

CHAPTER 16

DISPUTE SETTLEMENT

Article 1

Cooperation

The Parties shall at all times endeavour to cooperate with respect to the interpretation and application of this Agreement, and shall when a dispute arises, make every attempt through cooperation and consultations to arrive at a mutually satisfactory solution of any matter that might affect the operation of this Agreement.

Article 2

Scope of Application

Unless otherwise provided in this Agreement, whenever a Party considers that a measure of the other Party is inconsistent with its obligation under this Agreement or the other Party has failed to carry out its obligations under this Agreement, this Chapter shall apply.

Article 3

Choice of Forum

1. Where a dispute regarding the same matter arises under this Agreement and under the WTO Agreement or other agreements including another free trade agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has selected a forum

under any of the agreements referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 4

Consultations

1. The Parties shall make every attempt to arrive at a mutually satisfactory solution of any dispute through consultations under this Article.

2. The request for consultations shall be submitted in writing and shall set out reasons for the request, including identification of the measure at issue and indication of the legal basis for the complaint. The complaining Party shall deliver the request to the Party complained against.

3. If a request for consultations is made, the Party complained against shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of not more than:

- (a) 15 days after the date of receipt of the request for urgent matters, including those concerning perishable goods; or
- (b) 30 days after the date of receipt of the request for all other matters,

with a view to reaching a mutually satisfactory solution.

4. If the Party complained against does not respond within 10 days or enter into consultations within the timeframes referred to in paragraph 3, then the complaining Party may proceed directly to request the establishment of an arbitral tribunal (hereinafter referred to as "Arbitral Tribunal") in accordance with this Chapter.

5. The consultations shall be confidential and without

prejudice to the rights of either Party in any further or other proceedings.

Article 5

Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin, continue and be terminated at any time, including while proceedings of an Arbitral Tribunal established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 6

Establishment of Arbitral Tribunal

1. The complaining Party may request in writing the establishment of an Arbitral Tribunal if:

- (a) the consultations referred to in Article 4 (Consultations) fail to resolve a dispute within:
 - (i) 30 days after the date of receipt of the request for consultations regarding urgent matters, including those concerning perishable goods; or
 - (ii) 60 days after the date of receipt of the request for consultations regarding all other matters; or
- (b) paragraph 4 of Article 4 (Consultations) applies.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measure at issue and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly, and shall deliver the request to the Party complained against.

3. The date of the establishment of the Arbitral Tribunal shall be the date on which the last arbitrator is appointed.

Article 7

Composition of Arbitral Tribunal

1. An Arbitral Tribunal shall comprise three members.

2. Within 15 days after the date of receipt of the request to establish an Arbitral Tribunal, each Party shall designate one member of the Arbitral Tribunal.

3. The Parties shall designate by mutual agreement the third arbitrator within 30 days after the date of receipt of the request to establish an Arbitral Tribunal. The arbitrator so designated shall chair the Arbitral Tribunal.

4. If any member of the Arbitral Tribunal has not been designated under paragraph 2 or paragraph 3, following 30 days after the date of receipt of the request to establish an Arbitral Tribunal, the Director-General of the WTO shall, at the request of either Party, designate the relevant member within 30 days of the request to the Director-General of the WTO. In the event that the Director-General of the WTO is a national or permanent resident of any Party, the Deputy Director-General or the officer next in seniority who is not a national or permanent resident of any Party shall be requested to make the necessary designations.

5. The chair of the Arbitral Tribunal shall not be a national or permanent resident of any Party, nor be employed by either Party.

6. All arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) not have dealt with the matter under dispute in any capacity;
- (d) be independent of, and not be affiliated with or take instructions from, either Party; and
- (e) comply with a code of conduct in conformity with the rules established in the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* adopted by the WTO Dispute Settlement Body on 11 December 1996.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a substitute arbitrator shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the substitute arbitrator shall have all the powers and duties of the original arbitrator. The work of the Arbitral Tribunal shall be suspended during the appointment of the substitute arbitrator.

Article 8

Function of Arbitral Tribunal

1. The function of the Arbitral Tribunal is to make an objective assessment of the matter before it, including an

examination of the law and facts of the case and the applicability of and conformity with this Agreement.

2. Where an Arbitral Tribunal concludes that a measure is inconsistent with this Agreement or the Party complained against has failed to carry out its obligations under this Agreement, it shall recommend that the Party complained against brings the measure into conformity with this Agreement or complies with its obligations under this Agreement.

