

6. The Sub-Committee may establish a working group under the Sub-Committee for each of the fields of cooperation referred to in Article 111. The functions, composition, and other details of the working groups may be set forth in the Implementing Agreement.

Article 115
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 13
Dispute Settlement

Article 116
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 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 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. For the purposes of paragraphs 2 and 3, a dispute settlement procedure shall be deemed to have been initiated when a Party has requested the establishment of, or referred a dispute to, an arbitral tribunal or a dispute settlement panel, in accordance with this Chapter or any other international agreement to which the Parties are parties.

Article 117
Consultations

1. Either Party may make a request in writing for consultations to the other Party concerning any matter on the interpretation or application of this Agreement.

2. Any request for consultations shall be submitted in writing, containing the identification of the specific measures at issue and indication of the factual and legal basis (including, if applicable, the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint.

3. When a Party makes a request for 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 prompt and mutually satisfactory resolution of the matter. In case of consultations regarding perishable goods, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 118 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 the proceedings of the arbitral tribunal provided for in this Chapter are in progress.

Article 119 Establishment of Arbitral Tribunals

1. The complaining Party that made a request for consultations under Article 117 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 case of consultations regarding 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 case of consultations regarding 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 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 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 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 either 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 Director-General of the World Trade Organization shall immediately be requested to make the necessary appointments. In the event that the Director-General is a national of either Party, the Deputy Director-General or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.

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 120 Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 119:

- (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;
- (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 123.
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.
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. 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, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

Article 121 Proceedings of Arbitral Tribunals

1. The rules and procedures as set out in this Article shall apply to the proceedings of an arbitral tribunal.
2. The Parties, in consultation with the arbitral tribunal, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.
3. After consulting the Parties, the arbitral tribunal shall as soon as practicable and whenever possible within seven days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The timetable fixed for the arbitral tribunal shall include precise deadlines for written submissions by the Parties. Modifications to such timetable may be made by the agreement of the Parties in consultation with the arbitral tribunal.
4. The venue for the arbitral tribunal proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitral tribunal proceedings to be held in the capital of the Party complained against.
5. 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.

6. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. 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.

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

8. Notwithstanding paragraph 7, 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.

9. 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.

10. 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 purposes of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 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 15 days after the date of submission of the draft award.

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

12. 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.

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

Article 122 Termination of 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.

Article 123
Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 121.

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 in which to implement the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal which then determines 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 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 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 to confirm the failure.

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 this Agreement pursuant to 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 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 under this Agreement 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 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 119. Unless the Parties agree to a different period, the arbitral tribunal established for the purposes of 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 124 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 otherwise agreed by the Parties.

Chapter 14 Final Provisions

Article 125 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 126 Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 127 Amendment

1. This Agreement may be amended by agreement between the Parties. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed by the Parties.

2. Notwithstanding paragraph 1, amendments relating only to the following may be made by diplomatic notes exchanged between the Governments of the Parties:

- (a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change on the rates of customs duty to be applied by a Party to the originating goods of the other Party in accordance with Annex 1;
- (b) Annex 2; or
- (c) Attachment to Annex 3.

Article 128 Entry into Force

This Agreement shall enter into force on the first day of the second month following the month in which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated pursuant to Article 129.

Article 129 Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.