

2. Implementing arrangements setting forth the details and procedures of cooperative activities under this Article may be made between the government agencies of the Parties.

Article 148
Non-Application of Chapter 15

The dispute settlement procedure provided for in Chapter 15 shall not apply to this Chapter.

Article 149
Relation to Other Agreements

1. The Agreement between the Government of Japan and the Government of the United Mexican States concerning Cooperation in the Field of Tourism signed in Tokyo, on November 1, 1978 shall expire upon the date of entry into force of this Agreement.

2. It is confirmed by both Parties that nothing in this Chapter prejudices the rights and obligations of the Parties under the Agreement on Technical Cooperation between the Government of Japan and the Government of the United Mexican States signed in Tokyo, on December 2, 1986, as may be amended.

Chapter 15
Dispute Settlement

Article 150
Scope and Coverage

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

Article 151
Choice of Dispute Settlement Procedure

1. 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 both Parties are parties.

2. Notwithstanding paragraph 1 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

3. For the purposes of paragraph 2 above, a dispute settlement procedure under this Chapter shall be deemed to be initiated by a Party's request for the establishment of an arbitral tribunal pursuant to paragraph 1 of Article 153.

4. For the purposes of paragraph 2 above, a dispute settlement procedure under the WTO Agreement shall be deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement, as may be amended.

Article 152 Consultations

1. Each Party may request in writing consultations with the other Party regarding any matter on the interpretation or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1 above, 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 a prompt and satisfactory resolution of the matter. In a case of consultations regarding perishable goods, the requested Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 153 Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 152 above 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 after the date of its receipt of the request for consultations under that Article; or

- (b) if the Parties fail to resolve the dispute through such consultations under that Article within 60 days 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, or as a result of the application by the Party complained against of measures which are in conflict with the obligations of that Party, under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

- (a) the legal basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (b) the factual basis for the complaint.

3. The arbitral tribunal shall comprise 3 arbitrators.

4. 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 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 either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party.

5. 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 4 above.

6. If a Party has not appointed one arbitrator pursuant to paragraph 4 above or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 5 above, such arbitrator or such third arbitrator shall be chosen by lot within further 7 days from the candidates proposed pursuant to paragraph 4 above.

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

8. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of such arbitral tribunal 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 tribunal pursuant to this Article, to rule on the consistency of the measures at issue with this Agreement, and, where the arbitral tribunal reaches the conclusion that the measure is inconsistent with this Agreement, to make recommendations that the Party complained against bring the measure into conformity with this Agreement. When making recommendations, the arbitral tribunal may not suggest specific ways in which the Party complained against could implement the recommendations."

9. The Parties shall promptly deliver the terms of reference pursuant to paragraph 8 above to the arbitral tribunal.

10. If an arbitrator dies, withdraws or is removed, a replacement shall be appointed within 30 days in accordance with the appointment procedure provided for in paragraphs 4 to 6 above, which shall be applied, respectively, *mutatis mutandis*. In such a case, any time period applicable to the arbitral tribunal proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is appointed.

Article 154 Award of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 4 below shall be kept confidential.

3. Nothing in this Chapter shall preclude a Party from disclosing statements of its own position to the public. Each Party shall treat as confidential, information submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. A Party shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

4. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both 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 to the Parties its draft award within the aforementioned 90 day period, it may extend that period with the consent of the Parties. However, in no case should the period from the establishment of the arbitral tribunal to the submission of the draft award to the Parties exceed 150 days. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of the submission of the draft award.

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

6. In the case that the matters referred to the arbitral tribunal are those concerning perishable goods, the arbitral tribunal shall make every effort to issue its award to the Parties within 90 days after the date of its establishment. In no case should it do so later than 120 days.

7. The arbitral tribunal shall take its decisions including its award by majority vote.

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

Article 155

Termination of Proceedings of the Arbitral Tribunal

While the proceedings of the arbitral tribunal are in progress, the Parties may agree to terminate the proceedings at any time by jointly so notifying the chair of the arbitral tribunal.

Article 156

Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 154.

2. 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 for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.

3. If the Party complained against fails to comply with the award within the implementation period as determined pursuant to paragraph 2 above, 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 acceptable compensation. If no satisfactory compensation has been agreed within 20 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 measures taken by the Party complained against for implementing the award do not comply with the award within the implementation period as determined pursuant to paragraph 2 above, it may refer the matter to an arbitral tribunal.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 above confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2 above, 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. Suspension of the application of concessions or other obligations under paragraphs 3 and 5 above 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 an arbitral tribunal are in progress;
- (b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;
- (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the 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 other 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 above have not been met, it 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 to 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 4 to 6 of Article 153. Unless the Parties agree to a different period, such arbitral tribunal shall issue its award within 30 days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be binding on the Parties.

Article 157 Modification of Time Periods

Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 158 Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

Article 159 Rules of Procedure

Unless the Parties agree otherwise, the details and procedures for the arbitral tribunal provided for in this Chapter shall be in accordance with the Rules of Procedure to be adopted by the Joint Committee within the first year of the date of entry into force of this Agreement.

Chapter 16
Implementation and Operation of the Agreement

Article 160
Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, respecting any matter covered by this Agreement.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.

3. Nothing in this Article shall prejudice as to whether a measure adopted by a Party is consistent with this Agreement.

Article 161
Public Comment Procedures

The Government of each Party shall, in accordance with the domestic laws and regulations of the Party, endeavor to maintain public comment procedures, except in cases of emergency, *inter alia*, a real or imminent danger to the health, safety, or welfare of persons, to the preservation of the environment or to the conservation of exhaustible natural resources, in order to:

- (a) make public in advance regulations of general application that affect any matter covered by this Agreement, accompanied by an explanation of their rationale and potential effects, when the Government adopts, amends or repeals them;
- (b) provide a reasonable opportunity for comments by the public and give consideration to those comments before the adoption of such regulations; and
- (c) make public those comments. Where appropriate, those comments should be compiled and accompanied by the views of the Government on them.