

Chapter 14 Dispute Settlement

Article 137 General Provisions

The Parties shall at all times endeavour to reach a mutually satisfactory resolution of any matter concerning the interpretation and application of this Agreement through cooperation, expert consultations or other means provided for in this Agreement.

Article 138 Scope and Coverage

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 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, once the complaining Party has requested 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 with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of the other procedure for that particular dispute.

Article 139 Consultations

1. A Party may request in writing consultations with the other Party if it considers that a measure applied by that other Party is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired or nullified by such measure. The Party requesting consultations shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint.

2. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply promptly 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 case of a matter concerning perishable products, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 140 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 if the Parties agree and, at the request of either Party, be terminated at any time.

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 141 Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 139 may address a written request to the Party complained against for the establishment of an arbitral tribunal:

- (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in case of a matter concerning perishable products, after the date of receipt of the request for consultations under that Article; or
- (b) if the Parties fail to resolve the matter through such consultations under that Article within 60 days after the date of receipt of the request for such consultations.

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

- (a) the specific measures at issue; and

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

The arbitral tribunal may also be requested to propose implementation options, which will be attached to its award.

3. The arbitral tribunal shall consist of three arbitrators with relevant technical or legal expertise.

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 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.

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.

6. If a Party has not appointed the one arbitrator pursuant to paragraph 4, or if the Parties fail to agree on the third arbitrator pursuant to paragraph 5, the necessary appointments shall be made at the request of either Party by the Secretary-General of the Permanent Court of Arbitration within a further 30 days.

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

Article 142 Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 141:

- (a) shall examine the matter referred to in the request for the establishment of the arbitral tribunal pursuant to paragraph 2 of Article 141;
- (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;
 - (d) shall, if requested by the complaining Party pursuant to paragraph 2 of Article 141, attach to its award suggested implementation options for the Parties to consider in conjunction with Article 145; and
 - (e) should consult with the Parties, as appropriate, with a view to providing adequate opportunities for the development of a mutually satisfactory resolution.
2. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 143 Proceedings of Arbitral Tribunals

1. Unless the Parties have agreed otherwise, the arbitral tribunal shall decide on whether its proceedings are to be held in Japan or Switzerland, and the complaining Party shall provide the secretariat services. The language of the proceedings and the documents submitted to and produced by the tribunal, including the award, shall be English.
2. The arbitral tribunal shall meet in closed session. Hearings shall be open to the public, unless either Party objects.
3. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 8 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 provided and written submissions made by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or made written submissions designated to be 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.

5. Each Party has the right to at least one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions. 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.
6. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter.
7. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding. Any information provided or written submissions made 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.
8. The arbitral tribunal shall, within 90 days 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 purpose of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the afore-mentioned 90 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.
9. The arbitral tribunal shall issue its award within 30 days after the date of submission of the draft award.
10. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote.
11. The award of the arbitral tribunal shall be made public.

Article 144
Suspension or Termination of Proceedings
of Arbitral Tribunals

1. The Parties may agree to suspend the work of the arbitral tribunal at any time before the issuance of the award for a period not exceeding twelve months following the date of such agreement. If the work of the tribunal has been suspended for more than twelve months, the authority of the arbitral tribunal to examine the dispute shall lapse, unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties by jointly so notifying the chair of the arbitral tribunal.

Article 145
Implementation of Award

1. The Party complained against shall promptly comply with the award issued by the arbitral tribunal pursuant to Article 143.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the means and the period of time for implementing the award, taking into account, if applicable, the implementation options attached to the award. If the complaining Party considers the notified means or period of time to be unacceptable, it may request the Party complained against to hold consultations with a view to reaching a mutually satisfactory solution on the matter. If no such solution has been agreed upon within 20 days after the date of receipt of the request, the complaining Party may refer the matter to an arbitral tribunal, which then shall determine a reasonable means or period of time for implementing the award. The determination of the arbitral tribunal shall be presented within 15 days from the referral of the matter to the arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award, it shall notify the complaining Party accordingly within 20 days after the issuance of the award and enter into consultations, with a view to agreeing on mutually satisfactory compensation. If no such compensation has been agreed upon within 20 days after the date of the notification, the complaining Party may notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

4. If the Party complained against has failed to notify the means and the period of time for implementing the award pursuant to paragraph 2 or if the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as specified pursuant to paragraph 2, the complaining Party may notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

5. The notification pursuant to paragraph 3 or 4 shall indicate when the suspension of the application of concessions or other obligations under this Agreement shall commence and the application of what concessions or other obligations under this Agreement is to be suspended. Such suspension shall:

- (a) only be implemented at least 30 days after the date of notification;
- (b) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before an arbitral tribunal are in progress;
- (c) be restricted to benefits equivalent to the level of failure to comply with the award; and
- (d) be restricted to the same sector or sectors to which the inconsistency with the provisions of, or the nullification or impairment of a benefit under, this Agreement 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 5 have not been met, it may request consultations with the complaining Party within ten days after the receipt of the notification in accordance with paragraph 3 or 4. The complaining Party shall enter into consultations within ten 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. The ruling of the arbitral tribunal shall be given within 15 days from that referral. Application of concessions or other obligations under this Agreement shall not be suspended until the arbitral tribunal has issued its ruling.

7. The suspension of the application of concessions or other obligations under this Agreement following notification pursuant to paragraph 3 or 4 shall be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected.

8. A Party may request an arbitral tribunal to rule on the conformity with the award of any implementing measures adopted after the suspension of the application of concessions or other obligations under this Agreement and, in light of such ruling, whether the suspension should be terminated or modified. The ruling of the arbitral tribunal shall be given within 15 days from the date of such request.

9. The arbitral tribunal under this Article shall, wherever possible, be composed of the arbitrators of the original arbitral tribunal. If any of the arbitrators is not available, that arbitrator shall be replaced by an arbitrator appointed pursuant to paragraphs 4 to 6 of Article 141.

Article 146 Expenses

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

Article 147 Other Provisions

Any time period mentioned in this Chapter may be modified by agreement between the Parties.