

CHAPTER FOURTEEN DISPUTE SETTLEMENT

ARTICLE 14.1: COOPERATION

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

ARTICLE 14.2: SCOPE AND COVERAGE

1. Unless the Parties otherwise agree elsewhere in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or whenever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit the Party could reasonably have expected to accrue to it under Chapters Two (Trade in Goods), Three (Rules of Origins), and Six (Trade in Services) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. Unless the Parties otherwise agree, the timeframes and procedural rules set out in this Chapter and its Annex 14-A shall apply to all disputes governed by this Chapter.

3. Arbitral award consisting of findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. This Chapter may be invoked in respect of any measure affecting the observance of this Agreement taken by:

- (a) central, regional or local governments or other authorities of a Party; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or other authorities of a Party.

When an arbitral panel has ruled that a provision of this Agreement has not been observed, the Party concerned shall take such reasonable measures as may be available to it to ensure its observance within its territory.

5. The Parties and the arbitral panel appointed under this Chapter shall interpret and apply this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of interpretation of public international law.

ARTICLE 14.3: CHOICE OF FORUM

1. Disputes regarding any matter covered both by this Agreement and the WTO Agreement or any agreement negotiated there under, or any successor agreement thereto, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures are initiated under Article 14.6 or under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* contained in Annex 2 to the WTO Agreement, the forum thus selected shall be used to the exclusion of the other.

ARTICLE 14.4: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 14.2 by delivering written notification to the other Party.

2. If a request for consultations is made, the Party to which the request is made shall reply to the request within ten days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

- (a) provide sufficient information to enable a full examination of how the measure is affecting the operation of this Agreement; and
- (b) treat the consultations and the information exchanged therein as confidential.

ARTICLE 14.5: GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 14.6.

ARTICLE 14.6: REQUEST FOR AN ARBITRAL PANEL

1. A Party may request in writing for the establishment of an arbitral panel, if the matter has not been resolved under Article 14.4 within 45 days after the date of receipt of the request for consultations.
2. A request for arbitration shall give the reasons for the complaint including the identification of the measure at issue and indication of the legal basis of the complaint.
3. Unless the Parties otherwise agree, an arbitral panel shall be established upon delivery of the request and perform its functions in accordance with the provisions of this Chapter.

ARTICLE 14.7: COMPOSITION OF ARBITRAL PANELS

1. The arbitral panel referred to in Article 14.6 shall normally consist of three members. Each Party shall appoint a member within 30 days of the receipt of the request under Article 14.6. The Parties shall jointly appoint the third member, who shall serve as the chair of the arbitral panel, within 30 days after the appointment of the second member. If either Party fails to appoint its member within such period, the member appointed by the other Party shall act as the sole arbitrator.
2. If the Parties are unable to agree on the chair of the arbitral panel, they shall, within the next ten days, exchange their respective lists comprising four nominees each who shall not be nationals of either Party. The chair shall then be appointed in the presence of both Parties by draw of lot from the lists within 40 days from the date of appointment of the second member. If a Party fails to submit its list of four nominees, the chair shall be appointed by draw of lot from the list already submitted by the other Party.
3. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning the date when the original member becomes unable to act and ending on the date when the new member is appointed.
4. If the sole arbitrator or the chair appointed in accordance with paragraph 1 or 2 is replaced, any hearings held previously shall be repeated. If any member of the arbitral panel is replaced, such hearings may be repeated at the discretion of the arbitral panel.
5. Any person appointed as a member of the arbitral panel 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. A member shall be chosen strictly on the basis of impartiality, objectivity, reliability, sound judgment and

independence and shall conduct himself or herself on the same basis throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the basis stated above, the Parties shall consult and if they agree, the member shall be replaced by a new member in accordance with this Article. Unless the Parties agree otherwise, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

ARTICLE 14.8: TERMINATION OF PROCEEDINGS

The Parties may agree to terminate the proceedings before an arbitral panel at any time by jointly notifying the chair to this effect. The arbitration proceedings may be terminated at any time, but before issuance of the initial report under Article 14.11, if the complaining Party withdraws its complaint.

