

Article 56
Resources for Economic Cooperation

Taking into account the different levels of economic development and capacity among the Parties, resources for economic cooperation under this Chapter shall be provided in such a manner as may be mutually agreed upon among the Parties.

Article 57
Implementation of Economic Cooperation Activities

1. Economic cooperation activities shall involve Japan and at least two (2) ASEAN Member States.
2. Notwithstanding paragraph 1, economic cooperation activities may also involve Japan and one (1) ASEAN Member State, provided that those activities are regional in nature and of benefit to other ASEAN Member States. Such activities shall aim at narrowing the gaps of economic development among ASEAN Member States or at promoting the well-being of the people of ASEAN Member States towards further integration of ASEAN.
3. The Parties shall undertake economic cooperation activities at mutually agreed time.

Article 58
Non-application of Chapter 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

Chapter 9
Settlement of Disputes

Article 59
Definitions

For the purposes of this Chapter, the term:

- (a) "complaining party" means any Party or Parties that request consultations under paragraph 1 of Article 62;
- (b) "party to a dispute" means any Party which is a complaining party or a party complained against;
- (c) "party complained against" means any Party or Parties to which the request for consultations is made under paragraph 1 of Article 62; and

- (d) "third party" means a Party, other than the parties to a dispute, that notifies its interest in writing in accordance with Article 66.

Article 60 Scope of Application

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of all disputes between the Parties concerning the interpretation or application of this Agreement.

2. This Chapter may apply to measures affecting a Party's observance of this Agreement taken by regional or local governments or authorities within the Party. When the arbitral tribunal has awarded that a provision of this Agreement has not been observed in accordance with Article 67, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. Paragraphs 3 and 4 of Article 71 shall apply in cases where it has not been possible for the Party to secure such observance.

3. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which all of the parties to a dispute are parties.

4. Notwithstanding paragraph 3, once dispute settlement proceedings have been initiated under this Chapter or under any other international agreement to which all of the parties to a dispute are parties with respect to a particular dispute, the forum selected by the complaining party shall be used to the exclusion of any other fora for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

5. For the purposes of paragraphs 3 and 4, the complaining party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to, an arbitral tribunal or a dispute settlement panel, in accordance with this Chapter or any other international agreement to which the parties to a dispute are parties.

Article 61 Contact Points

1. For the purposes of this Chapter, a Party may designate a contact point responsible for communications on all matters referred to in this Chapter. The submission of any request, notice or other document under this Chapter to the contact point so designated shall be deemed to have been made to that Party.

2. Where a Party chooses not to designate a contact point pursuant to paragraph 1, the submission of any request, notice or other document under this Chapter shall be made to the contact point which the Party designates in accordance with Article 12.

3. Any Party receiving any request, notice or other document under this Chapter shall acknowledge receipt in writing.

Article 62 Consultations

1. A Party or Parties may make a request in writing for consultations to other Party or Parties concerning any matter on the interpretation or application of this Agreement where the complaining party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the party complained against to carry out its obligations under this Agreement, or as a result of the application by the party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request for consultations shall be submitted in writing, containing the identification of the specific measures at issue and indication of the factual and legal basis (including the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint. The complaining party shall at the same time notify the rest of the Parties thereof.

3. Upon receipt of the request referred to in paragraph 1, the party complained against shall promptly acknowledge receipt of such request to the complaining party and the rest of the Parties at the same time.

4. If a request for consultations is made, the party complained against shall reply to the request within ten (10) days after the date of receipt of the request and shall enter into consultations in good faith within a period of not more than thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

5. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations under this Article. To this end, the parties to the dispute shall provide each other with sufficient information to enable a full examination of the dispute.

6. Consultations shall be confidential between the parties to the dispute and are without prejudice to the rights of any Party in any further proceedings under this Chapter or in other proceedings. The parties to the dispute shall inform the rest of the Parties of the outcome of the consultations.

7. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall enter into consultations within a period of no more than ten (10) days after the date of receipt of the request by the party complained against.

8. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall make every effort to accelerate the consultations to the greatest extent possible.

Article 63 Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time by agreement of the parties to the dispute and be terminated at any time upon the request of any party to the dispute.

3. If the parties to the dispute agree, good offices, conciliation or mediation may continue while the proceedings of the arbitral tribunal provided for in this Chapter are in progress.

