

CHAPTER 12

DISPUTE SETTLEMENT

ARTICLE 12.1

Co-operation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation, consultations or other means to reach a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 12.2

Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, in particular when a Party considers that a measure of another Party is inconsistent with the obligations of this Agreement.

ARTICLE 12.3

Choice of Forum

1. Disputes regarding the same matter arising under this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party.
2. Unless otherwise agreed by the disputing Parties, once the complaining Party has requested a WTO panel under Article 6 of the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereinafter referred to as the “DSU”) or a panel under this Agreement pursuant to paragraph 1 of Article 12.6 (Request for a Panel), the forum selected shall be used to the exclusion of the other in respect of that matter.
3. Before a Party initiates a dispute settlement procedure against another Party under the WTO Agreement, that Party shall notify the other Parties of its intention.

ARTICLE 12.4

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of a 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 Parties' rights in any other proceedings.

ARTICLE 12.5

Consultations

1. A Party may request in writing consultations with any other Party with respect to any matter referred to in Article 12.2 (Scope of Application). The requesting Party shall notify the other Parties in writing thereof.
2. Consultations shall take place in the Joint Committee if the Parties making and receiving the request for consultations so agree.
3. The request for consultations shall set out the reasons for the complaint, including an identification of the measure concerned and an indication of the legal basis of the complaint.
4. Consultations shall be held within:
 - (a) 30 days following the date of receipt of the request for consultations regarding urgent matters¹⁸;
 - (b) 45 days following the date of receipt of the request for consultations for all other matters; or
 - (c) such other period as the consulting Parties may agree.
5. Consultations may be held in person or by any technological means available to the consulting Parties. If in person, consultations shall be held in the place agreed by the consulting Parties. If no agreement has been reached by the consulting Parties the consultations shall be held in the territory of the requested Party.
6. In a consultation, the consulting Parties shall provide sufficient information to enable a full examination of how the measure in force might affect the operation and

¹⁸ Urgent matters include those concerning perishable goods, or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods and services.

application of this Agreement. The consulting Parties shall treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

7. The consultations shall be confidential and without prejudice to the rights of the consulting Parties in any further proceedings.

8. The consulting Parties shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 12.6

Request for a Panel

1. A consulting Party may request in writing the establishment of a panel:
 - (a) if the requested Party has not responded to the request for consultations within 15 days of the date of receipt of such request;
 - (b) if consultations are not held within the periods established in Article 12.5 (Consultations) or within any other periods as the requested and requesting Parties may have agreed; or
 - (c) in the event that the consulting Parties fail to resolve a matter within 60 days of the date of the receipt of the request for consultations or as regards urgent matters within 45 days, or within any other period as they may agree.
2. The complaining Party shall deliver the request for the establishment of a panel to the Party complained against. The request shall contain the reason for the request, the identification of the specific measures, and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
3. A copy of the request shall be communicated to the other Parties.
4. Unless otherwise agreed by the disputing Parties, the panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure.

ARTICLE 12.7

Third Party Participation

1. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the disputing Parties and the panel, to make written submissions to the

panel, receive written submissions including annexes of the disputing Parties, attend hearings and make oral statements.

2. When delivering a written notice pursuant to paragraph 1, a third party to the dispute shall include an explanation of its particular interest in the dispute.

3. When making oral statements or written submissions, a third party shall respect the equal rights of the disputing Parties and not introduce new matters that go beyond the terms of reference. The oral statements or written submissions of the third party shall assist the panel in the resolution of the dispute, in particular by providing an additional perspective or a particular knowledge or insight.

4. The panel shall not consider oral statements or written submissions that do not meet the requirements set forth in paragraph 3. The panel is not required to address in its report the arguments made by the third party in its written submissions or oral statements.

ARTICLE 12.8

Qualifications of Panelists

1. Panelists shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;
- (c) be independent of and not be affiliated with or take instructions from, any Party; and
- (d) comply with the standards of conduct established by the Model Rules of Procedure.

2. If a disputing Party has justifiable doubts as to the panelist's compliance with the standards of conduct established in the Model Rules of Procedure, it may propose to the other disputing Party the removal of the panelist. If the other disputing Party does not agree, or the panelist does not withdraw, the decision shall be made by the Secretary-General of the Permanent Court of Arbitration (hereinafter referred to as "the PCA").

