

TITLE V
DISPUTE SETTLEMENT

ARTICLE 38
Scope and Coverage

Unless otherwise provided for in this Agreement, this Title shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the interpretation and implementation of this Agreement, when a Party considers that:

- a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
- b) the other Party has otherwise failed to carry out its obligations under this Agreement.

ARTICLE 39
Choice of Dispute Settlement Procedure

1. Where a dispute regarding any matter arises under this Agreement and the WTO Agreement, the complaining Party may select the dispute settlement procedure in which to settle the dispute.
2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other.

ARTICLE 40
Consultations

1. The Parties shall at all times endeavor to agree on the interpretation and implementation of this Agreement and shall make every attempt through cooperation and consultations to avoid and settle disputes between them and to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Each Party may request consultations within the Joint Committee with respect to an existing or proposed measure or any matter relating to the interpretation and implementation of this Agreement.

3. The requesting Party shall deliver written notification to the other Party, stating the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.

4. The Joint Committee shall convene within 30 days after the date of receipt of the request. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure or any other matter might affect the interpretation and implementation of this Agreement, and give confidential treatment to the information exchanged during consultations.

5. The Joint Committee shall endeavor to resolve the dispute promptly by means of a decision and may make recommendations regarding the implementing measures to be taken by the Party concerned, and the timeframe for doing so.

6. The Joint Committee may call on technical advisers or create working groups or expert groups as it deems necessary in order to assist the Parties to reach a mutually satisfactory resolution of the dispute. The Parties may agree to suspend further proceedings provided in the following articles during the activities envisaged in this paragraph.

7. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

ARTICLE 41

Establishment of Arbitration Panels

1. The Parties shall at all times endeavor to reach a mutually satisfactory agreement on the dispute.

2. If a matter, unless otherwise mutually agreed, has not been resolved within 15 days after the Joint Committee has convened pursuant to paragraph 4 of Article 40 or 45 days after the date of receipt of the request for consultations within the Joint Committee, whichever is earlier, the complaining party may request in writing the establishment of an arbitration panel.
3. Pursuant to this Article, the complaining Party shall identify in the request for the establishment of an arbitration panel, the specific measure at issue, the legal basis of the complaint including any provision of this Agreement alleged to have been breached and any other relevant provisions, the factual basis for the complaint, and shall deliver the request to the other Party.
4. The establishment of an arbitration panel shall not be requested on any matter relating to a proposed measure.
5. The date of establishment of an arbitration panel shall be the date on which the chair is appointed.

ARTICLE 42

Terms of Reference of Arbitration Panels

Unless the Parties otherwise agree, within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 41, to make findings together with the reasons on whether the measure is in conformity with the Agreement or not and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute.”

ARTICLE 43

Composition of Arbitration Panels

1. Arbitration panels shall consist of three arbitrators.

2. Each Party shall appoint one arbitrator, who may be its national, within 30 days from the date of receipt of the request for the establishment of the arbitration panel. The Parties shall agree on and appoint the third arbitrator, who shall be the chair of the arbitration panel, within 45 days after the date of receipt of the request for the establishment of the arbitration panel, taking into account the list established pursuant to paragraph 3. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the third arbitrator shall be chosen within seven days by lot from the list established pursuant to paragraph 3.

3. The Joint Committee shall, in its first meeting, establish a list of 10 individuals who are willing and able to serve as third arbitrator. In establishing the list the Parties will take into consideration the indicative list of governmental and non-governmental arbitrators, established by the WTO. The Joint Committee shall ensure that the list always contains 10 individuals at any point in time. These individuals 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. All arbitrators shall have specialized knowledge or experience in law, international trade or other matters relating to this Agreement or in the resolution of disputes deriving from international trade agreements, be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organization and shall comply with the Code of Conduct, which will be adopted by the Joint Committee upon the entry into force of this Agreement.

5. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if so agreed, they shall replace that arbitrator in accordance with paragraph 6.

6. If an arbitrator appointed under this Article becomes unable to participate in the proceeding or resigns, or is to be replaced according to paragraph 5; a successor shall be selected within 10 days in accordance with the selection procedure followed to select that arbitrator. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator becomes unable to participate in the proceeding or resigns. The work of the arbitration panel shall resume on the date the successor is appointed.