4. Proceedings involving good offices, conciliation or mediation, and, in particular, positions taken by the parties to the dispute during these proceedings, shall be kept confidential and without prejudice to the rights of any Party in any proceedings under this Chapter or in other proceedings.

Article 64 Establishment of Arbitral Tribunals

1. The complaining party may request in writing, to the party complained against, the establishment of an arbitral tribunal:

- (a) if the party complained against does not respond within ten (10) days, or does not enter into such consultations within thirty (30) days after the date of receipt of the request for such consultations; or
- (b) if the parties to the dispute fail to resolve the dispute through such consultations within sixty (60) days after the date of receipt of the request for such consultations, or within twenty (20) days after such date in cases of urgency including those which concern perishable goods.

2. A copy of the request referred to in paragraph 1 shall also be communicated to the rest of the Parties.

3. Where more than one (1) complaining party request the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be established by the parties to the dispute to examine the matter, taking into account the rights of each party to the dispute.

4. Where a single arbitral tribunal is established pursuant to paragraph 3, the arbitral tribunal shall organise its examination and present its findings to all the parties to the dispute in such a manner that the rights which the parties to the dispute would have enjoyed had separate arbitral tribunals examined the same matter are in no way impaired. If any of the parties to the dispute so requests, the arbitral tribunal may make separate awards on the dispute concerned as long as the timeframe for making the awards so permits. The written submissions by a party to the dispute shall be made available to the other parties to the dispute, and each party to the dispute shall have the right to be present when any other party to the dispute presents its views to the arbitral tribunal.

5. Where more than one (1) arbitral tribunal are established to examine the dispute related to the same matter, to the greatest extent possible, the same persons shall be appointed by the parties to the disputes to serve on each of the separate arbitral tribunals.

6. Any request for the establishment of an arbitral tribunal shall indicate whether consultations under Article 62 have been held, identify the factual basis for the complaint including the specific measures at issue and provide the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions.

Article 65 Composition of Arbitral Tribunals

1. An arbitral tribunal shall consist of three (3) arbitrators.

2. The complaining party and the party complained against shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitral tribunal, each appoint one (1) arbitrator who may be a national of any party to the dispute and propose up to three (3) candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of any party to the dispute, nor have his or her usual place of residence in any party to the dispute, nor be employed by any party to the dispute, nor have dealt with the dispute in any capacity.

3. The complaining party and the party complained against shall agree on and appoint the third arbitrator within forty-five (45) days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 2. If either the complaining party or the party complained against has not appointed an arbitrator pursuant to paragraph 2, or if the parties to the dispute fail to agree on and appoint the third arbitrator pursuant to this paragraph, the Director-General of the World Trade Organization shall immediately be requested to make the necessary appointments. In the event that the Director-General is a national of any party to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of any party to the dispute shall be requested to make the necessary appointments. Appointments made pursuant to this paragraph other than that of the third arbitrator shall be deemed to have been made by the complaining party or the party complained against which has failed to make such an appointment.

4. The date of establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed pursuant to paragraph 3.

5. If an arbitrator appointed under this Article resigns or becomes unable to act, a succeeding arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the succeeding arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the succeeding arbitrator is appointed.

6. Any person appointed as an arbitrator shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral tribunal proceedings. If a party to the dispute believes that an arbitrator is not adhering to the basis stated above, the parties to the dispute shall consult and if they agree, the arbitrator shall be removed and a new arbitrator shall be appointed in accordance with this Article.

Article 66 Third Parties

1. Any Party having a substantial interest in a dispute before an arbitral tribunal and having notified its interest in writing to the parties to the dispute and the rest of the Parties shall have an opportunity to make written submissions to the arbitral tribunal. These submissions shall also be given to the parties to the dispute and may be reflected in the award of the arbitral tribunal.

2. A third party shall receive the submissions of the parties to the dispute to the first meeting of the arbitral tribunal.

3. If a third party considers that a measure that is already the subject of any arbitral tribunal proceedings nullifies or impairs benefits accruing to it under this Agreement, such third party may have recourse to normal dispute settlement procedures under this Chapter.

