

CHAPTER 15

DISPUTE SETTLEMENT

ARTICLE 15.1: COOPERATION

The Parties shall at all times endeavor to cooperate with respect to the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory solution of any matter that might affect its operation when a dispute arises.

ARTICLE 15.2: SCOPE OF APPLICATION

Unless otherwise provided in this Agreement, whenever a Party considers that the other Party has failed to carry out its obligations under this Agreement, the dispute settlement provisions of this Chapter shall apply.

ARTICLE 15.3: CHOICE OF FORUM

1. Where a dispute regarding the same measure arises under this Agreement and under other agreements including another free trade agreement to which both Parties are party or the WTO Agreements, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has selected the forum under any of the agreements referred to in paragraph 1, the forum thus selected shall be used to the exclusion of all other fora.

ARTICLE 15.4: CONSULTATIONS

1. The Parties shall make every attempt to arrive at a mutually satisfactory solution of any dispute through consultations under this Article or under other provisions of this Agreement providing for consultations.
2. The request for consultations shall be submitted in writing and shall set out the reasons for the request, including identification of the measure at issue, and indication of the legal basis for the complaint. The complaining Party shall deliver the request to the Party complained against.
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 within a period not exceeding 30 days after the date of

receipt of the request, with a view to reaching a mutually satisfactory solution. Consultations on urgent matters, including those regarding perishable goods, shall commence within 15 days from the receipt of the request for consultations.

4. If the Party complained against does not respond within the aforesaid 10 days, or does not enter into consultations within the timeframes provided in paragraph 3, the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

5. The consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

ARTICLE 15.5: ESTABLISHMENT OF AN ARBITRAL TRIBUNAL

1. If the consultations referred to in Article 15.4 fail to resolve a matter within 60 days or 30 days in relation to urgent matters, including those on perishable goods, after the date of receipt of the request for consultations, the complaining Party may request in writing the establishment of an arbitral tribunal to examine the matter.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measure/s at issue, and provide brief summary of the legal basis of the complaining Party sufficient to present the problem clearly, and shall deliver the request to the other Party. The date of establishment of the arbitral tribunal is the date of the receipt of the request.

ARTICLE 15.6: COMPOSITION OF ARBITRAL TRIBUNAL

1. An arbitral tribunal shall comprise three members.

2. Within 15 days after the establishment of an arbitral tribunal, each Party shall designate one member of the arbitral tribunal.

3. The Parties shall designate by common agreement the third arbitrator within 30 days after the establishment of an arbitral tribunal. The arbitrator thus designated shall chair the arbitral tribunal.

4. If any member(s) of the arbitral tribunal has not been designated within 30 days after the establishment of the arbitral tribunal, at the request of either Party, the Director-General of the WTO shall be authorized to designate the member(s) within a further 30 days. If one or more members are designated according to this paragraph, the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal.

5. The chair of the arbitral tribunal shall not be a national of either Party nor have his or her usual place of residence in the territory of either Party, nor be employed by either Party, nor have dealt with the matter in any capacity.

6. All arbitrators 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; and
- (d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a substitute arbitrator shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator, and the substitute arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the substitute arbitrator.

ARTICLE 15.7: FUNCTIONS OF ARBITRAL TRIBUNALS

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

2. Where an arbitral tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement.

3. The arbitral tribunal shall consider this Agreement in accordance with customary rules of interpretation of public international law. The arbitral tribunal, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

ARTICLE 15.8: RULES OF PROCEDURE OF ARBITRAL TRIBUNAL

1. Unless the Parties otherwise agree, the arbitral proceedings shall be conducted in accordance with the Rules of Procedure set out in Annex 15-A.
2. Apart from the rules set out in this Article and Rules of Procedure referred to in paragraph 1, the arbitral tribunal, in consultation with the Parties, may adopt additional rules of procedure, including those in relation to the rights of the Parties to be heard and its deliberations, as it considers appropriate, provided they are not contrary to this Chapter and the Annex 15-A.
3. The arbitral tribunal shall take its decisions by consensus provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the arbitral tribunal report by individual arbitrators shall be anonymous.
4. Unless the Parties otherwise agree within 20 days from the date of the establishment of the arbitral tribunal, the terms of reference shall be as follows:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 5, and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."
5. The remuneration of the arbitrators and other expenses associated with the conduct of arbitral proceedings shall be borne by the Parties in equal shares.

ARTICLE 15.9: SUSPENSION OR TERMINATION OF PROCEEDINGS

1. The Parties may agree that the arbitral tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the terms of reference for establishment of the arbitral tribunal shall lapse, unless the Parties otherwise agree.
2. The Parties may agree to terminate the proceedings of an arbitral tribunal.

ARTICLE 15.10: REPORT OF ARBITRAL TRIBUNAL

1. The arbitral tribunal shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.
2. Unless the Parties otherwise agree, the arbitral tribunal shall issue the report to Parties within 120 days from the date of its composition.

3. In exceptional cases, if the arbitral tribunal considers it cannot issue its report 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 release its report. Any delay shall not exceed an additional period of 30 days, unless the Parties otherwise agree.
4. In cases of urgency, including those involving perishable goods, the arbitral tribunal shall make every effort to notify its ruling within 60 days from the date of its composition. In exceptional cases, this term can be extended, which in any event shall not be longer than 75 days from the date of the composition of arbitral tribunal.
5. The arbitral tribunal's report is final and has no binding force except between the Parties and in respect of that particular case to which the report is related.
6. The report shall be made available to the public no later than 15 days after the issuance of the report, subject to the protection of confidential information, unless either of the Parties disagrees.