ARTICLE 12.9

Panel Selection

1. The panel shall comprise three members. The date of establishment of the panel shall be the date on which the chair is appointed.
2. Each disputing Party shall, within 20 days after the date of receipt by the Party complained against of the request for the establishment of the panel, appoint a panelist, who may be a national of said Party, propose up to four candidates to serve as the chair of the panel, and notify the other disputing Party in writing of the name of the panelist and its proposed candidates to serve as chair, including their relevant background information.
3. Within an additional ten days from the receipt by the Party complained against of the request for the establishment of the panel, the disputing Parties shall endeavour to agree on and appoint the chair from among the candidates proposed by both Parties. If the disputing Parties do not agree, the two panelists already appointed shall within an additional ten days, endeavour to agree on the chair from among the candidates proposed by the disputing Parties. If the panelists do not find it appropriate to appoint any of the proposed candidates they may appoint a different individual.
4. If all three members have not been designated or appointed within 40 days from the receipt by the Party complained against of the request for the establishment of the panel, the necessary designations shall be made, at the request of any of the disputing Parties, in the following manner:
 - (a) if a panelist has not been designated in accordance with paragraph 2, the Secretary-General of the PCA shall name a member from among the list of candidates for the chair proposed by the disputing Parties; or
 - (b) if the chair has not been designated in accordance with paragraph 3, the Secretary-General of the PCA, shall appoint the chair from among the candidates for the chair proposed by the disputing Parties.
5. If an appointed panelist withdraws, is removed, or becomes unable to serve, a replacement shall be appointed in the following manner:
 - (a) in the case of a panelist appointed by a Party, that Party shall designate a new panelist within 15 days, failing which the replacement shall be appointed in accordance with subparagraph 4(a);
 - (b) in the case of the chair of the panel, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with subparagraph 4(b);
 - (c) if there are no remaining candidates proposed by the Parties, each Party shall propose up to three additional candidates within the same 30 days

as referred to in subparagraph (b), and the panelist or chair shall be appointed by the Secretary-General of the PCA within seven days thereafter from among the candidates proposed.

6. Any time period applicable to the proceedings shall be suspended for a period beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is appointed.

7. If the Secretary-General of the PCA is unable to perform his obligations as set forth by this Article or is a national of a Party to the dispute, the designations shall be made by the Deputy Secretary-General of the PCA.

ARTICLE 12.10

Role of the Panel

1. The panel shall make an objective assessment of the matter under its consideration, in light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law and in light of the submissions and arguments of the disputing Parties as well as other information received during the proceedings, and formulate the necessary findings for settling the dispute in accordance with the request for the establishment of the panel and the terms of reference.

2. Unless otherwise agreed by the disputing Parties, within 20 days from the date of the receipt of the request for the establishment of the panel, its terms of reference shall be:

“To examine, in light of the relevant provisions of this Agreement, the matter referred to it in the panel request and to make findings, determinations and recommendations as referred to in paragraph 3 of Article 12.13 (Reports of the Panel).”

3. The decisions of the panel including the adoption of the report shall normally be taken by consensus. If the panel is not able to reach a consensus, it may adopt its decisions by majority. No panel may disclose which panelists are associated with majority or minority opinions.

4. The reports, as well as any other decision of the panel, shall be communicated to the Parties. The reports shall be made public, unless the disputing Parties decide otherwise.

ARTICLE 12.11

Model Rules of Procedure

1. The procedure before the panel shall be conducted in accordance with the Model Rules of Procedure unless otherwise provided for in this Agreement. The disputing Parties may agree on different rules to be applied by the panel.
2. Within six months following the date of entry into force of this Agreement, the Joint Committee shall adopt the Model Rules of Procedure which shall ensure at least the following:
 - (a) each disputing Party shall have the right to at least one hearing before the Panel, as well as the opportunity to provide initial and rebuttal written submissions;
 - (b) the hearings before the panel shall be open to the public unless otherwise agreed by the disputing Parties;
 - (c) the protection of information designated as confidential by any of the Parties;
 - (d) at the request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from experts it deems appropriate;
 - (e) unless otherwise agreed by the disputing Parties, the hearings of the panel shall take place in Washington D.C. USA;
 - (f) in presenting oral arguments the disputing Parties have the right to use either their own language or English. Written submissions must be submitted in Spanish with an English translation or in English with a Spanish translation;
 - (g) each disputing Party's individual costs, including the costs for the translation of the written submissions as well as other costs related to the preparation and the carrying out of the proceedings, including the disputing Parties' administration costs, shall be borne by each disputing Party; and
 - (h) costs for the panelists and the administrative costs for the oral hearings, including interpretation, shall be borne by the disputing Parties in equal parts. The panel may however decide that the costs be distributed differently taking into account, *inter alia*, the particulars of the case and other circumstances that may be deemed relevant.

ARTICLE 12.12

Consolidation of Proceedings

Where more than one Party requests the establishment of a panel relating to the same matter or measure, and whenever feasible, a single panel should be established to examine complaints relating to the same matter.