Article 67
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 64:

- (a) should 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 the Agreement;
- (b) should consult with the parties to the dispute as appropriate and provide them with adequate opportunities for the development of a mutually satisfactory resolution;
- (c) shall make its award in accordance with this Agreement and applicable rules of international law;
- (d) shall set out, in its award, its findings of law and fact, together with the reasons therefor;
- (e) may, apart from giving its findings, include in its award suggested implementation options for the parties to the dispute to consider in conjunction with Article 71; and
- (f) cannot, in its award, add to or diminish the rights and obligations of any Party provided in this Agreement.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by any party to the dispute, the arbitral tribunal may request advisory reports in writing from experts. The arbitral tribunal may, at the request of any party to the dispute or on its own initiative, select, in consultation with the parties to the dispute, no fewer than two (2) scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award. Any information and technical advice so obtained shall be made available to the parties to the dispute.

Article 68
Proceedings of Arbitral Tribunals

1. The rules and procedures as set out in this Article shall apply to the proceedings of an arbitral tribunal.
2. The parties to the dispute, in consultation with the arbitral tribunal, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.

Terms of Reference for Arbitral Tribunals

3. An arbitral tribunal shall have the following terms of reference:

"To examine, in the light of (the relevant provisions in this Agreement to be cited by the parties to the dispute), the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 64, and to issue awards including findings, determinations and suggested implementation options, if any, as provided for in Article 67."

Written Submissions and Other Documents

4. Each party to the dispute shall deliver to the other parties to the dispute a copy of its written submissions to the arbitral tribunal.
5. In respect of any request, notice or other documents related to the arbitral tribunal proceedings that is not covered by paragraph 4, each party to the dispute may deliver a copy of the documents to the other parties to the dispute by facsimile, e-mail or other means of electronic transmission.
6. Any party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other documents related to the arbitral tribunal proceedings by delivering a new document clearly indicating the changes.

Timetable

7. After consulting the parties to the dispute, the arbitral tribunal shall as soon as practicable and whenever possible within seven (7) days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The timetable fixed for the arbitral tribunal shall include precise deadlines for written submissions by the parties to the dispute. Modifications to such timetable may be made by the agreement of the parties to the dispute in consultation with the arbitral tribunal.

Operation of Arbitral Tribunals

8. An arbitral tribunal shall meet in closed session. The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

9. All third parties which have notified their interest in the dispute shall be invited in writing to present their views during a session of the first meeting of the arbitral tribunal proceedings set aside for that purpose. All such third parties may be present during the entirety of this session.

10. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

11. Notwithstanding paragraph 10, any party to the dispute may make public statements of its positions and its views regarding the dispute, but shall treat as confidential, information and written submissions made by the other parties to the dispute to the arbitral tribunal which the other parties to the dispute have designated as confidential. Where a party to the dispute submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of another party to the dispute, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

12. The venue for the arbitral tribunal proceedings shall be decided by mutual agreement between the complaining party and the party complained against. If there is no agreement, the venue shall alternate among the capitals of the parties to the dispute with the first meeting of the arbitral tribunal proceedings to be held in one (1) of the capitals of the party complained against.

13. The parties to the dispute shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information provided and written submissions made to the arbitral tribunal by a party to the dispute, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other parties to the dispute.

Article 69 Draft Award and Award

1. The award of the arbitral tribunal shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made in the proceedings. Opinions expressed in the award of the arbitral tribunal by its individual arbitrator shall be anonymous.

2. The arbitral tribunal shall, within ninety (90) days after the date of its establishment, issue to the parties to the dispute its draft award including both the descriptive part and its findings and conclusions for the purposes of enabling the parties to the dispute to review precise aspects of the draft award.

3. When the arbitral tribunal considers that it cannot issue its draft award within the ninety (90) day period referred to in paragraph 2, it shall inform the parties to the dispute in writing of the reasons for the delay together with the estimate of the period within which it will issue its draft award.

4. The parties to the dispute may submit comments in writing to the arbitral tribunal on the draft award within fifteen (15) days after the date of issuance of the draft award.

5. Where written comments by the parties to the dispute as provided for in paragraph 4 are received, the arbitral tribunal, on its own initiative or at the request of a party to the dispute, may reconsider its award and make any further examination that it considers appropriate.

6. The arbitral tribunal shall issue its award to the parties to the dispute within thirty (30) days after the issuance of the draft award.

7. The arbitral tribunal shall make its decisions, including its award, by consensus, failing which it may make its decisions by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the parties to the dispute.

9. The award of the arbitral tribunal shall be circulated to the Parties within ten (10) days after its issuance to the parties to the dispute.