ARTICLE 14.9: PROCEEDINGS OF ARBITRAL PANELS

1. Unless the Parties otherwise agree, the arbitral panel shall follow the model rules of procedure in the Annex 14-A, which shall ensure:

- (a) confidentiality of the proceedings and all written submissions to, and communications with, the panel;
- (b) that the arbitral panel meets in closed session;
- (c) a right to at least one hearing before the arbitral panel;
- (d) an opportunity for each Party to provide initial and rebuttal submissions;
- (e) that a Party may make available to the public at any time its own written submissions, subject to subparagraph (g);
- (f) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to Article 14.11.3; and
- (g) the protection of confidential information.

2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with this Chapter and the model rules of procedure in the Annex 14-A.

ARTICLE 14.10: INFORMATION AND TECHNICAL ADVICE

1. Upon the request of a Party, or on its own initiative, the arbitral panel may seek information or technical advice from any person or body that it deems appropriate, provided that the Parties so agree. Any information or technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter

raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

ARTICLE 14.11: INITIAL REPORT

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 14.10.
2. Unless the Parties otherwise agree, the arbitral panel shall, within 90 days after the last member is appointed, present to the Parties an initial report containing:
 - (a) findings of fact and/or law together with reasons;
 - (b) its determination as to the implementation, interpretation or application of this Agreement or whether the measure at issue is inconsistent with the provisions of this Agreement or causes nullification or impairment of any benefit accruing to a Party under this Agreement, or any other determination requested in the terms of reference; and
 - (c) its recommendations, if any, on the means to resolve the dispute.
3. The Parties may submit written comments on the initial report within 14 days of its presentation.
4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after taking into account written comments.

ARTICLE 14.12: FINAL REPORT

1. The arbitral panel shall present its final report to the Parties, within 30 days of presentation of the initial report, unless the Parties otherwise agree.
2. The final report of the arbitral panel shall be made public within 15 days of its delivery to the Parties.

ARTICLE 14.13: IMPLEMENTATION OF FINAL REPORT

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.
2. On receipt of the final report of an arbitral panel, the Parties shall agree on:
 - (a) the means to resolve the dispute as per the determinations or recommendations, if any, of the arbitral panel; and

- (b) the reasonable period of time necessary to implement the report to resolve the dispute. If the Parties fail to agree on the reasonable period of time, either Party may request the original arbitral panel to determine the length of such period, in the light of the particular circumstances of the case. The arbitral panel shall present its determination within 15 days after submission of the request.

3. If, in its final report, the arbitral panel determines that a Party is not in conformity with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall, wherever possible, be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 14.14: NON-IMPLEMENTATION: COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Parties:

- (a) are unable to agree on the means to resolve the dispute pursuant to Article 14.13. 2(a) within 30 days of issuance of the final report; or
- (b) have agreed on the means to resolve the dispute pursuant to Article 14.13, but the responding Party fails to implement the aforesaid means within 30 days following the expiration of the reasonable period of time determined in accordance with Article 14.13.2(b);

the responding Party shall, if requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation is reached within 20 days after the Parties have entered into negotiations on compensatory adjustment, the complaining Party may at any time thereafter serve written notice on the responding Party that it intends to suspend the application to that Party of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspension of benefits 30 days after the date when it served notice on the responding Party under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.

3. Any suspension of benefits shall be restricted to benefits granted to the responding Party under this Agreement.

4. In considering what benefits to suspend under paragraph 2:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with this Agreement or to

have caused nullification or impairment; and/or

- (b) the complaining Party may suspend benefits in other sectors, if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment, has been removed, or a mutually satisfactory solution is reached.

6. If the responding Party considers that:

- (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the non-conformity, nullification or impairment that the arbitral panel has found;

it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within 30 days after it is reconvened.