ARTICLE 12.13

Reports of the Panel

1. Unless the disputing Parties otherwise agree, the panel shall submit an initial report within 90 days, and 50 days in the event of urgent matters, after the date of its establishment.
2. A disputing Party may submit written comments to the panel on its initial report within 14 days of its presentation. The panel shall present to the disputing Parties a final report within 30 days of presentation of the initial report.
3. The reports shall contain:
 - (a) the findings of fact and law together with the reasons therefor, including the determination as to whether a disputing Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference;
 - (b) the recommendations for the resolution of the dispute and the implementation of the report;
 - (c) if requested, the findings about the level of adverse trade effects caused to a disputing Party by the other disputing Party's failure to conform with the obligations of this Agreement; and
 - (d) if requested, a reasonable period to comply with the final report.

ARTICLE 12.14

Request for Clarification of the Report

1. Within 10 days of the presentation of the final report, a disputing Party may submit a written request to the panel for clarification of any determination or recommendation in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days following its submission.

2. The submission of a request pursuant to paragraph 1 shall not affect the time periods referred to in Article 12.16 (Implementation of the Report and Compensation) and Article 12.17 (Non-Implementation and Suspension of Benefits) unless the panel decides otherwise.

ARTICLE 12.15

Suspension and Termination of Procedure

1. The disputing Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel to consider the dispute shall lapse, unless the disputing Parties agree otherwise.

2. If the authority of the panel lapses and the disputing Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a disputing Party from introducing a new complaint regarding the same matter.

3. The disputing Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chairperson of the panel.

4. A complaining party may withdraw its complaint at any time before the final 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.

5. A panel may, at any stage of the proceedings prior to release of the final report, propose that the disputing Parties seek to settle the dispute amicably.

ARTICLE 12.16

Implementation of the Report and Compensation

1. The rulings of the panel on the matters referred to in sub-paragraphs (a) and (d) of Article 12.13 (Reports of the Panel) shall be final and binding for the disputing Parties.

2. The Party complained against shall within 30 days after the issuance of the report notify the other Party as to when and how it will comply with the ruling. The Party complained against shall comply with the ruling promptly, unless the panel report sets a period of time for the implementation of the ruling pursuant to subparagraph 3(d) of Article 12.13 (Reports of the Panel) or the disputing Parties agree on a different period of time. The Party complained against shall take into account any recommendations of the panel for the resolution of the dispute and the implementation of the ruling.

3. The Party complained against may also notify the complaining Party within 30 days after the issuance of the report that it considers it impracticable to comply with the ruling, and offer compensation. If the complaining Party considers the proposed compensation to be unacceptable or not sufficiently detailed to assess properly, it may request consultation with the aim of reaching an agreement on compensation. If there is no agreement on compensation, the Party complained against must comply with the ruling of the original panel pursuant to paragraph 2.

ARTICLE 12.17

Non-Implementation and Suspension of Benefits

1. If the Party complained against:
 - (a) fails to comply with the ruling in the report promptly or within any other time decided by the original panel or agreed by the disputing Parties; or
 - (b) fails to comply with an agreement on compensation pursuant to paragraph 3 of Article 12.16 (Implementation of the Report and Compensation) within the time period agreed by the disputing Parties,

the complaining Party may suspend benefits granted under this Agreement equivalent to those affected by the measure that the panel has found to violate this Agreement.

2. In considering which benefits to suspend pursuant to paragraph 1, the complaining Party should first seek to suspend the application of benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with the obligations of this Agreement. If the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate this Agreement has been brought into conformity with the rulings of the panel or until the disputing Parties have otherwise settled the dispute.

4. 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 that notification, the Party complained against may request the original panel to rule on any disagreement regarding the notified suspension, including whether the suspension of benefits is justified and whether the benefits which the complaining Party intends to suspend are excessive. The ruling of the panel shall be given within 45 days from that request. Benefits shall not be suspended until the panel has issued its ruling.

5. In case of disagreement as to whether the Party complained against has complied with the report promptly or within any other time period decided by the original panel or agreed by the disputing Parties, either of these Parties may refer the dispute to the original panel. The report of the panel shall normally be rendered within 45 days from the request. Benefits shall not be suspended until the panel has issued its ruling.

6. At the request of a disputing Party, the original panel shall determine the conformity with the rulings of the panel in this Chapter of any implementing measures adopted after the suspension of benefits by the complaining Party and whether the suspension of benefits should be terminated or modified. In this case the ruling of the panel shall be given within 30 days from the date of that request.

7. A panel under this Article shall whenever possible be composed of members of the original panel. If any of the panelists dies, withdraws, is removed or is otherwise unavailable, that panelist shall be replaced by a panelist appointed pursuant to paragraph 5 of Article 12.9 (Panel Selection).