

CHAPTER 8

DISPUTE SETTLEMENT

ARTICLE 44

Consultations

1. In case of any divergence with respect to the interpretation, implementation and application of this Agreement, the Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory solution.
2. A Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing thereof and supply all relevant information.
3. The consultations shall take place in the Joint Committee if any of the Parties so requests within 20 days from the receipt of the notification referred to in paragraph 2, with a view to finding a commonly acceptable solution.
4. If the Party to which a request is made in accordance with paragraph 2 does not reply within 10 days or does not enter into consultations within 20 days from the date of receipt of the request, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 45.

ARTICLE 45

Arbitration

1. Disputes between the Parties relating to the interpretation of rights and obligations under this Agreement, which have not been settled through direct consultations or in the Joint Committee within 60 days from the date of the receipt of the request for consultations, may be referred to arbitration by the complaining Party by means of a written request to the Party complained against. A copy of this request shall be communicated to all other Parties so that they may determine whether to participate in the arbitration.
2. 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, a single arbitration panel should, whenever feasible, be established to consider such disputes.³
3. A Party that is not a party to the dispute shall be entitled, on delivery of a written request to the parties to the dispute, to make written submissions to the arbitration panel,

³ For the purpose of this Chapter, the terms “Party” and “Party to the dispute” are used regardless of whether two or more Parties are involved in a dispute.

receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

4. The arbitration panel shall comprise three members, who shall be nominated in accordance with the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration, effective 20 October 1992 (hereinafter referred to as the “Optional Rules”). If a member of the arbitration panel fails to participate in the arbitration, the other members shall, unless a party to the dispute requests otherwise, have the discretion to continue the arbitration and to render any ruling notwithstanding the failure of one member to participate.

5. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in light of the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law. The ruling of the arbitration panel shall be final and binding upon the parties to the dispute. Any ruling of the arbitration panel shall be made public, unless the parties to the dispute agree otherwise.

6. The language of any proceedings shall be English. The hearings of the arbitration panel shall be open to the public unless the parties to the dispute agree otherwise. Each Party shall treat as confidential the information submitted by any other Party to the arbitration panel which that Party has designated as confidential.

7. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.

8. The ruling of the arbitration panel shall be rendered within 180 days of the date on which the presiding arbitrator of the arbitration panel was appointed. This period may be extended by a maximum of 90 days, if the parties to the dispute so agree.

9. The costs of arbitration, including the remuneration of the members of the arbitration panel, shall be borne by the parties to the dispute in equal shares. Each party shall bear its own costs of arbitration, in particular for its representation, witnesses, including expert witnesses, and statements submitted to the arbitration panel.

10. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the Optional Rules shall apply.

11. 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. The forum thus selected shall be used to the exclusion of the other. For the purpose of this paragraph, dispute settlement proceedings under the WTO Agreement or this Agreement are deemed to be initiated upon a request for the establishment of a panel by a Party. Before a Party initiates dispute settlement proceedings under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes against another Party regarding a matter arising under both this Agreement and the WTO Agreement, that Party shall notify all other Parties of its intention to do so.

ARTICLE 46

Implementation of the Ruling

1. The Party complained against shall promptly comply with the ruling of the arbitration panel. 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 30 days from the date of the ruling, either party to the dispute may, within 10 days from the expiration of such period, request the original arbitration panel to determine the length of the reasonable period of time.
2. The Party concerned shall notify in writing the other party to the dispute of the measure adopted in order to implement the ruling.
3. If the Party concerned fails to comply with the ruling within a reasonable period of time and the parties to the dispute have not agreed on any compensation, the other party to the dispute may, until the ruling has been properly implemented or the dispute has been otherwise resolved, and subject to a prior notification of 30 days, 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 violate this Agreement.
4. Any dispute regarding the implementation of the ruling or the notified suspension shall be decided by the original arbitration panel upon request of either party to the dispute before suspension of benefits can be applied. The arbitration panel may also rule on the conformity with the ruling of any implementing measures adopted after the suspension of benefits and whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel under this paragraph shall normally be given within 45 days from the date of receipt of the request.