

Article 110 Implementation

The Joint Committee shall be responsible for encouraging and promoting economic cooperation in any area within the scope of this Agreement as may be mutually agreed upon by the Parties.

Article 111 Dispute Settlement

1. Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 for any dispute or differences arising from this Chapter.
2. Any dispute or differences arising from this Chapter may be referred to the Joint Committee. The Joint Committee may make recommendations on such issue taking into consideration the strategic priorities and capabilities of the Parties.

Article 112 Financial Arrangements

The financial arrangements to cover expenses for the economic cooperative activities undertaken within the framework of this Chapter shall be mutually agreed upon by the Parties on a case-by-case basis subject to the availability of funds.

CHAPTER 12 DISPUTE SETTLEMENT MECHANISM

Article 113 Scope and Coverage

1. Unless otherwise provided for in this Agreement, the provisions of this Chapter shall apply to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. The rules, procedures and time frames set out in this Chapter may be waived, varied or modified by mutual agreement.
3. Findings and recommendations of an arbitral tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.
4. Arbitral tribunals appointed under this Chapter shall interpret and apply the provisions of this Agreement in accordance with customary rules of interpretation of public international law.
5. Subject to paragraph 6 of this Article, nothing in this Agreement shall prejudice the right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties.

6. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are parties, that forum shall be used to the exclusion of any other for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreement are in dispute.

7. For the purposes of this Article, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to an arbitral tribunal in accordance with this Chapter or any other international agreement to which the Parties are parties.

Article 114 Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 115 Consultations

1. A Party may request consultations with the other Party with respect to any matter affecting the interpretation or application of this Agreement. A Party may make the request to the other Party if the Party considers that:

- (a) any benefit accruing to it directly or indirectly is being nullified or impaired; or
- (b) the attainment of any objective of this Agreement is being impeded,

as a result of the failure of the other Party to carry out its obligations under this Agreement.

2. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

3. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis of the complaint. Each Party shall also:

- (a) provide sufficient information to enable a full examination of how the measure might affect the operation of this Agreement; and
- (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

4. The Party to which the request is made pursuant to this Article shall reply to the request within 10 days after the date of receipt of the request and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

Article 116 **Good Offices, Conciliation or Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 117.

Article 117 **Establishment of Arbitral Tribunals**

1. The Party which made the request for consultations in accordance with Article 115 may make a written request to the other Party to establish an arbitral tribunal under this Article provided:

- (a) the Party to which the request is made does not reply to the request within 10 days after its receipt, or does not enter into such consultations within 30 days after the date the receipt of the request under Article 115; or
- (b) such consultations fail to resolve the dispute within 60 days after the date of receipt of the request for consultations.

2. The request to establish an arbitral tribunal shall include an identification of the measures at issue and an indication of the factual and legal basis of the complaint.

Article 118 **Composition of Arbitral Tribunals**

1. 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 a national of its country 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 the country of either

Party, nor have his or her usual place of residence in the country of either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

2. Both 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. If the Parties fail to agree on the third arbitrator, the Parties shall request the two arbitrators appointed pursuant to paragraph 1 of this Article to appoint the third arbitrator. If the two arbitrators fail to appoint the third arbitrator within 10 days, the Parties shall consult each other in order to jointly appoint the third arbitrator of the arbitral tribunal within a further period of 30 days.

3. If an arbitrator or the Chair appointed under this Article resigns or becomes unable to act, a successor arbitrator or Chair shall be appointed in the same manner as prescribed for the appointment of the original arbitrator or Chair, and the successor shall have all the powers and duties of the original arbitrator.

4. The date of establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed.

Article 119

Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of, and conformity with this Agreement.

2. The arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in Article 120, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

Article 120

Proceedings of Arbitral Tribunals

1. An 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 substantive meetings of the arbitral tribunal shall be decided by mutual agreement by the Parties, failing which the first substantive meeting shall be held in the capital of the country of the Party which did not request for the establishment of the arbitral tribunal, with the second substantive meeting to be held in the capital of the country of the other Party.

3. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public, provided that a Party shall treat as confidential,

information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the complaining Party to present its submissions. Subsequently, and still at the same meeting, the Party complained against shall be asked to present its submissions.

6. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its rebuttal first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

8. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

9. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 of this Article shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

10. At the request of a Party to the arbitral tribunal or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the arbitral proceedings so agree, and subject to such terms and conditions as such Parties may agree.

11. An arbitral tribunal shall take its decisions by consensus, provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

12. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity

to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.

13. The findings and recommendations of the arbitral tribunal shall be set out in a final report released to the Parties pursuant to paragraph 11 of this Article. Unless the Parties otherwise agree, the arbitral tribunal shall base its final report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to paragraphs 9 and 10 of this Article. The final report shall set out its:

- (a) findings of fact and law together with reasons;
- (b) determination as to whether the measure at issue is inconsistent with the obligations under this Agreement;
- (c) recommendation that the Party complained against, bring the measure into conformity with the obligations under this Agreement; and
- (d) recommendations, if any, on the means to resolve the dispute.

14. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its establishment. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case however, should the period from the establishment of an arbitral tribunal to the release of the final report to the Parties exceed 150 days. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

15. The final report of the arbitral tribunal shall be final and binding on the Parties.

Article 121

Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings before an arbitral tribunal established under this Agreement at any time by jointly notifying the Chair of the arbitral tribunal to this effect.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

Article 122 Implementation

1. On receipt of the final report of the arbitral tribunal, the Parties shall agree on the resolution of the dispute, including the reasonable period of time necessary to implement the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the arbitral tribunal.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the award of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay and shall submit its report within 45 days after the date of referral of the matter to it.

Article 123 Compensation and Suspension of Benefits

1. If the Parties:-

- (a) are unable to agree on the resolution of the dispute pursuant to paragraph 1 of Article 122 within 45 days of issuance of the final report; or
- (b) have agreed on the resolution of the dispute pursuant to paragraph 1 of Article 122 and the Party complained against fails to implement or observe the terms of such agreement within the reasonable period of time as agreed,

the Party complained against shall enter into negotiations with the complaining Party with a view to developing a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining Party to enter into negotiations on developing such compensation, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 118.

3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.

4. In considering what benefits to suspend under paragraph 2 of this Article:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement; and
- (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as:

- (a) the Party removes the measure found to be inconsistent with this Agreement;
- (b) the Party that must implement the arbitral tribunal's recommendations has done so; or
- (c) a mutually satisfactory solution is reached.

6. If the Party complained against considers that:

- (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the measure found to be inconsistent with this Agreement,

it may request the original arbitral tribunal to determine the matter. The original arbitral tribunal shall present its determination to the Parties within 30 days after it reconvenes. Where the original arbitral tribunal cannot hear the matter for any reason, a new arbitral tribunal shall be appointed pursuant to the procedures set out in Article 118.

Article 124

Expenses

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

Article 125
Focal Points and Service of Documents

Both Parties shall designate a focal point for this Chapter. Any request, acknowledgement, written submission or other document relating to the dispute settlement procedures in this Chapter shall be delivered to the relevant Party through its designated focal point.

CHAPTER 13
GENERAL EXCEPTIONS

Article 126
General and Security Exceptions

1. For the purposes of Chapters 2, 3, 4, 6, 7 and 9, Articles XX and XXI of the GATT 1994 shall, *mutatis mutandis*, be incorporated into and form part of this Agreement.
2. For the purposes of Chapters 8 and 9, other than Article 95, Articles XIV and XIV *bis* of the GATS shall, *mutatis mutandis*, be incorporated into and form part of this Agreement.
3. In addition, nothing in this Agreement shall be construed so as to prevent either Party from taking any action which it considers necessary for the protection of critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

Article 127
Taxation Measures

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.
2. For the purposes of this Agreement, “taxation measures” means any measures levying direct or indirect taxes, including excise duties and sales tax, as defined by the national laws and regulations of the countries of the Parties as long as these taxes are not used for the purpose of protecting the domestic industry of the country of the Party levying the duties.
3. Nothing in this Agreement shall affect the rights and obligations of either Party under any other agreement on taxation measures. In the event of any inconsistency between this Agreement and any such agreement on taxation measures, that agreement shall prevail to the extent of the inconsistency.