

- (e) establishing its own rules and procedures;
- (f) discussing any issues related to this Chapter;
and
- (g) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall respect existing consultation mechanisms between the Parties for Official Development Assistance and other existing cooperation schemes and, as appropriate, share information with such mechanisms to ensure effective and efficient implementation of cooperative activities.

4. The Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties as resource persons with necessary expertise relevant to the issues to be addressed.

5. The Sub-Committee shall hold its inaugural meeting within one (1) year after this Agreement enters into force. Subsequent meetings of the Sub-Committee shall be held at such frequency as the Parties may agree on.

6. The Sub-Committee may establish a working group for each field of cooperation under the Sub-Committee. The functions, composition and other details of the working groups may be set forth in the Implementing Agreement.

Article 148 Non-Application of Chapter 15

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

Chapter 15 Dispute Avoidance and Settlement

Article 149 Scope and Coverage

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance and settlement of disputes between the Parties concerning the interpretation or application of this Agreement.

2. 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.

3. Notwithstanding paragraph 2 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 shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

4. Paragraph 3 above shall not apply where the Parties expressly agree to the use of more than one (1) dispute settlement procedure in respect of a particular dispute.

5. Where an infringement of the obligations assumed under this Agreement constitutes an infringement of the obligations assumed under the WTO Agreement, the Parties shall give priority consideration to having recourse to the dispute settlement procedures under the WTO Agreement.

Article 150
General Consultations
for the Avoidance and Settlement of Disputes

1. For the purposes of avoiding disputes, a Party may request in writing consultations with the other Party with regard to 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 afford adequate opportunity for consultations and shall reply promptly to the request and enter into consultations in good faith.

3. The Parties shall make every effort to avoid possible disputes through consultations.

Article 151
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested in writing at any time by either Party. They may begin at any time if the Parties agree. The use of good offices, conciliation or mediation may be terminated at any time at the request of either Party. While good offices, conciliation or mediation are in progress, the requesting Party of the consultations referred to in paragraph 1 of Article 152 shall not request the establishment of an arbitral tribunal pursuant to paragraph 1 of Article 153.
2. If the Parties agree, good offices, conciliation or mediation may continue while proceedings of the arbitral tribunal provided for in this Chapter are in progress.

Article 152
Special Consultations for Dispute Settlement

1. For the purposes of settling disputes, either Party may make a request in writing for consultations to the other Party if the requesting Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, as a result of failure of the requested Party to carry out its obligations, or as a result of the application by the requested Party of measures which conflict with its obligations, under this Agreement.
2. Unless the Parties agree otherwise, the requested Party shall:
 - (a) enter into consultations within thirty (30) days after the date of receipt of the request for consultations made pursuant to paragraph 1 above; or
 - (b) enter into consultations within ten (10) days after the date of receipt of the request for consultations made pursuant to paragraph 1 above if the procedure provided for in Article 150 was utilized in respect of the same dispute and sixty (60) days or more have elapsed from the date of the initiation of consultations under that Article.
3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations.

Article 153
Establishment of Arbitral Tribunals

1. Unless otherwise agreed by the Parties, if the Parties fail to resolve a dispute through consultations provided for in Article 152, either Party may request the establishment of an arbitral tribunal in respect of that dispute:

- (a) after ninety (90) days, which may be extended up to one hundred eighty (180) days upon the request of the requested Party, from the date on which the requested Party receives the request for consultations made pursuant to subparagraph 2(a) of Article 152; or
- (b) after sixty (60) days, which may be extended up to one hundred fifty (150) days upon the request of the requested Party, from the date on which the requested Party receives the request for consultations made pursuant to subparagraph 2 (b) of Article 152.

2. Any request to establish 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. Each Party shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one (1) arbitrator who may be its national and propose up to three (3) candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal (hereinafter referred to in this Chapter as "the chair"). The chair 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.

4. The Parties shall, in consultation with their appointed arbitrators, if necessary, agree on and appoint the chair within sixty (60) 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 above.

5. If the Parties fail to agree on and appoint the chair pursuant to paragraph 4 above, the chair shall be chosen by lot from the candidates proposed pursuant to paragraph 3 above within seven (7) days after the expiry of the period provided for in paragraph 4 above.

6. The arbitral tribunal should be composed of arbitrators with international legal expertise or relevant technical knowledge.