ARTICLE 44
Proceedings of Arbitration Panels

1. Panel meetings shall be closed to the public, unless the Parties decide otherwise.
2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitration panel, including any comments on the draft report and responses to questions put by the arbitration panel, shall be made available to the other Party.
3. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.
5. The arbitration panel shall aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.
6. At the request of a Party or on its own initiative and subject to such terms and conditions as the Parties may agree within 10 days, the arbitration panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.
7. The deliberations of the arbitration panel 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 and written submissions submitted by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 30 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

9. Each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares. The costs and expenses of the arbitrators shall normally conform to the WTO standards.

ARTICLE 45

Suspension or Termination of Proceedings

1. The Parties may agree that the arbitration panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If in any case, the suspension of the work of the arbitration panel exceeds 12 months, the authority for the establishment of the arbitration panel shall lapse unless the Parties agree otherwise. This shall not prejudice to the rights of the complaining party to request at a later stage, the establishment of an arbitration panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of the arbitration panel by jointly so notifying the chair of the arbitration panel at any time before the issuance of the report to the Parties.

ARTICLE 46
Arbitration Panel Report

1. The report of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.
2. The arbitration panel shall submit its report containing its findings and conclusions to the Parties, as a general rule not later than three months from the date of establishment of the arbitration panel. If the arbitration panel cannot submit its report within this period, it may extend that period to a maximum of five months from the date of establishment of the arbitration panel.
3. Arbitration panels shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, due account being taken of the fact that the Parties must perform this Agreement in good faith and avoid circumvention of their obligations.
4. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its report to the Parties within 75 days from the date of establishment of the arbitration panel. In no case should it do so later than four months from that date. The arbitration panel may give a preliminary report on whether a case is urgent.
5. The report of the arbitration panel shall be final and binding on the Parties.
6. The report shall contain both the descriptive part summarizing the submissions and arguments of the Parties and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its report. The findings and determinations of the arbitration panel and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

ARTICLE 47
Implementation of the Report

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity as determined in the report of the arbitration panel, immediately, or if this is not practicable, within a reasonable period of time.
2. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the report of the arbitration panel referred to in Article 46, either Party may refer the matter to an arbitration panel, which shall determine the reasonable period of time.
3. The Party complained against shall notify to the complaining Party the implementing measures adopted in order to put an end to the violation of its obligations under this Agreement, before the expiry of the reasonable period of time agreed by the Parties or determined in accordance with paragraph 2. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity as determined in the report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 2, either Party may refer the matter to an arbitration panel as provided for in Article 48.

ARTICLE 48
Non-Implementation, Compensation and Suspension of Concessions or Other Obligations

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies the complaining Party that it is impracticable, or the arbitration panel to which the matter is referred pursuant to paragraph 3 of Article 47 rules that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance. Such notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the arbitration panel referred to in Article 46 has found a failure to comply with the obligations under this Agreement; and
- b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based. In the selection of the benefits to suspend, the Parties will take into consideration those which least disturb the functioning of this Agreement.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitration panel. Concessions or other obligations shall not be suspended until the arbitration panel has its ruling.

7. The arbitration panel that is established for the purposes of this Article or Article 47 shall have, wherever possible, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators to the arbitration panel that is established for the purposes of this Article or Article 47 shall be appointed pursuant to Article 43. The arbitration panel established under this Article or Article 47 shall submit its report to the Parties within 60 days after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned 60 day period, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be final and binding on the Parties.

ARTICLE 49

Rules of Procedure

The Joint Committee shall adopt the Rules of Procedure which provide for the details of the rules and procedures of arbitration panels established under this Title, upon the entry into force of this Agreement. Unless the Parties otherwise agree, the arbitration panel shall follow the rules of procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the rules adopted by the Joint Committee.

ARTICLE 50

Application and Modification of Rules and Procedures

Any time period or other rules and procedures for arbitration panels provided for in this Title, including the Rules of Procedure referred to in Article 49, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Title.