ARTICLE 15.11: IMPLEMENTATION OF ARBITRAL TRIBUNAL'S REPORT

1. If in its report the arbitral tribunal concludes that a Party has not complied with its obligations under this Agreement, the resolution, whenever possible, shall be that the Party complained against eliminates the non-conformity.
2. The Party complained against shall promptly comply with the recommendations and rulings in the report of the arbitral tribunal. If it is not practicable to comply immediately, the Party complained against shall implement the recommendations and rulings within a reasonable period of time.

ARTICLE 15.12: REASONABLE PERIOD OF TIME

1. The reasonable period of time shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 30 days from the issuance of the arbitral tribunal's report, either Party may, to the extent possible, refer the matter to the original arbitral tribunal, which shall determine the reasonable period of time.
2. The arbitral tribunal shall provide its report on the reasonable period of time to the Parties within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 15 days, unless the Parties otherwise agree.
3. The reasonable period of time normally should not exceed 15 months from the

date of issuance of the arbitral tribunal's report. Reasonable period may be extended by mutual agreement of the Parties.

ARTICLE 15.13: COMPLIANCE REVIEW

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations and rulings of the arbitral tribunal, such dispute shall be decided through arbitral proceeding under this Chapter, including wherever possible by resort to the original arbitral tribunal.
2. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 15 days unless the Parties otherwise agree.
3. Articles concerning procedure of arbitral tribunal in this Agreement shall apply *mutatis mutandis* to the arbitral proceedings under this Article.

ARTICLE 15.14: SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS

1. If the arbitral tribunal under Article 15.13 finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance therewith or otherwise comply with the recommendations and rulings of the Arbitral Tribunal within the reasonable period of time established, or the Party complained against expresses in writing that it will not implement the recommendations, such Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 20 days after entering into negotiation for compensation, or if no such request has been made, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.
2. The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.
3. In considering what concessions or other obligations to suspend:

- (a) the complaining Party shall first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations derived of this Agreement ; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s), it may suspend concessions or other obligations in other sectors. The communication in which it notifies such a decision shall indicate the reasons on which it is based.

4. Upon written request of the Party concerned, the original arbitral tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2 and/or whether the principles set out in paragraph 3 have not been applied. If the arbitral tribunal cannot be established with its original members, it shall be constituted in accordance with the procedure set out in Article 15.6.

5. The arbitral tribunal shall present its determination within 60 days from the request made pursuant to paragraph 4 or, if an arbitral tribunal cannot be established with its original members, from the date on which the new arbitral tribunal was composed.

6. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitral tribunal's determination pursuant to this Article.

7. Compensation and suspension of concessions or other obligations shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been removed or amended so as to bring it into conformity with this Agreement, or until the Parties have reached a mutually satisfactory solution.

ARTICLE 15.15: POST SUSPENSION

1. Without prejudice to the procedure in Article 15.14, if the Party complained against considers that it has eliminated the non-conformity that the arbitral tribunal has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 45 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The arbitral tribunal shall release its report within 60 days after the referral of the

matter. If the arbitral tribunal concludes that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

ARTICLE 15.16: PRIVATE RIGHTS

Neither Party may provide for a right of action under its domestic law including initiation of proceedings before its respective domestic courts against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 15-A

RULES OF PROCEDURE OF ARBITRAL TRIBUNAL

First Written Submissions

1. The complaining Party shall deliver its first written submission no later than 20 days from the date of the composition of the arbitral tribunal. The Party complained against shall deliver its first written submission no later than 30 days after the date of delivery of the complaining Party's first written submission, unless the arbitral tribunal otherwise decides.
2. A Party shall provide a copy of its first written submission to each of the arbitrators and to the other Party. A copy of the document shall also be provided in electronic format.

Hearings

3. The chair of the arbitral tribunal shall fix the date and time of the hearing in consultation with the Parties and other members of the arbitral tribunal. The chair of the arbitral tribunal shall notify in writing the Parties of the date, time, and location of the hearing. Unless one of the Parties disagrees, the arbitral tribunal may decide not to convene a hearing.
4. The arbitral tribunal may convene additional hearings.
5. All arbitrators shall be present at the hearings.
6. The hearings of the arbitral tribunal shall be held in closed session.

Supplementary Written Submissions

7. Within 20 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing. The supplementary written submissions shall be delivered in accordance with paragraph 2 of these Rules.

Questions in Writing

8. The arbitral tribunal may, at any time during the proceedings, put questions in writing to the Parties.
9. A Party shall deliver the written reply to the arbitral tribunal and to the other Party. Each Party shall be given the opportunity to provide written comments on the reply of the other Party.

Confidentiality

10. The arbitral hearings and the documents submitted to the arbitral tribunal shall be kept confidential. Nothing in this Chapter shall preclude a Party from disclosing statements of its own positions to the public. The information submitted by the other Party to the arbitral tribunal, which that Party has designated as confidential, shall be treated as confidential.

***Ex parte* Contacts**

11. The arbitral tribunal shall not meet or contact a Party in the absence of the other Party.

12. No Party may contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators.

13. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other Party or other arbitrators.

Role of Experts

14. Upon request of a Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body that it deems appropriate. Any information so obtained shall be provided to the Parties for comments.

Working Language

15. The working language of the dispute settlement proceedings shall be English.