Article 154 Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 153:

- (a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;
- (b) shall make its award in accordance with this Agreement and applicable rules of international law, including customary international law;
- (c) shall set out, in its award, its findings of law and fact, together with the reasons therefore; and
- (d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 157.

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

3. 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 an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

4. 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 an expert or 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 (2) scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

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 ninety (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, unless the dispute is settled otherwise or the proceeding of the arbitral tribunal is terminated in accordance with Article 156. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the aforementioned ninety (90) day 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 fifteen (15) days after the date of receipt of the draft award.

7. The arbitral tribunal shall issue its award within thirty (30) days after the date of receipt of the draft award by the Parties.

8. The arbitral tribunal shall endeavor to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote should a consensus not be reached.

Article 155 Proceedings 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 6 of Article 154 shall be kept confidential.

3. Notwithstanding paragraph 2 above, 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 to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to whom such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.

4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding and to submit any relevant information, including rulings of the Dispute Settlement Body of the World Trade Organization. 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. Unless otherwise agreed by the Parties, English shall be the language used in the proceedings of, and submissions to, the arbitral tribunal.

Article 156 Suspension and Termination of Proceedings

Even if the arbitral tribunal has been established and the proceedings are in progress, the Parties may agree to terminate, or suspend, the proceedings at any time by jointly so notifying the chair.

Article 157
Implementation of Award

1. The award of the arbitral tribunal issued pursuant to Article 154 (hereinafter referred to in this Article as "the original award") shall be complied with promptly. A Party which is required by the arbitral tribunal to comply with its award (hereinafter referred to in this Article as "the implementing Party") shall, within forty five (45) days after the date of issuance of the original award, notify in writing the other Party (hereinafter referred to in this Article as "the other Party") as to the period which it assesses to be reasonable and necessary in order to implement the original award. The other Party may request consultations if it considers the period notified to be unacceptable, in which case the Parties shall enter into consultations within thirty (30) days after the date of receipt of the request.

2. If the implementing Party considers it impracticable to comply with the original award within the implementation period as determined pursuant to paragraph 1 above, the implementing Party shall no later than the expiry of that implementation period enter into consultations with the other Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within forty five (45) days after the date of expiry of that implementation period, the other Party may notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement.

3. If the other Party considers that the measures taken by the implementing Party to comply with the original award do not comply with the original award, it may request consultations, in which case the Parties shall promptly enter into consultations.

4. Either Party may refer matters arising from the implementation of the original award to an arbitral tribunal if:

- (a) consultations were initiated under paragraph 1 above, and the Parties fail to reach agreement on the period for implementation within thirty (30) days after the date of receipt of the request; or

- (b) consultations were initiated under paragraph 3 above, and the Parties fail to resolve the matter, and at least forty five (45) days have elapsed since the date of the expiration of the period for implementation provided for in paragraph 1 above.

5. If the arbitral tribunal to which the matter is referred pursuant to subparagraph 4(b) above confirms that the implementing Party has failed to comply with the original award within the implementation period as determined pursuant to paragraph 1 or subparagraph 4(a) above, the other Party may, within thirty (30) days after the date of such confirmation by the arbitral tribunal, notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement.

6. Suspension of the application of obligations pursuant to paragraph 2 or 5 above may only be implemented at least thirty (30) days after the date of the notification in accordance with that paragraph. Such suspension:

- (a) shall 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) shall be temporary, and shall be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;
- (c) shall be restricted to the level of nullification or impairment that is attributable to the failure to comply with the original award; and
- (d) shall be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend obligations in such sector or sectors.

7. If the implementing Party considers that the requirements in paragraph 2, 5 or 6 above have not been met, it may request consultations with the other Party. The other Party shall enter into consultations within ten (10) days after the date of receipt of the request. If the Parties fail to resolve matters within thirty (30) days after the date of receipt of the request for consultations pursuant to this paragraph, either Party 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 6 of Article 153. Unless the Parties agree to a different period, such arbitral tribunal shall issue its award within sixty (60) days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be final and binding on 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 within the first year of the date of entry into force of this Agreement and to be modified, if necessary, by the Joint Committee.

Chapter 16 Final Provisions

Article 160 Table of Contents and Headings

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 161 General Review

The Parties shall undertake a general review of the Agreement and its implementation and operation in 2011 and every five (5) years thereafter, unless otherwise agreed by both Parties.