

CHAPTER 11 DISPUTE SETTLEMENT

Article 105

Co-operation

The Parties shall at all times endeavour to agree on the 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 when a dispute occurs.

Article 106

Scope of Application

Wherever a Party considers that the other Party has failed to carry out its obligations under this Agreement, the dispute settlement provisions of this Chapter shall apply, except if otherwise provided in this Agreement.

Article 107

Choice of Forum

1. Where a dispute arises under this Agreement and under other agreements, including another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested a panel under other agreements referred to in paragraph 1, the forum selected shall be used to exclude application of dispute settlement provisions under this Agreement.

Article 108

Consultation

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.
2. The request for consultations shall be submitted in writing and shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the other Party.
3. If a request for consultations is made, the Party complained against shall reply to the request within 10 days from the date of its receipt and shall enter into consultations in good faith within a period of not more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Party complained against

does not respond within the aforesaid 10 days, or does not enter into consultations within the aforesaid 30 days, then the complaining Party may proceed directly to request the establishment of an arbitral panel.

4. The consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

Article 109

Establishment of an Arbitral Panel

1. If the consultation referred to in Article 108 fails to resolve a matter within 60 days from receipt of the request for consultations, the complaining Party may request in writing the establishment of an arbitral panel to consider the matter.
2. The complaining Party shall state in the request the measure complained of, indicate the provisions of this Agreement that it considers relevant, and deliver the request to the other Party. An arbitral panel shall be established upon receipt of a request.

Article 110

Composition of an Arbitral Panel

1. An arbitral panel shall comprise three members.
2. Within 15 days after the establishment of a panel, the two Parties shall each designate one member of that arbitral panel.
3. The Parties shall agree on the appointment of the third panellist within 30 days after the establishment of a panel. The panellist thus appointed shall chair the arbitral panel.
4. If any member of the arbitral panel has not been designated or appointed within 30 days from the establishment of a panel, at the request of either Party, the Director-General of the WTO is expected to designate a member within a further 30 days.
5. The Chair of the arbitral panel shall not be a national of either of the Parties, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either of the Parties, nor have dealt with the matter in any capacity.
6. All panellists shall:
 - (a) have expertise or experience in the field of 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) be independent of, and not be affiliated with or take instructions from, any Party; and

- (d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

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

Article 111

Functions of an Arbitral Panel

1. The function of an arbitral panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.
2. Where an arbitral panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.
3. The arbitral panel, in its findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.
4. The arbitral panel shall make its award based on the provisions of this Agreement, interpreted in accordance with customary rules of interpretation of public international law.

Article 112

Rules of Procedure of an Arbitral Panel

1. Unless the Parties agree otherwise, the arbitration panel proceedings shall be conducted in accordance with this Chapter and the Rules of Procedure of the Arbitration Panel set out in Annex IX.
2. For all arbitration panel proceedings the procedures shall ensure that:
 - (a) the Parties 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 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, subject to any requirements of confidentiality; and
 - (d) hearings, deliberations, and all written submissions to and communications with the arbitration panel be confidential.

3. Unless the Parties otherwise agree within 20 days from the date of the establishment of the arbitral 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 arbitral panel pursuant to Article 109 and to make findings of law and fact together with the reasons therefore as well as to make recommendations for the resolution of the dispute.”

4. The arbitral panel shall take its decisions by consensus. If the arbitral panel is unable to reach consensus it may take its decisions by majority vote. Panellists may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the panel report by individual panellists shall be anonymous.

5. At the request of either Party or on its own initiative, the arbitral panel may seek scientific information and technical advice from experts as it deems appropriate.

6. The remuneration of the panellists and other expenses of the arbitral panel shall be borne by the Parties in equal shares.

Article 113

Withdrawal of Complaint

A complaining Party may withdraw its complaint at any time before the initial 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.

Article 114

Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral panel has been suspended for more than 12 months, the authority for establishment of the arbitral panel shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral panel.

Article 115

Initial Report

1. The arbitration panel shall present to the Parties an initial report within 90 days from the date of the establishment of the arbitration panel.