3. The Arbitral Tribunal shall interpret this Agreement in accordance with customary rules of interpretation of public international law. The Arbitral Tribunal, in its findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

Article 9

Rules of Procedure of Arbitral Tribunal

1. Unless the Parties otherwise agree, the arbitral proceedings shall be conducted in accordance with Annex 16-1 (Rules of Procedure of Arbitral Tribunal).

2. Apart from the rules of procedure set out in this Article and Annex 16-1 (Rules of Procedure of Arbitral Tribunal), the Arbitral Tribunal may, in consultation with the Parties, adopt additional rules of procedure, as it considers appropriate, provided they are not contrary to the provisions of this Chapter and Annex 16-1 (Rules of Procedure of Arbitral Tribunal).

3. The Arbitral Tribunal shall take its decisions by consensus. Where an Arbitral Tribunal is unable to reach consensus, it may take its decisions by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. The Arbitral Tribunal shall indicate separate opinions of the arbitrators on matters not unanimously agreed in its reports, without disclosing which

arbitrators are associated with majority or minority opinions. All opinions expressed in the reports of the Arbitral Tribunal by individual arbitrators shall be anonymous.

4. Unless the Parties agree otherwise within 20 days from the date of the establishment of the Arbitral Tribunal, the terms of reference for the Arbitral Tribunal shall be as follows:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an Arbitral Tribunal pursuant to Article 6 (Establishment of Arbitral Tribunal) and to make findings of law and facts and if applicable, make recommendations, together with the reasons therefor, for the resolution of the dispute.”

5. After consulting the Parties, the Arbitral Tribunal shall, as soon as practicable and whenever possible within 15 days from the date of its establishment, fix the timetable for the arbitral proceedings.

6. Unless the Parties agree otherwise, each Party shall bear the costs of its appointed arbitrator and its own expenses. The costs of the chair of the Arbitral Tribunal and other expenses associated with the conduct of the arbitral proceedings shall be borne by both Parties in equal shares.

Article 10

Suspension or Termination of Proceedings

1. The Parties may agree that the Arbitral Tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In such event, the Parties shall jointly notify the chair of the Arbitral Tribunal. If the work of the Arbitral Tribunal has been suspended for more than 12 months, the terms of reference for the Arbitral Tribunal shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of an Arbitral Tribunal by jointly notifying the chair of the Arbitral Tribunal at any time before the issuance of the final report to the Parties.

Article 11

Reports of Arbitral Tribunal

1. The reports of the Arbitral Tribunal shall be drafted without the presence of the Parties. The Arbitral Tribunal shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any other information provided to the Arbitral Tribunal pursuant to paragraph 14 of Annex 16-1 (Rules of Procedure of Arbitral Tribunal).

2. The Arbitral Tribunal shall present its draft report to the Parties within 90 days after the date of its establishment or in cases of urgency, including those concerning perishable goods, within 30 days after the date of its establishment. In exceptional cases, if the Arbitral Tribunal considers that it cannot present its draft report within 90 days, or within 30 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its draft report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise.

3. The Arbitral Tribunal shall set out in its draft report:

- (a) a descriptive section summarising the submissions and arguments of the Parties;
- (b) its findings on the law and facts of the case and on the applicability of the relevant provisions of this Agreement;

- (c) its findings on whether the measure concerned is inconsistent with this Agreement or whether the Party complained against has failed to carry out its obligations under this Agreement and, if applicable, recommendations for the resolution of the matter; and
- (d) the reasons for its findings and recommendations in subparagraphs (b) and (c).

4. A Party may submit written comments on the draft report to the Arbitral Tribunal within 10 days after receiving the draft report or within such period as the Parties may agree.

5. After considering any written comments by the Parties and making any further examination it considers necessary, the Arbitral Tribunal shall present its final report to the Parties within 30 days, or 15 days in cases of urgency, after presentation of the draft report, unless the Parties agree otherwise. The final report shall set out any further arguments made by the Parties on the draft report as well as relevant findings and recommendations of the Arbitral Tribunal and the reasons thereto.

6. The final report of the Arbitral Tribunal is final and has binding effect on the Parties in respect of that particular case to which the report refers.

7. Unless the Parties otherwise decide, the final report shall be made available to the public no later than 15 days after its issuance, subject to the protection of confidential information.

Article 12

Implementation of Arbitral Tribunal's Final Report

1. If in its final report the Arbitral Tribunal concludes that a measure is inconsistent with this Agreement or the Party

complained against has failed to carry out its obligations under this Agreement, the Party complained against shall eliminate the non-conformity or comply with its obligations under this Agreement.

2. The Party complained against shall promptly comply with the obligations in paragraph 1. If this is not practicable, the Party complained against shall comply with the obligations in paragraph 1 within a reasonable period of time.

