Agreement's provisions).

3. If a request for consultations is made, the Party complained against shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view of reaching a mutually satisfactory solution, within a period of:

- (a) not more than 30 days after the date of receipt of the request;
- (b) on disputes concerning perishable goods, 15 days after the date of receipt of the request.

The consultation period shall not exceed 45 days from the date of receipt of the request to initiate consultations and 20 days in case of perishable goods, unless both Parties agree to extend these periods.

4. The consulting Parties shall:

- (a) provide sufficient information to enable a full examination of how the measure or other matter at issue might affect the operation of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

5. In consultations under this Article, a consulting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

6. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in a place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

7. Consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

Article 144: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the Parties so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular the positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter.

3. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time and be terminated at any time.

4. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 145 (Establishment of a Panel).

Article 145: Establishment of a Panel

1. If the Party complained against does not answer the request for consultations within 10 days from the date of receipt of such request, or if the Party complained against does not enter into consultations within the periods laid down in Article 143 (Consultations), paragraph 3, or if the consultation period has expired and the Parties have failed to resolve the dispute, the complaining Party may request in writing the establishment of a panel to consider the matter.

2. The complaining Party shall identify the measure or other matter at issue and indicate the provisions of this Agreement considered relevant, and shall deliver the request for the establishment of the panel to the other Party.

3. A panel shall be established upon receipt of a request.

4. Unless otherwise agreed by the disputing Parties, the panel shall be established, selected and perform its functions in a manner consistent with this Chapter.

Article 146: Composition of a Panel

1. The Parties shall apply the following procedures in selecting a panel:

- (a) a panel shall comprise 3 members;
- (b) each Party shall appoint a panelist within 10 days of the receipt of the request for the establishment of the panel;
- (c) if one Party does not appoint a panelist within the aforementioned 10 days, the other Party shall be entitled to appoint a panelist of its selection;
- (d) the Parties shall endeavour to agree on a third panelist, who shall not be a national of any of the Parties, to serve as chairperson of the panel, within 15 days of the receipt of the request for the establishment of the panel;
- (e) in the event that the chairperson of the panel cannot be appointed in accordance with the procedure set out in sub-paragraph (d), either Party may request the Director General of the WTO to designate the panelist within 10 days of the receipt of such request. This selection shall be made among WTO experienced panelists that abide by the criteria established by the Parties;
- (f) all panelists shall meet the qualifications set out in paragraph 2.

Each Party shall endeavour to appoint panelists who have expertise or experience relevant to the subject matter of the dispute.

2. All panelists shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party;
- (d) comply with the Rules of Conduct for the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes; and
- (e) not have participated in the dispute in any other capacity pursuant to Article 144 (Good Offices, Conciliation and Mediation).

3. The date of composition of the panel shall be the date on which the chairperson is appointed.

4. If any of the panelists resigns or becomes unable to act, a new panelist shall be appointed in accordance with this Article. If a Party believes that a panelist is in violation of the Rules of Conduct referred to in paragraph 2(d), both Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be appointed in accordance with this Article.

5. Where in accordance to paragraph 4, there is a need to appoint a new panelist, panel proceedings shall be suspended until the new panelist is appointed. The new panelist shall have all the powers and duties of the original panelist.

6. The procedures set out in this Article shall apply in those cases where the original panel, or some of its members, are unable to reconvene pursuant to Articles 153 (Implementation of the Panel Report), 154 (Compliance Review), 155 (Compensation and Suspension of Concessions or Other Obligations) and 156 (Post Suspension). In these cases, the period for notifying the report shall be counted from the date on which the last panelist is appointed.

Article 147: Functions of the Panel

1. The function of a panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Where a panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against brings the measure into conformity.

3. The panel, in its findings and recommendations, cannot add to or diminish the rights and obligations provided for in this Agreement.

Article 148: Rules of Procedure of the Panel

1. The Commission shall establish Rules of Procedure, no later than during its first session, which shall ensure:

- (a) a right to at least one hearing before the panel;
- (b) an opportunity for each Party to provide initial and rebuttal written submissions;
- (c) the possibility of using technological means to conduct the proceedings;
- (d) that the hearings before the panel and its deliberations shall be confidential; and
- (e) the protection of confidential information.

2. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Rules of Procedure. The panel may, in consultation with the Parties, regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations.

3. The Commission may modify the Rules of Procedure.

4. Unless the Parties otherwise agree within 20 days from the date of the establishment of the panel, the terms of reference of the panel shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of the panel pursuant to Article 145 (Establishment of a Panel) and to make findings of fact and law, conclusions and, if needed, recommendations for the resolution of the dispute."

5. Where the Parties have agreed on different terms of reference they shall notify these to the panel within 2 days of its composition.

6. The location of any hearing of the panel, if it is held in person, shall be decided by mutual agreement of the Parties, failing which, it shall be held in the capital of the Party complained against.

7. The panel shall make every effort to take its decisions by consensus, provided that where a panel is unable to reach consensus it may take its

decisions by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the panel report by individual panelists shall be anonymous.

8. The remuneration of the panelists and other expenses of the panel shall be borne by the Parties in equal shares.

Article 149: Information and Technical Advice

1. On request of a Party, or on its own initiative, unless both Parties disapprove, the panel may seek information and technical advice from any person or body that it deems appropriate.

2. Before the panel requests information or technical advice, appropriate procedures shall be established in consultation with the Parties. The panel shall provide the Parties with:

- (a) prior notification and time to make observations before the panel regarding requests for information and technical advice pursuant to paragraph 1; and
- (b) a copy of any information or technical advice submitted in answer to a request made pursuant to paragraph 1 and the opportunity to submit comments.

3. When the panel takes into consideration such information or technical advice in the preparation of its report, it shall also take into account any comments or observations submitted by the Parties on the information or technical advice.

4. When a request for information or technical advice is made in accordance with this Article, any period regarding the panel procedure shall be suspended from the date of the delivery of the request to the date when the written report is delivered to the panel.

Article 150: Suspension or Termination of Proceedings

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months from the date of such agreement. If the panel procedure has been suspended for more than 12 months, the terms of reference of the panel shall lapse unless the Parties agree otherwise, without prejudice of the complaining Party's right to request consultations and subsequently request the establishment of a panel on the same matter at a later stage. This paragraph shall not apply where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 144 (Good Offices, Conciliation and Mediation).

2. The Parties may agree to terminate the proceedings before a panel by jointly notifying the panel to this effect, at any time prior to the notification of the panel report.

Article 151: Report of the Panel

1. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.
2. The panel shall notify a report to the Parties containing:
 - (a) findings of fact and law;
 - (b) its conclusions as to whether the measure or other matter at issue is inconsistent with this Agreement; and
 - (c) its recommendations, if any, for the resolution of the dispute.
3. Unless the Parties otherwise agree, the panel shall notify the report to the Parties within 120 days after the composition of the panel.
4. In exceptional cases, if the panel considers it cannot notify its report to the Parties within 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will notify its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.
5. In cases regarding perishable goods, the panel shall make every effort to notify its report within 80 days from the date of its composition. Any delay shall not exceed a further period of 10 days, unless the Parties otherwise agree.
6. The Parties shall simultaneously make the report available to the public, subject to the protection of confidential information, within 25 days after its notification, or 5 days after the panel responds to a request, if any, pursuant to Article 152 (Request for Clarification of the Report).
7. The panel report is final and binding on the Parties.

Article 152: Request for Clarification of the Report

1. Within 25 days of the notification of the report, either Party may submit a written request to the panel for clarification of any items the Party considers require further explanation or definition.
2. The panel shall respond the request within 20 days following the submission of such request. The clarification of the panel shall only be a more precise explanation of the contents of the report, and not an amendment of such report.
3. The filing of this request for clarification will not postpone the effect of the panel report or the compliance of the adopted decision, unless the panel decides otherwise.

