

Chapter 14 Dispute Settlement

Article 133 Scope

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. Nothing in this Chapter shall prejudice any right of the Parties to have recourse to dispute settlement procedures available under the WTO Agreement.
3. Notwithstanding paragraph 2, once the establishment of an arbitral tribunal under this Chapter or a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement is requested with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of any other procedure for that particular dispute.

Article 134 Consultations

1. Either Party may request in writing to the other Party for consultations concerning any matter on the interpretation or application of this Agreement.
2. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution of the matter. In cases of urgency, including those concerning perishable goods, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 135
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

Article 136
Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 134 may request in writing the establishment of an arbitral tribunal to the Party complained against:

- (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, after the date of receipt of the request for such consultations; or
- (b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly 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 the establishment of an arbitral tribunal pursuant to this Article shall identify:

- (a) the factual basis for the complaint; and

- (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached.

3. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three 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 either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The Parties shall agree on and appoint the third arbitrator within 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 3.

5. If a Party has not appointed an arbitrator pursuant to paragraph 3 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 4, the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot-drawing from the candidates proposed pursuant to paragraph 3.

6. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

7. An arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 137 Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 136:

- (a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory solution;
- (b) shall make its award in accordance with this Agreement and applicable rules of international law;

- (c) shall set out in its award, its findings of law and fact, together with the reasons therefor; and
- (d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 140.

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 as the arbitral tribunal considers necessary and appropriate.

3. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request information or advisory reports in writing from experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings and provide information or advice upon request by the arbitral tribunal, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

4. Any information or advice obtained by the arbitral tribunal pursuant to paragraph 3 shall be made available to the Parties. Each Party may make written submissions on the handling of such information or advice by the arbitral tribunal.

Article 138 Proceedings of Arbitral Tribunals

- 1. The arbitral tribunal shall meet in closed session.
- 2. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

3. Notwithstanding paragraph 2, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, 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 Party.

5. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

6. The arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency including those concerning perishable goods, after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 120 days or 60 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.

7. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

8. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus. Failing such consensus, it may make its decisions, including its award, by majority vote. In case of majority vote, opinions expressed by individual arbitrators shall be anonymous.

9. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 139 Termination of Proceedings

1. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties.

2. When the Parties jointly notify the chair of the arbitral tribunal of the agreement under paragraph 1, the chair shall terminate the proceedings of the arbitral tribunal.

Article 140 Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 138.

2. If the prompt compliance with the award is impracticable, the Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time required for implementing the award. If the complaining Party considers that the period of time notified is unacceptable, it may refer the matter to an arbitral tribunal which then shall determine the reasonable implementation period.

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 30 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend 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, it may refer the matter to an arbitral tribunal.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 confirms 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, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

6. The suspension of the application of concessions or other obligations under paragraphs 3 and 5 may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

- (a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;
- (b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;
- (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and
- (d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors.

7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 5 or 6 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3 through 5 of Article 136.

9. Unless the Parties agree to a different time period, the arbitral tribunal established under this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 141 Expenses

1. Unless otherwise agreed by the Parties, the expenses of the arbitral tribunal other than those referred to in paragraph 2, shall be borne by the Parties in equal shares.

2. Each Party shall bear the expenses of its representation in the proceedings of the arbitral tribunal.

Article 142 Language

All proceedings of the arbitral tribunal and all documents and information submitted to the arbitral tribunal shall be in the English language.