Article 13

Reasonable Period of Time

1. The reasonable period of time referred to in Article 12 (Implementation of Arbitral Tribunal's Final Report) shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 30 days after the issuance of the final report of the Arbitral Tribunal, either Party may refer the matter to the original Arbitral Tribunal, which shall determine the reasonable period of time.

2. The Arbitral Tribunal shall provide its determination to the Parties pursuant to paragraph 1 within 30 days after the date of the referral of the matter to it.

3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the final report of the Arbitral Tribunal. The reasonable period of time may be extended by mutual agreement of the Parties.

Article 14

Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the obligations in paragraph 1 of Article 12 (Implementation of Arbitral Tribunal's Final Report), such

dispute shall be decided through arbitral proceedings under this Chapter, including wherever possible by resort to the original Arbitral Tribunal with the same arbitrators. Where this is not possible, any substitute arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and shall have all the powers and duties of the original arbitrator.

2. The Arbitral Tribunal shall provide its report to the Parties in respect of the matter under paragraph 1 within 60 days after the date of the referral of the matter to it. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 15 days unless the Parties agree otherwise.

3. The provisions of this Chapter including Annex 16-1 (Rules of Procedure of Arbitral Tribunal) shall apply, *mutatis mutandis*, to the arbitral proceedings under this Article.

Article 15

Suspension of Concessions or Other Obligations

1. If the Arbitral Tribunal under Article 14 (Compliance Review) finds that the Party complained against fails to comply with the obligations in paragraph 1 of Article 12 (Implementation of Arbitral Tribunal's Final Report) within the reasonable period of time, or the Party complained against expresses in writing that it will not comply with the obligations in paragraph 1 of Article 12 (Implementation of Arbitral Tribunal's Final Report), such Party shall, if so requested, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 20 days from the date of receipt of such request or if no such request has been made and the reasonable period of time has expired, the complaining Party may suspend the application of

concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending the concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment. For the avoidance of doubt, any suspension of concessions or other obligations shall be restricted to those accruing to the Party complained against under this Agreement.

3. In considering what concessions or other obligations to suspend:

- (a) the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure that the Arbitral Tribunal has found to be inconsistent with the obligations of this Agreement or affected by the failure of a Party complained against to carry out its obligations under this Agreement as determined by the Arbitral Tribunal; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may suspend concessions or other obligations in other sectors. The communication in which it notifies such a decision shall indicate the reasons on which it is based.

4. Upon written request of the Party complained against, the original Arbitral Tribunal shall determine whether the level of the concessions or other obligations suspended or to be suspended by the complaining Party is excessive pursuant to

paragraph 2 or determine whether the principles set forth in paragraph 3 have not been followed. If the Arbitral Tribunal cannot be established with its original members, it shall be established according to the procedures provided in Article 7 (Composition of Arbitral Tribunal).

5. The Arbitral Tribunal shall present its determination within 60 days from the request made pursuant to paragraph 4, or if an Arbitral Tribunal cannot be established with its original members, from the date on which the last arbitrator of the newly established Arbitral Tribunal is appointed.

6. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the determination of the Arbitral Tribunal pursuant to paragraph 5.

7. Compensation and the suspension referred to in this Article shall be temporary measures. Neither compensation nor suspension is preferred to the compliance with the obligations in paragraph 1 of Article 12 (Implementation of Arbitral Tribunal's Final Report). The suspension shall only be applied until such time as the obligations in paragraph 1 of Article 12 (Implementation of Arbitral Tribunal's Final Report) are complied with or a mutually satisfactory solution is reached.

Article 16

Post Suspension

1. Without prejudice to the procedures in Article 15 (Suspension of Concessions or Other Obligations), if the Party complained against considers that it has brought the measure into conformity with this Agreement or carried out its obligations under this Agreement, it may provide written notice to the complaining Party with a description of how it has brought the measure into conformity with this Agreement or carried out its obligations under this Agreement. If the complaining Party disagrees, it may refer the matter to the

original Arbitral Tribunal within 45 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The Arbitral Tribunal shall release its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the Arbitral Tribunal concludes that the Party complained against has brought the measure into conformity with this Agreement or carried out its obligations under this Agreement, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 17

Private Rights

Neither Party may provide for a right of action under its law including the initiation of proceedings before its respective courts against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

**LIST OF ANNEX
TO CHAPTER 16 (DISPUTE SETTLEMENT)**

ANNEX 16-1

RULES OF PROCEDURE OF ARBITRAL TRIBUNAL