

CHAPTER 11

DISPUTE SETTLEMENT

ARTICLE 11.1

Scope and Coverage

1. The objective of this Chapter is the settlement of any disputes concerning the interpretation or application of this Agreement, in particular if a Party considers that a measure is inconsistent with this Agreement. Unless otherwise provided in this Agreement, this Chapter applies.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party.¹⁵ The forum thus selected shall be used to the exclusion of the other.
3. For the purposes of paragraph 2, dispute settlement procedures under the WTO Agreement are deemed to be selected by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 11.4 (Establishment of Arbitration Panel).

ARTICLE 11.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are undertaken voluntarily if the parties to the dispute so agree. They may begin and be suspended or terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the parties to the dispute in any further proceedings.

ARTICLE 11.3

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations in good faith to reach a mutually agreed solution of any matter raised in accordance with this Article.

¹⁵ For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

2. A Party may request in writing consultations with another Party, if it considers that a measure is inconsistent with this Agreement. The request shall identify the measure at issue and the legal basis for the complaint. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise. Upon agreement of the parties to the dispute, the consultations may be held by any technological means available.
3. Consultations shall commence within 30 days from the receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within ten days or does not enter into consultations within 30 days from the receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 11.4 (Establishment of Arbitration Panel).
4. The parties to the dispute shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
5. The consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any further proceedings.
6. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 11.4

Establishment of Arbitration Panel

1. If the consultations referred to in Article 11.3 (Consultations) fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, from the receipt of the request for consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration process.
2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.
3. The arbitration panel shall consist of three members who shall be appointed in accordance with the procedures of the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration, as effective from 20 October 1992 (Optional Rules) *mutatis mutandis*.

4. Notwithstanding paragraph 3, if not all three members have been appointed, the necessary appointments shall be made at the request of any party to the dispute by the Director-General of the WTO, acting as appointing authority. If the Director-General of the WTO is unable to act or is a national of a party to the dispute, the Deputy Director-General of the WTO shall act as the appointing authority. If the Director-General of the WTO or the Deputy Director-General of the WTO refuses to act or fails to appoint the arbitrator within 60 days of the receipt of a request by a party to the dispute, either party to the dispute may request the President of the International Court of Justice (ICJ) to make the appointments.

5. The arbitrators shall be independent, impartial and have specialised knowledge or experience in law, international trade or in the settlement of disputes under international trade agreements.

6. Unless the parties to the dispute otherwise agree within 30 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

“To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 11.4 (Establishment of Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

7. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel should be established to examine complaints relating to the same matter.

8. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

ARTICLE 11.5

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the panel shall be governed by the Optional Rules, *mutatis mutandis*.¹⁶

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel, in conformity with the terms of reference and in light of the relevant provisions of this Agreement interpreted in accordance with the rules of interpretation of public international law.

¹⁶ The following articles of the Optional Rules shall not apply: Article 26 (Interim Measures of Protection), Article 35 (Interpretation of the Award) and Article 37 (Additional Award).

3. The arbitration panel shall establish its working schedule allowing the parties to the dispute adequate time to comply with all steps of the proceedings.
4. The language of any proceedings shall be English, and the hearings of the arbitration panel shall be open to the public, unless the parties to the dispute agree otherwise.
5. The location of any hearing of the arbitration panel shall be decided by mutual agreement of the parties to the dispute, failing which, it shall be held in The Hague, The Netherlands.
6. There shall be no *ex parte* communication with the arbitration panel concerning matters under its consideration.
7. All documents or information submitted by a Party to the arbitration panel, shall, at the same time, be transmitted by that Party to the other party to the dispute.
8. The Parties shall treat as confidential the information submitted to the arbitration panel which has been designated as confidential by the Party submitting the information.
9. Decisions of the arbitration panel shall be taken by a majority of its members, if consensus cannot be reached. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall disclose which members are associated with majority or minority opinions.
10. The costs of arbitration shall be borne by the parties to the dispute in equal shares.

ARTICLE 11.6

Panel Reports

1. The arbitration panel should submit an initial report containing its findings and rulings to the parties to the dispute not later than 90 days from the date of establishment of the arbitration panel. A party to the dispute may submit written comments to the arbitration panel within 30 days from the receipt of the initial report. The arbitration panel should present to the parties to the dispute a final report within 45 days from the receipt of the initial report. In urgent matters, including those on perishable goods, the panel shall endeavour to accelerate the proceedings accordingly.
2. The final report, as well as any report under Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.
3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

ARTICLE 11.7

Suspension or Termination of Arbitration Panel Proceedings

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.
2. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.
3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chairperson of that arbitration panel.
4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

ARTICLE 11.8

Implementation of the Final Panel Report

1. The Party complained against shall take all necessary measures to promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 60 days from the receipt of that request.
2. The Party complained against shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.
3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 11.9 (Compensation and Suspension of Benefits). The ruling of the arbitration panel should be rendered within 90 days from the receipt of that request.

ARTICLE 11.9

Compensation and Suspension of Benefits

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 11.8 (Implementation of the Final Panel Report), or notifies the complaining party that it does not intend to comply with the ruling in the final panel report, that Party shall, if so requested by the complaining party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 30 days from the receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.
2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
3. The complaining Party shall notify the Party complained against of the benefits, which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits, which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel should be given within 45 days from the receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.
4. Compensation and suspension of benefits 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 withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.
5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel should be given within 30 days from the receipt of that request.

ARTICLE 11.10

Other Provisions

1. Whenever possible, the arbitration panel referred to in Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the final report. If a member of

the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrator.

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the parties to the dispute or, upon request of a party to the dispute, by the arbitration panel.

3. When an arbitration panel considers that it cannot comply with a time period imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.