

Chapter 16 Dispute Settlement

Article 16.1 Scope

Unless otherwise provided for in this Agreement, the dispute settlement procedure of this Chapter shall apply with respect to the avoidance and the settlement of disputes between the Parties arising out of the interpretation and/or application of this Agreement.

Article 16.2 General Principle

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement. They shall make every attempt through cooperation, consultations or other means to arrive at a prompt and mutually satisfactory resolution of any matter concerning the interpretation and/or application of this Agreement.

Article 16.3 Choice of Forum

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 party, including the WTO Agreement. The complaining Party may select the forum in which to settle the dispute.

2. Notwithstanding paragraph 1, once the complaining Party has requested the establishment of an arbitral tribunal under this Chapter or any other international agreement to which both Parties are party, including a panel under the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement 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 16.4
Consultations

1. Either Party may request in writing consultations to the other Party with respect to any matter on the interpretation and/or application of this Agreement.
2. In the request for consultations referred to in paragraph 1, the complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal and factual basis of the complaint.
3. The Party complained against shall promptly respond in writing to such request and enter into consultations with the complaining Party in good faith within 40 days after the date of receipt of the request. In cases of urgency, including those which concern perishable goods, the Party complained against shall enter into consultations within 20 days after the date of receipt of the request.
4. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article. During the consultations the Parties shall provide to each other sufficient information to enable a full examination of the matter.
5. During the consultations under this Article, the Parties shall endeavor to make available personnel of their relevant agencies and organizations with expertise in the matter subject to the consultations.
6. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.
7. The consultations under this Article may be held in person or by any technological means available to the Parties upon agreement by the Parties. If the Parties agree to hold consultations in person, the consultations shall be held in a venue agreed upon by the Parties, or if there is no agreement on the venue, in the capital of the Party complained against.

Article 16.5
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 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.
3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 16.6
Establishment of Arbitral Tribunals

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against if:
 - (a) the Party complained against does not enter into consultations under Article 16.4 within 40 days, or within 20 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations; or
 - (b) the Parties fail to resolve the dispute through consultations under Article 16.4 within 60 days, or within 30 days in cases of urgency, including those which concern 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 to establish an arbitral tribunal in accordance with this Article shall identify the reasons for the request including:

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

Article 16.7 Composition of Arbitral Tribunals

1. An arbitral tribunal shall comprise three arbitrators, who should have relevant technical or legal expertise.

2. 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.

3. The Parties shall endeavor to 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 in accordance with paragraph 2.

4. If a Party has not appointed the one arbitrator in accordance with paragraph 2, or if the Parties fail to agree on the third arbitrator in accordance with paragraph 3, the arbitrator or arbitrators not yet appointed shall be chosen within 10 days by lot from the candidates proposed in accordance with paragraph 2.

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

6. If an arbitrator appointed under this Article resigns, dies or otherwise becomes unable to act, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the replacement arbitrator is appointed.

Article 16.8 Functions of Arbitral Tribunals

1. The functions of the arbitral tribunal established in accordance with Articles 16.6 and 16.7 shall be to:

- (a) make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement;
- (b) consult regularly with the Parties offering them equal opportunities for such consultations and provide adequate opportunities for the development of a mutually satisfactory resolution;
- (c) make its award in accordance with this Agreement and applicable rules of international law;
- (d) include in its award, its findings of law and fact, together with the reasons for the findings; and
- (e) attach to its award suggested implementation options including suggested period of time for implementing the award, for the Parties to consider in conjunction with Article 16.11, if requested by either Party.

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. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts.

4. Any information obtained by the arbitral tribunal in accordance with paragraph 3 shall be made available to the Parties.

Article 16.9 Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties with the first meeting of the arbitral tribunal proceedings to be held in the capital of the Party complained against.

3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

4. Notwithstanding paragraph 3, 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, the other Party may request a non-confidential summary of the information or written submission which may be disclosed publicly. The Party to which such a request is made may agree to the request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.

5. 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.

6. The award of the arbitral tribunal shall be drafted without the presence of the Parties.

7. The arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency including those which concern 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 it. 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. 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. Either Party may submit comments in writing to the arbitral tribunal on the draft award within 30 days after the date of submission of the draft award.

8. The arbitral tribunal shall present its award to the Parties within 45 days after the date of submission of the draft award.

9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus, but may also make its decisions, including its award, by majority vote.

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

Article 16.10
Termination of the Proceedings

The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties, in which case the chair shall terminate the proceedings of the arbitral tribunal without delay.

Article 16.11
Implementation of Award

1. Unless the Parties otherwise agree, the Party complained against shall promptly comply with the award of the arbitral tribunal issued in accordance with Articles 16.8 and 16.9. If this is not practicable, the Party complained against shall comply with the award within a reasonable period of time.
2. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties, taking into account, where appropriate, the suggested period of time attached to the award by the arbitral tribunal. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the award of the arbitral tribunal, either Party may refer the matter to an arbitral tribunal, which shall determine the reasonable period of time.
3. (a) If the Party complained against considers it impracticable to comply with the award within the reasonable period of time, the Party complained against shall, no later than the expiry of that period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.

- (b) If no satisfactory compensation or any alternative arrangement has been agreed within 30 days after the date of expiry of the reasonable period of time, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

4. If the complaining Party considers that the Party complained against has failed to comply with the award within the reasonable period of time and if the Party complained against has not entered into consultations in accordance with subparagraph 3(a), the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

5. The suspension of the application of concessions or other obligations under paragraph 3 or 4 shall:

- (a) not be effected if, with respect to 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 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.

6. If the Party complained against considers that the requirements for the suspension of the application of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 4 or 5 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 in accordance with this paragraph, the Party complained against may refer the matter to an arbitral tribunal, which then shall determine whether the said requirements have been met.

7. The arbitral tribunal that is established for the purposes of this Article shall, whenever 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 in accordance with paragraphs 2, 3 and 4 of Article 16.7. Unless the Parties agree on a different period, the arbitral tribunal established under this Article shall make its determinations within 60 days after the date when the matter is referred to it. Such determinations shall be final and binding on the Parties.

Article 16.12 Modification of Time Periods

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

Article 16.13 Expenses

Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless the Parties otherwise agree.

Article 16.14
Language

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