

CHAPTER 8 DISPUTE SETTLEMENT

ARTICLE 8.1

Objective and Scope

1. The objective of this Chapter is to provide the Parties with a dispute settlement mechanism that aims at achieving, mutually agreed solutions to, or settlement by arbitration of, any dispute arising from this Agreement.
2. Disputes on 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.⁹ The forum thus selected shall be used to the exclusion of the other.
3. For the purpose of this Article, 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.
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party as regards a matter arising under both this Agreement and the WTO Agreement, it shall notify the Parties of its intention at least thirty days in advance.

ARTICLE 8.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties involved so agree. They may begin at any time and be terminated at any time.
2. Proceedings involving good offices, conciliation and mediation and all information disclosed during such proceedings shall be confidential, non binding and without prejudice to the Parties' rights in any other proceedings.

⁹ For the purpose of this Chapter the terms "Party", "Party to the dispute", "complaining Party", "Party complained against" are used regardless of whether two or more Parties are involved in a dispute.

ARTICLE 8.3

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 co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.
2. A Party may request in writing consultations with another Party whenever it considers that a measure applied by the Party to which the request is made is inconsistent with this Agreement. Consultations shall take place in the Joint Committee unless the Party making or receiving the request for consultations disagrees.
3. Consultations shall, unless the Parties agree otherwise, be held in the territory of the defending Party.
4. Consultations shall be entered into in good faith within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable agricultural goods, shall be entered into in good faith within 15 days from the receipt of the request for consultations.
5. The consultations shall be deemed concluded within 60 days from the date of the consultation request, unless both Parties agree to continue consultations. If the Joint Committee has not been involved in the consultations and if the consultations fail the Joint Committee shall as soon as possible meet with the aim of solving the issue at hand. Consultations within the Joint Committee shall take place within 30 days unless the Parties agree otherwise.
6. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure might affect the operation of this Agreement.
7. The proceedings and all information disclosed during the consultations shall remain confidential. The Parties shall treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.
8. Consultations shall be without prejudice to the rights of the Parties involved in any further proceedings.
9. The Parties involved in the consultations shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 8.4

Establishment of Arbitration Panel

1. If the matter has not been resolved within the Joint Committee pursuant to Article 8.3, it may be referred to arbitration by one or more of the Parties involved by means of a written request addressed to the Party complained against. A copy of this request shall also be communicated to all other Parties so that each Party may determine whether to participate in the dispute.
2. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or the request involves more than one defending Party a single arbitration panel shall be established to examine these requests whenever feasible.
3. The complaining Party shall state in its request the measure it considers to be in breach of this Agreement and provide a brief summary of the legal basis of the complaint.
4. A Party which is not a Party to the dispute shall be entitled, on delivery of a written notice to the disputing Parties, to make written submissions to the arbitration panel, receive written submissions, including annexes, of the disputing Parties, attend hearings and make oral statements.

ARTICLE 8.5

Arbitration Panel

1. The arbitration panel shall comprise three members.
2. In the written request pursuant to Article 8.4, the Party referring the dispute to arbitration shall designate one member of the arbitration panel.
3. Within 15 days of the receipt of the request referred to in paragraph 2, the Party to which it was addressed shall designate one member of the arbitration panel.
4. The Parties to the dispute shall agree on the appointment of the third member within 30 days of the appointment of the second member. The member thus appointed shall chair the arbitration panel.
5. If all three members have not been designated or appointed within 45 days from the date of receipt of the notification referred to in paragraph 2, the necessary designations shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further 30 days. Should the designation or appointment of all three members not have taken place within the 30 days, the request shall be made to the Secretary-General of the Permanent Court of Arbitration (PCA). If the Director-General of the WTO or the Secretary-General of the PCA is unable to act under this

paragraph or is a national of a Party to this Agreement, the designation or appointment shall be effected by the Deputy Director-General of the WTO or the Deputy Secretary General of the PCA.

6. The Chair of the arbitration panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed or previously have been employed by any of the Parties, nor have dealt with the case in any capacity.

7. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's compliance with this Chapter or the Model Rules of Procedure as set out in Annex XV. If the other Party does not agree to the challenge or the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Director-General of the WTO or the Secretary-General of the PCA in accordance with the procedure set out in paragraph 5.

8. If an arbitrator is unable to participate in the proceeding, dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to appoint the original arbitrator and the succeeding arbitrator shall have all powers and duties of the original arbitrator. In such a case, the arbitration panel proceedings shall be suspended during this period.

9. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

ARTICLE 8.6

Procedures of the Arbitration Panel

1. Unless the Parties to the dispute agree otherwise, the arbitration panel proceedings shall be conducted in accordance with this Chapter and the Model Rules of Procedure as set out in Annex XV.

2. Notwithstanding paragraph 1, the procedures for all arbitration panel proceedings shall ensure that:

- (a) the Parties to the dispute have the right to at least one hearing before the arbitration panel as well as the opportunity to provide initial and rebuttal written submissions;
- (b) the Parties to the dispute be invited to all the hearings held by the arbitration panel;
- (c) all submissions and comments made to the arbitration panel be available to the Parties to the dispute; and
- (d) hearings can be opened to the public if both Parties agree in writing.

