

SECTION V LEVEL OF CONCESSIONS

Article 15

1. A Party or Signatory Party proposing to apply a preferential safeguard measure shall endeavour to maintain a substantially equivalent level of concessions to that existing under this Agreement between it and the Party or Signatory Party which would be affected by such a measure. To achieve this objective, the Parties or Signatory Parties concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on trade.

2. If no agreement is reached within 30 days in the consultations set forth under Article 14 of this Chapter, the Parties or Signatory Parties concerned shall be free to, no later than ninety (90) days after the measure has been applied, suspend the application of substantially equivalent concessions or other obligations under the Agreement, to the trade of the Party or Signatory Party applying the measure.

CHAPTER IV DISPUTE SETTLEMENT

SECTION I APPLICATION OF THE CHAPTER

Article 1

The provisions of this Chapter shall apply with respect to any disputes concerning the interpretation, application of and/or non-compliance with the provisions of the Free Trade Agreement between MERCOSUR and the Arab Republic of Egypt and the decisions of the Joint Committee taken pursuant to this Agreement.

Article 2

1. Any dispute regarding matters arising under the provisions of this Agreement and the decisions of the Joint Committee taken pursuant to this Agreement, on issues regulated by the WTO Agreement, may be settled in accordance with this Chapter or with the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (hereinafter referred to as "the DSU") at the complaining party's election.

2. Where a dispute settlement proceeding has been initiated with regard to a particular measure, either under this Chapter or under the DSU, a dispute settlement proceeding regarding the same measure shall not be initiated in the other forum.

3. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated under this Chapter when the complaining party requests consultations under Article 4 of this Chapter.

4. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated under the DSU when the complaining party requests consultations under Article 4 of the DSU.

5. Notwithstanding the above, disputes that may arise in connection with anti-dumping, countervailing measures and global safeguards shall be settled exclusively in accordance with the DSU.

6. Notwithstanding the above, disputes regarding matters for which the Agreement only makes reference to the rights and obligations of the parties under the WTO Agreement, shall be settled exclusively in accordance with the DSU.

Article 3

1. For the purpose of this Chapter, the "Contracting Parties" are MERCOSUR and Egypt. The "Signatory Parties" are the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, Member States of MERCOSUR, and Egypt.

2. MERCOSUR or its Member States may initiate a dispute settlement proceeding against Egypt as:

- a) MERCOSUR as a Contracting Party;
- b) one MERCOSUR Member State as a Signatory Party; or
- c) two or more Member States of MERCOSUR as Signatory Parties, in which event, they shall present jointly only one case on the same subject matter.

3. Egypt may initiate a dispute settlement proceeding either against MERCOSUR as a Contracting Party or one of its Member States as a Signatory Party.

4. For the purpose of this Chapter, both Contracting Parties as well as one or more Member States of MERCOSUR and Egypt may be parties to a dispute and shall hereinafter be referred to as "party" or "parties".

SECTION II CONSULTATIONS

Article 4

The parties shall endeavor to resolve any disputes regarding the interpretation, application of and/or non-compliance with the provisions referred to in Article 1 of this Chapter by entering into consultations in good faith with the aim of reaching a prompt, equitable and mutually agreed solution.

Article 5

Any request for consultations shall be submitted in writing to the other party and shall specify the reasons for the request, including the identification of the measures at issue and the provisions concerned.

Article 6

1. The party to which the request for consultations is made shall reply within fifteen (15) days of its receipt.
2. Consultations, and in particular all information disclosed 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.
3. Consultations shall be held within forty five (45) days of the date of receipt of the request on the territory of the party complained against, unless the parties agree otherwise. Consultations shall be deemed concluded within seventy five (75) days of the date of receipt of the request, unless both parties agree to continue consultations.
4. In cases of urgency, including those regarding perishable goods, the periods set forth in paragraph 3 shall be reduced by half.

SECTION III JOINT COMMITTEE INTERVENTION

Article 7

1. In the event of both parties being unable to reach a mutually agreeable solution through consultations, each of the parties may refer any dispute to the Joint Committee established under Section IV of Chapter I.
2. Any request to the Joint Committee shall be submitted in writing and shall give the reasons for the request, including the identification of the measures at issue and the provisions concerned.