2. The arbitration panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.

3. Either Party may submit written comments to the arbitration panel on the initial report within 14 days from the presentation of the report.
4. In such an event, and after considering the written comments, the arbitration panel, on its own initiative or at the request of either Party, may:
 - (a) request the views of either of the Parties;
 - (b) reconsider its report; and/or
 - (c) make any further examination that it considers appropriate.

Article 116

Final Report

1. The arbitration panel shall present to the Parties the final report, containing the matters referred to in paragraph 2 of Article 115, including any separate opinions on matters not unanimously agreed, within 45 days of presentation of the initial report.
2. Unless the Parties decide otherwise, the final report shall be published 15 days after it is presented to them.

Article 117

Implementation of an Arbitral Report

1. If in its report the arbitral panel concludes that a Party has not conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.
2. Unless they reach agreement on compensation or other mutually satisfactory solution, the Parties shall implement the recommendations contained in the report of the arbitral panel.
3. The Parties shall implement the recommendations contained in the report of the arbitral panel within a reasonable period of time if it is not practicable to comply immediately.

Article 118

Reasonable Period of Time

1. The reasonable period of time referred to in paragraph 3 of Article 117 shall be mutually determined by the Parties. If the Parties fail to agree on the reasonable period of time within 45 days from the release of the arbitral panel's report, either Party may, to the extent possible, refer the matter to the original arbitral panel, which shall determine the reasonable period of time following consultation with the Parties.

2. The arbitral panel shall provide its determination concerning the reasonable period of time to the Parties within 60 days from the date of the referral of the matter to the panel. When the arbitral panel considers that it cannot provide its determination within this time frame, 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 determination. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

Article 119

Compliance Review of Implementing Measures

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the recommendations of the arbitral panel, such dispute shall be referred to an arbitral panel proceeding, including wherever possible by resorting to the original arbitral panel.

2. The arbitral panel shall provide its report to the Parties within 60 days from the date of the referral of the matter to it.

Article 120

Suspension of Concessions and Obligations

1. If the arbitral panel finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the arbitral panel within the reasonable period of time established, or the Party complained against expresses in writing that it will not implement the recommendations, and the Parties fail to reach agreement on compensation, the complaining Party may suspend the application of concessions and obligations of equivalent effect to the responding Party.

2. In considering what concessions and obligations to suspend pursuant to paragraph 1:

- (a) the complaining Party should first seek to suspend concessions and obligations in the same sector(s) as that affected by the measure that the arbitral panel has found to be inconsistent with the obligations derived of this Agreement; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions and obligations in the same sector(s), it may suspend concessions and obligations in other sectors. The communication in which the complaining Party announces such a decision shall indicate the grounds on which the decision is based.

3. The complaining Party shall notify the responding Party 30 days before suspending concessions and obligations.

4. Upon written request of the Party concerned, the original arbitral panel shall determine whether the level of concessions and obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2. If the arbitral panel cannot be

established with its original members, the proceeding set out in Article 110 shall be applied.

5. The arbitral panel shall present its determination within 60 days from the request made pursuant to paragraph 4, or if an arbitral panel cannot be established with its original members, from the date on which the last panellist is selected. The ruling of the arbitral panel shall be final. It shall be delivered to the Parties and be made public, unless the Parties decide otherwise.

6. The Complaining Party shall not suspend the application of concessions and obligations before the conditions in paragraph 1 have been fulfilled.

7. The suspension of benefits shall be temporary and only be applied by the complaining Party until the measure found to violate this Agreement has been brought into conformity with this Agreement, or the Parties have reached agreement on a resolution of the dispute.

Article 121

Post Suspension

1. Without prejudice to the procedures in Article 120, if the responding Party considers that it has eliminated the non-conformity that the arbitral panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral panel within 60 days from receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions and obligations.

2. The arbitral panel shall release its report within 60 days from the referral of the matter. If the arbitral panel concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions and obligations.

Article 122

Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.