3. Unless otherwise agreed by the Parties to the dispute, the proceedings, hearings and deliberations, the initial report and all written submissions as well as all information not publicly available that is disclosed during arbitration shall remain confidential. Regardless of any such an agreement, information designated as confidential by a third Party referred to in paragraph 4 of Article 8.4 shall be kept confidential.

4. Unless the Parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference 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 an arbitration panel pursuant to Article 8.4 and to make findings of law and fact together with the reasons therefore as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

5. The arbitration panel shall make its ruling based on the provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law as laid down in the Vienna Convention on the Law of Treaties. The rulings cannot add to or diminish the rights and obligations provided in the provisions of this Agreement.

6. Decisions of the arbitration panel shall be taken by a majority of its members if consensus can not be reached. Any member may furnish separate opinions on matters not unanimously agreed. No arbitration panel may disclose which members are associated with majority or minority opinions.

7. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARTICLE 8.7

Suspension, Withdrawal and Termination of Panel Proceedings

1. Where the Parties to the dispute agree, the arbitration panel may suspend its work and proceedings at any time for a period not exceeding 12 months. If the work and the proceedings of the arbitration panel have been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse unless the Parties agree otherwise.

2. 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.

3. The Parties may, at any time, reach a mutually agreed solution to a dispute or decide to terminate the proceedings of an arbitration panel established under this Agreement.

4. The Party or Parties concerned shall notify the other Parties and the arbitration panel of a suspension of the panel work and proceedings, withdrawal of a complaint, termination of the panel proceedings or a mutually agreed solution. In the case of withdrawal, termination or a mutually agreed solution, the arbitration panel shall terminate its proceedings.

5. An arbitration panel may, at any stage of the proceeding prior to release of the final report, propose that the Parties to the dispute seek to settle the dispute amicably and may propose a solution.

ARTICLE 8.8

Initial Report

1. Following the consideration of submissions and oral arguments the arbitration panel shall present to the Parties to the dispute an initial report within 90 days from the date of the establishment of the arbitration panel. The initial report shall include the findings of fact and law together with the reasons therefore.

2. In cases of urgency, including those on perishable agricultural goods, the arbitration panel shall make every effort to issue its ruling within 60 days from the establishment of the arbitration panel.

3. Where the arbitration panel considers that the deadline referred to in paragraphs 1 and 2 cannot be met, the Chair shall notify the Parties in writing, stating the reasons for the delay and the additional time needed.

4. A Party to the dispute may submit written comments to the arbitration panel on the initial report within 14 days of the presentation of the report. At the request of a Party, the arbitration panel shall hold a further meeting with the Parties on the issues identified in the written comments.

5. The findings of the final panel report shall include its assessment of the arguments made at the interim review stage.

ARTICLE 8.9

Final Report

1. The arbitration panel shall present to the Parties to the dispute the final report, containing the matters referred to in Article 8.8, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report or in case an additional hearing is requested in accordance with paragraph 4 of Article 8.8, within 45 days of the presentation of the initial report.

2. Unless the Parties to the dispute decide otherwise, the final report shall be published 15 days after it is presented to them.

ARTICLE 8.10

Implementation of Final Panel Report

1. The arbitration panel ruling is final and binding from the date it is issued and notified to the Parties to the dispute. The Party found in violation of this Agreement shall 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 an agreement within 30 days, either Party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time for compliance, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 30 days from that request.

2. The Party complained against shall notify the other Party of the measure adopted in order to implement the rulings of the panel, as well as a detailed description of how the measure ensures implementation sufficient to allow the other Party to assess the measure.

3. At the request of a Party to the dispute, and before compensation can be sought or suspension of benefits can be applied in accordance with paragraphs 4 and 5, the original arbitration panel shall rule on the existence or on the conformity of any measure taken to comply with the rulings. The ruling of the arbitration panel shall be given within 90 days from the date of that request.

4. If the Party found in violation of this Agreement fails to properly implement, after the expiry of the reasonable period of time according to paragraph 1, the ruling of the final report of the arbitration panel or any subsequent ruling of the arbitration panel according to paragraph 3 that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from date of the request for consultations, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement that are equivalent to those affected by the measure found to violate this Agreement.

5. In considering the benefits to be suspended, the complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to violate 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 another sector, indicating the reasons justifying its decision.

6. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due

to take effect. Within 15 days from that notification, any of the Parties to the dispute 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 violate this Agreement, and whether the proposed suspension is in accordance with paragraphs 4 and 5. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

7. The suspension of benefits shall be temporary and only be applied until the measure found to violate this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or the Parties to the dispute have reached an agreement on a resolution of the dispute. The defending Party shall notify the other Party and the Joint Committee of the measures it has taken to comply.

8. At the request of a Party to the dispute, the original arbitration panel shall rule on the conformity with the ruling of any implementing measure 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 shall be given within 45 days from the date of that request. During this period benefits shall no longer be suspended.

ARTICLE 8.11

Other Provisions

1. Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties involved.

2. When possible, the arbitration panel referred to in paragraphs 1, 3, 6 and 8 of Article 8.10 shall comprise the same panelists who issued the final report. If a member of the original arbitration panel is unavailable, the procedures laid down under Article 8.4 shall apply for the selection of a replacement arbitrator.