7. Where there is disagreement as to the existence, or consistency with this Agreement, of measures taken to comply with the determinations or recommendations of the arbitral panel, such dispute shall be decided through recourse to the dispute settlement procedures under this Chapter, including, wherever possible resort to the original arbitral panel. The arbitral panel shall provide its report to the Parties within 60 days after the date of referral of the matter to it.

8. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment of the arbitral panel set out in Article 14.7 shall be applied.

ARTICLE 14.15: OFFICIAL LANGUAGE

1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.

2. When an original document submitted to the arbitral panel by a Party is not in English, that Party shall translate it into English and submit it together with the original document.

ARTICLE 14.16: EXPENSES

1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

2. Each Party shall bear its own expenses and legal costs in the arbitral proceedings.

ANNEX 14-A MODEL RULES OF PROCEDURE

Application

1. These Rules are established under Article 14.9 and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For the purposes of this Annex:

Complaining Party means a Party that requests the establishment of a panel under Article 14.6;

Responding Party means a Party complained against; and

Arbitral panel means an arbitral panel established under Article 14.7.

3. Any reference made in these Rules to an Article, is a reference to the appropriate Article under this Chapter.

Terms of Reference for Panels

4. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of a 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 14.6, to make findings of fact and/or law together with the reasons thereof as well as recommendations, if any, on the means to resolve the dispute, and to deliver the written reports referred to in Articles 14.11 and 14.12."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last member of the panel.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

Written Submissions and Other Documents

7. Each Party shall deliver no less than four copies of its written submission to the panel and a copy to the other Party.

8. A complaining Party shall deliver its initial written submission to the responding Party no later than 15 days after the date on which the last panelist is

appointed. The responding Party shall deliver its written submission to the complaining Party no later than 30 days upon receipt of the initial written submission of the complaining Party.

9. In respect of a request, notice or other documents related to the panel proceedings that is not covered by paragraph 7 or 8, each Party shall deliver copies of the documents to the other Party by facsimile, email or other means of electronic transmission.

10. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other documents related to the panel proceedings by delivering a new document clearly indicating the changes.

Operation of Panels

11. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

12. Except as otherwise provided for in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

13. Only members of the panel may take part in the deliberations of the panel, but the panel may in consultation with the Parties employ such number of assistants, interpreters or translators, or court reporters (designated note takers) as may be required for the proceedings and permit them to be present during such deliberations. The members of the panel and the persons employed by the panel shall maintain the confidentiality of the panel's proceedings unless such information is already made available to the public.

14. A panel may, in consultation with the Parties, modify any time period applicable in the panel proceedings and make other procedural or administrative adjustments as may be required in the proceedings.

Hearings

15. The chair of the panel shall fix the date and time of the hearing in consultation with the Parties and the other members of the panel, and then notify the Parties in writing of the date, time and location of the hearing.

16. The venue for the proceedings of the panel shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the venue of the first sitting to be in the territory of the complaining Party.

17. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the responding Party are afforded equal time for arguments, replies and counter-replies.

Decisions of the Panel

18. The panel shall take its decisions by consensus, provided that where a panel is unable to reach consensus it may take its decisions by majority vote.

Availability of Information

19. A Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment, to the extent it considers strictly necessary to protect personal privacy or legitimate commercial interests of particular enterprises, public or private, or to address essential confidentiality concerns.

20. A Party shall treat as confidential any information submitted by the other Party to the panel that the latter Party has designated as confidential pursuant to paragraph 19.

21. Each Party shall take such reasonable steps as are necessary to ensure that its experts, interpreters, translators, court reporters (designated note takers) and other individuals involved in the panel proceedings maintain the confidentiality of the panel proceedings.

Remuneration and Payment of Expenses

22. The panel 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, court reporters (designated note takers) or other individuals that it retains in a panel proceeding in consultation with the Parties.