Article 8

1. The Joint Committee shall meet within forty five (45) days after all the Parties have received the request referred to in the previous Article. Should it not be possible to hold the meeting of the Joint Committee within this period of time, the parties may extend this term by consensus.
2. The Joint Committee shall meet, unless the Parties agree otherwise, on the territory of the party complained against.

3. The Joint Committee's intervention, in particular all information disclosed and positions taken by the parties during this procedure, shall be confidential, and without prejudice to the rights of either party in any further proceedings.

Article 9

1. The Joint Committee may, after having heard the arguments of the parties, settle the dispute by means of recommendations.

2. The Joint Committee shall make any recommendations it deems fit within thirty (30) days as from the date of its first meeting. Should the Joint Committee fail to reach a mutually satisfactory solution within this term, unless the parties agree otherwise, the stage provided for in this Section shall immediately be considered ended.

3. The Joint Committee may seek the opinion of experts when necessary. In such cases, the Committee shall issue its recommendations within forty five (45) days as from the date of its first meeting.

SECTION IV MEDIATION

Article 10

1. If consultations fail to produce a mutually agreed solution and the Joint Committee is unable to issue recommendations, the parties may, by consensus, seek recourse to a mediator. Any request for mediation shall be made in writing and state any measure which has been the subject of consultations as well as the mutually agreed terms of reference for the mediation.

2. Unless the parties agree on a mediator within ten (10) days of the date of receipt of the request for mediation, the mediator shall be selected by lot from the list of non-national arbitrators referred to in Article 13.1 of this Chapter.

3. The mediator will convene a meeting with the parties no later than thirty (30) days after being selected. The mediator shall receive the submissions of each party no later than fifteen (15) days before the meeting and may request additional information from the parties. Any information obtained in this manner must be disclosed to each of the parties and submitted for their comments.

4. The mediator shall notify an opinion no later than sixty (60) days after having been selected. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the Agreement. The mediator's opinion is non-binding.

5. The proceedings involving mediation, in particular the mediator's opinion and all information disclosed 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, unless the parties agree otherwise.

6. If the parties so agree, procedures for mediation may continue while the arbitration procedure proceeds.
7. The time limits referred to in paragraphs 3 and 4 may be amended, should circumstances so demand, with the agreement of both parties. Any amendment shall be notified in writing to the mediator.
8. In the event that mediation produces a mutually acceptable solution to the dispute, both parties shall submit a notification in writing to the mediator.

SECTION V ARBITRATION PROCEDURE

Article 11

1. Where the parties have failed to resolve the dispute by recourse to consultations as provided for in Section II, or through the intervention of the Joint Committee as provided for in Section III, the complaining party may request the initiation of an arbitration procedure.
2. The request for arbitration shall be made in writing to the party complained against and the Joint Committee and shall specify the reasons for the request, including the identification of the measures at issue; the provisions concerned; and, whether the procedures provided for in Sections II and III were followed.

Article 12

The parties acknowledge as binding, ipso facto and with no need for a special agreement, the jurisdiction of the Arbitration Tribunal set up in each case to hear and solve the disputes referred to in this Chapter.

Article 13

1. At the first meeting of the Joint Committee, the Parties shall propose a list of 10 individuals to serve as arbitrators, two of whom shall not be nationals of either Party.

The Joint Committee will ensure that the lists are always maintained at this level.

2. Arbitrators shall have specialized knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organization or government, or be affiliated with the government of any of the Signatory Parties.

3. Non-national arbitrators shall be jurists.

4. As from the time of the request of the complaining party for arbitration, the Parties will not be in a position to amend their list of proposed arbitrators.

5. After accepting their appointment and before beginning their work, the arbitrators shall sign the Statement of Agreement contained in Annex IV.1 (Code of Conduct for Arbitrators of the Arbitration Tribunal).