Article 70 Suspension and Termination of Proceedings

1. Where the parties to the dispute agree, the arbitral tribunal may suspend its work at any time for a period not exceeding twelve (12) months from the date of the joint notification of such agreement to the chair of the arbitral tribunal by the parties to the dispute. Upon the request of any party to the dispute, the arbitral tribunal proceedings shall be resumed after such suspension. If the work of the arbitral tribunal has been suspended for more than twelve (12) months, the authority of the arbitral tribunal shall lapse unless the parties to the dispute agree otherwise.

2. The parties to the dispute may agree to terminate the proceedings of an arbitral tribunal at any time before the issuance of the award by jointly so notifying the chair of the arbitral tribunal.

3. Before the arbitral tribunal issues its draft award, it may, at any stage of the proceedings, propose to the parties to the dispute that the dispute be settled amicably.

Article 71 Implementation of Award

1. The party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 69.

2. The party complained against shall, within twenty (20) days after the date of issuance of the award, notify the complaining party of the period of time in which to implement the award. If the complaining party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal which then determines the reasonable implementation period. The arbitral tribunal shall inform the parties to the dispute of its determination within thirty (30) days after the date of the referral of the matter to it.

3. If the party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining party, with a view to developing mutually satisfactory compensation. If no satisfactory compensation has been agreed within twenty (20) days after the date of expiry of that implementation period, the complaining party may request an arbitral tribunal to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

4. If the complaining party considers that the party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining party may refer the matter to an arbitral tribunal to confirm the failure and to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

5. The arbitral tribunal established under this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators of such arbitral tribunal shall be appointed pursuant to paragraphs 2 and 3 of Article 65.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under paragraphs 3 and 4 shall issue its award within sixty (60) days after the date when the matter is referred to it.

7. The award of the arbitral tribunal established under this Article shall be binding on all the parties to the dispute.

Article 72 Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations under this Agreement are temporary measures available in the event that the award is not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations under this Agreement is preferred to full implementation of the award to bring a measure into conformity with this Agreement. Compensation, if granted, shall be consistent with this Agreement.

2. The application of concessions or other obligations under this Agreement shall not be suspended before the commencement and during the course of the proceedings under paragraphs 3 and 4 of Article 71.

3. The suspension of the application of concessions or other obligations under paragraphs 3 and 4 of Article 71 may only be implemented after the complaining party notifies the party complained against and the rest of the Parties that the complaining party intends to suspend the application to the party complained against of concessions or other obligations under this Agreement. The party complained against and the rest of the Parties shall be informed of the commencement of the suspension and which concessions or other obligations under this Agreement would be suspended.

4. In considering what concessions or other obligations under this Agreement to be suspended under paragraphs 3 and 4 of Article 71, such suspension shall:

- (a) be temporary, and be discontinued when the parties to the dispute reach a mutually satisfactory resolution or where compliance with the award is effected;
- (b) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and
- (c) be restricted to the same sector or sectors as those in which the arbitral tribunal has found the nullification or impairment, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors, in which case, the complaining party may suspend concessions or benefits in other sectors under this Agreement.

5. If the party complained against considers that the suspension of concessions or other obligations under this Agreement by the complaining party is inconsistent with the provisions of paragraph 4, the matter shall be referred to an arbitral tribunal. For the purposes of the arbitral tribunal established under this Article, paragraph 5 of Article 71 shall apply, *mutatis mutandis*.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under this Article shall issue its award within sixty (60) days after the date when the matter is referred to it. Such award shall be binding on all the parties to the dispute.

Article 73 Expenses

1. The complaining party and the party complained against shall respectively bear the costs of the arbitrators which they appointed, and their own expenses and legal costs.
2. Unless the parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of the proceedings of the arbitral tribunal shall be borne in equal parts by the parties to a dispute.
3. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to their assistants, designated note takers or other individuals that it retains.

Chapter 10 Final Provisions

Article 74 Table of Contents, Headings and Subheadings

The table of contents, headings and subheadings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 75 Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force pursuant to paragraph 1 of Article 79, and every five (5) years thereafter, unless otherwise agreed by the Parties.

Article 76 Annexes and Notes

The Annexes including attachment and Notes to this Agreement shall form an integral part of this Agreement.

Article 77 Amendments

1. This Agreement may be amended by agreement among the Parties.