Article 153: Implementation of the Panel Report

1. The Party complained against shall, without undue delay, take any measure necessary to comply in good faith with the report.
2. The disputing Parties may also agree at any time on a mutually satisfactory solution to the dispute.
3. If it is not practicable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to comply, within 30 days after the date of the notification of the report.
4. Failing agreement between the Parties on the reasonable period of time in accordance with paragraph 3, either Party may request the original panel to establish the reasonable period of time. Such a request shall be made in writing and notified to the other Party. The panel shall notify its report to the Parties within 20 days from the date of the submission of the request.
5. The reasonable period of time may be extended by mutual agreement of the Parties. All periods contained in this Article constitute part of the reasonable period of time.

Article 154: Compliance Review

1. The Party complained against shall notify the complaining Party by the end of the reasonable period of time of any measure that it has taken to comply with the report of the panel and provide information including the effective date and the relevant text of the measure.
2. In the event of disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may refer the matter to the original panel. Such request shall be made in writing, identify the specific measure at issue and explain how such measure is inconsistent with the provisions of this Agreement. The panel shall notify its report within 45 days of the date of the submission of the request.

Article 155: Compensation and Suspension of Concessions or Other Obligations

1. If a panel has concluded, in accordance with Article 151 (Report of the Panel), that a measure or other matter at issue is inconsistent with this Agreement and the Party complained against has failed to carry out the recommendations of the panel report within the reasonable period of time, or if the complaining Party considers that the Party complained against has failed to carry out the mutually satisfactory solution, or if the panel, in accordance with Article 154 (Compliance Review) concludes that the measure taken to comply is inconsistent with that Party's obligations under this Agreement, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation.

2. If the disputing Parties:

- (a) are unable to agree on compensation within 30 days after the period for negotiating such compensation has begun; or
- (b) have agreed on compensation and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application, to that Party, of concessions or other obligations of equivalent effect. The notice shall specify the level of concessions or other obligations that the Party proposes to suspend. The complaining Party may begin suspending concessions or other obligations 30 days after the date on which it provides written notice under this paragraph, or 7 days after the panel issues its report under paragraph 3, as the case may be.

3. If the Party complained against considers that the level of concessions or other obligations proposed to be suspended is excessive, it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original panel be reconvened to consider the matter. The Party complained against shall also deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall notify its report to the disputing Parties within 60 days after it reconvenes. If the panel finds that the level of concessions or other obligations proposed to be suspended is excessive, it shall establish the level of concessions or other obligations it considers to be of equivalent effect.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- (a) a complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors affected by the measure or other matter at issue that the panel has found to be inconsistent with the obligations of this Agreement; and
- (b) a complaining Party that considers it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors may suspend concessions or other obligations in other sectors.

5. Compensation and suspension of concessions or other obligations shall only be applied until the Party complained against has implemented the recommendation of the panel report or a mutually satisfactory solution is reached.

Article 156: Post Suspension

1. Without prejudice to the procedures in Article 155 (Compensation and Suspension of Concessions or Other Obligations), if the Party complained against considers that it has complied, it may provide written notice to the complaining Party to request the end of the suspension of concessions or other obligations.

2. If the complaining Party agrees, it shall reinstate any concessions or other obligations suspended under Article 155 (Compensation and Suspension of Concessions or Other Obligations). If the complaining Party disagrees, it shall refer the matter to the original panel within 60 days of the receipt of the written notice provided by the Party complained against. If the complaining Party does not refer the matter to the panel within said period, it shall lose its right to apply the suspension of concessions or other obligations.

3. The panel shall notify its report on the matter within 30 days after the complaining Party refers the matter to it. If the panel concludes that the Party complained against has complied, the complaining Party shall promptly reinstate any concessions or other obligations suspended under Article 155 (Compensation and Suspension of Concessions or Other Obligations).

Article 157: Private Rights

No Party shall provide for a right of action under its domestic law against the other Party on the grounds that a measure of the other Party is inconsistent with this Agreement.

Article 158: Time Limits

1. All periods laid down in this Chapter and in the Rules of Procedure shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any period referred to in this Chapter and in the Rules of Procedure may be modified by mutual agreement of the Parties.