Article 14

1. The Arbitration Tribunal shall be composed of three (3) arbitrators appointed as follows:

- a) within fifteen (15) days of the request for arbitration referred to in Article 11 of this Chapter, each party shall appoint an arbitrator and an alternate selected amongst the individuals that party proposed in the list referred to in Article 13.1 of this Chapter. If any of the parties fails to appoint an arbitrator and an alternate within the prescribed period, at the request of the other party, the representatives of the parties shall draw by lot an arbitrator and an alternate amongst the individuals proposed under Article 13.1 of this Chapter by the party having failed to appoint an arbitrator and an alternate;
- b) within fifteen (15) days of the request for arbitration referred to in Article 11 of this Chapter, the parties shall jointly appoint the third arbitrator and an alternate selected amongst the non-national individuals proposed in the lists referred to in Article 13.1 of this Chapter to chair the Arbitration Tribunal. If the parties fail to appoint an arbitrator and an alternate within the prescribed period, at the request of any of the parties, the representatives of the parties shall draw by lot an arbitrator and an alternate amongst the non-national individuals proposed under Article 13.1 of this Chapter.

2. The appointments provided for in this Article shall be notified to the parties and to the Joint Committee.

3. An alternate arbitrator shall replace the titular arbitrator in case of the arbitrator's inability to be part of the Arbitration Tribunal, whether at the time of its establishment or in the course of the procedure.

4. The date of establishment of the Arbitration Tribunal shall be the date as of when the Statements of Agreement have been signed by the three arbitrators.

Article 15

1. The venue for the arbitration proceedings shall be decided by mutual agreement between the parties. If the parties fail to reach an agreement within ten (10) days of the establishment of the Arbitration Tribunal, the latter shall meet on the territory of the party complained against.

2. The Arbitration Tribunal shall apply the Rules of Procedure, which include the rights to hearings and the exchange of written submissions as well as deadlines and timetables for ensuring expediency, as set out in Annex IV.2. The Rules of Procedure shall be modified or amended subject to the agreement of the parties thereto.

Article 16

The Arbitration Tribunal shall issue its award in the light of the information provided and the statements made by the parties.

Article 17

The Arbitration Tribunal shall decide on the dispute based on the provisions of the Agreement, Joint Committee decisions taken pursuant to the Agreement and the applicable principles and provisions of international law.

Article 18

1. The Arbitration Tribunal shall render its written award, normally, within ninety (90) days as from the date of its establishment and in no case more than one hundred and twenty (120) days as from that date.
2. The Arbitration Tribunal shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. The vote of the Arbitration Tribunal shall be confidential and no dissenting opinion shall be expressed.

Article 19

Arbitration awards are unappealable and binding on the parties as from receipt of the respective notification and will be final in respect of them.

SECTION VI COMPLIANCE

Article 20

1. Awards shall be enforced within the period of time established by the Arbitration Tribunal for compliance with the award. That period of time shall be final unless one of the parties justifies in writing the need for a different period of time. The Arbitration Tribunal shall render its decision within a period of 15 days from the date of the written request. The Arbitration Tribunal shall decide on the basis of the written submissions of the parties and shall convene a meeting for this purpose only under special circumstances.

Where the Arbitration Tribunal has not established in the award a period of time for compliance, the award shall be enforced within one hundred and eighty (180) days, unless the parties agree otherwise.

2. Before the end of the period of time established in accordance with the preceding paragraph, the party complained against shall notify the other party of the implementing measures that it has adopted or intends to adopt in order to comply with the award of the Arbitration Tribunal.
 3. In the event that there is disagreement between the parties concerning the consistency of the measure adopted to comply with the award, the complaining party may seek recourse to the original Arbitration Tribunal to rule on the matter, by submitting a written request to the other party and the Joint Committee explaining why the measure is inconsistent with the award. The Arbitration Tribunal will issue its decision within forty five (45) days of the date of its re-establishment.
 4. The complaining party shall be entitled, upon notification to the party complained against, to suspend the application of benefits granted under this Agreement at a level equivalent to the adverse economic impact caused by the measure found to violate this Agreement if:
 - a) the Arbitration Tribunal decides under paragraph 3 that the implementing measures adopted are not in compliance with the Arbitration award; or,
 - b) the party complained against fails to notify in due time the measures referred to in paragraph 2.
 5. The suspension of benefits shall be temporary and shall be applied only until the measure found to be in violation of the Agreement is withdrawn or amended so as to bring it into conformity with this Agreement or until the parties have agreed to settle the dispute.
 6. If the party complained against considers that the level of suspension is not equivalent to the adverse economic impact caused by the measure found to violate the Agreement, it may make a written request within thirty (30) days from the date of suspension for the reconvening of the original Arbitration Tribunal. The Joint Committee and the parties shall be informed of the Arbitration Tribunal's decision on the level of the suspension of benefits within thirty (30) days of the date of the request for its establishment.
 7. The party complained against shall submit to the complaining party a notification of the implementing measures it has adopted to comply with the award of the Arbitration Tribunal and of its request to end the suspension of benefits applied by the complaining party.
- The party complained against shall reply to any request from the complaining party for consultations on the implementing measures notified within ten (10) days of receipt of the request.

If the parties do not reach an agreement on the compatibility of the notified implementing measures with this Agreement within thirty (30) days of receipt of the request for consultations, either of the parties may request that the original Arbitration Tribunal decide on the matter within sixty (60) days of the notification of the implementing measures. The decision shall be issued within forty five (45) days of the written request for its re-establishment. If the Arbitration Tribunal decides that the implementing measure is not in conformity with this Agreement, it will determine whether the complaining party can resume the suspension of benefits at the same or a different level.

Article 21

In the event of the original Arbitration Tribunal, or some of its arbitrators, being unable to reconvene under Article 20 of this Chapter, the procedures set out in Article 14 of this Chapter shall apply. In such case, the Arbitration Tribunal may decide to extend the time limits set forth under Article 20 of this Chapter by no longer than fifteen (15) days.

SECTION VII GENERAL PROVISIONS

Article 22

1. The expenses of the Arbitration Tribunal shall be borne in equal parts by the parties. The Joint Committee shall agree on an understanding on reference costs at its first meeting.
2. Each party shall bear its own expenses and legal costs.

Article 23

All the time limits laid down in this Chapter shall be counted in calendar days from the day following the act or fact to which they refer. If the last day for delivery of a document falls on a Friday, Saturday, or Sunday, the document may be delivered on the following Monday.

Article 24

All documentation, recommendations and proceedings linked to the procedure established in this Chapter, as well as the sessions of the Arbitration Tribunal, shall be confidential, except for the awards of the Arbitration Tribunal. Nevertheless, the award will not include any information submitted by the parties to the Arbitration Tribunal which any of them deem confidential.

Article 25

At any time during the proceeding the complaining party may abandon its claims or the parties may reach an agreement. In either case, the dispute shall be terminated and the Arbitration Tribunal notified.

Article 26

No later than five (5) years after the entry into force of this Agreement, the Joint Committee should review its implementation.

CHAPTER V FINAL PROVISIONS

Article 1 - Evolutionary Clause

Where a Party considers that it would be useful in the interests of the economies of the Parties to develop and deepen the relations established by the Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the Joint Committee. The Joint Committee shall examine such a request and, where appropriate, make recommendations by consensus, particularly with a view to opening negotiations.

Article 2 - Annexes

Annexes to this Agreement are an integral part of it.

Article 3 - Amendments

1. Amendments to this Agreement, which are decided upon by the Joint Committee, shall be submitted to the Signatory Parties for ratification and shall enter into force after confirmation that all internal legal procedures required by each Signatory Party for their entry into force have been completed.
2. Amendments or modifications to the present Agreement shall be adopted by means of additional Protocols thereto.

Article 4 - Application of the Agreement

From the perspective of the importing Signatory Party, nothing in this Agreement shall require that the Signatory Party apply this Agreement to territories not covered by its customs law.

Article 5 - Entry into Force

This Agreement shall enter into force thirty (30) days after the date of the notification to the Depositary of each of the instruments of ratification of the last Signatory Party.