

CHAPTER 21

DISPUTE SETTLEMENT

SECTION A

Objective, scope and definitions

ARTICLE 21.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for settling disputes between the Parties concerning the interpretation and application of the provisions of this Agreement with a view to reaching a mutually agreed solution.

ARTICLE 21.2

Scope

Unless otherwise provided for in this Agreement, this Chapter applies with respect to the settlement of any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement.

ARTICLE 21.3

Definitions

For the purposes of this Chapter:

- (a) 'arbitrator' means a member of a panel;
- (b) 'cases of urgency' and 'matters of urgency' include those which concern goods or services that rapidly lose their quality, current condition or commercial value in a short period of time;
- (c) 'Code of Conduct' means the Code of Conduct for Arbitrators referred to in Article 21.30;
- (d) 'complaining Party' means the Party that requests the establishment of a panel pursuant to Article 21.7;
- (e) 'covered provisions' means the provisions of this Agreement covered by this Chapter in accordance with Article 21.2;
- (f) 'DSB' means the Dispute Settlement Body of the WTO;
- (g) 'panel' means a panel established pursuant to Article 21.7;
- (h) 'Party complained against' means the Party against which a dispute has been brought before a panel pursuant to Article 21.7; and
- (i) 'Rules of Procedure' means the Rules of Procedure of a Panel referred to in Article 21.30.

SECTION B

Consultations and mediation

ARTICLE 21.4

Request for information

Before a request for consultations or mediation is made pursuant to Article 21.5 or 21.6 respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

ARTICLE 21.5

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 21.2 through consultations in good faith with a view to reaching a mutually agreed solution.
2. A Party may seek consultations by means of a written request to the other Party. In the request for consultations, the Party which requested consultations shall give the reasons for the request, including identification of the measure at issue and an indication of its factual basis and its legal basis specifying the relevant covered provisions.
3. During consultations each Party shall provide sufficient information to enable a full examination of the measure at issue including how that measure could affect the operation and application of this Agreement.
4. The Party to which the request for consultations is made shall reply to the request no later than 10 days after the date of receipt of the request. The Parties shall enter into consultations no later than 30 days after the date of receipt of the request. Consultations shall be deemed to be concluded no later than 45 days after the date of receipt of the request unless the Parties agree otherwise. Where both Parties consider that the case concerns matters of urgency, consultations shall be deemed to be concluded no later than 25 days after the date of receipt of the request unless the Parties agree otherwise.
5. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the Party to which the request is made.
6. Consultations, including all information disclosed and positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

ARTICLE 21.6

Mediation

1. A Party may at any time request the other Party to enter into a mediation procedure with respect to any matter within the scope of this Chapter concerning a measure that adversely affects trade or investment between the Parties.
2. The Parties may at any time agree to enter into a mediation procedure which shall be initiated, conducted and terminated in accordance with the Mediation Procedure to be adopted by the Joint Committee at its first meeting pursuant to subparagraph 4(f) of Article 22.1.
3. If the Parties agree, the mediation procedure may continue while the panel procedures set out in Section C proceed.

SECTION C

Panel procedure

ARTICLE 21.7

Establishment of a panel

1. The Party that sought consultations pursuant to Article 21.5 may request the establishment of a panel if:
 - (a) the other Party does not respond to the request for consultations within 10 days after the date of its receipt, or does not enter into consultations within 30 days after the date of receipt of the request;
 - (b) the Parties agree not to enter into consultations; or
 - (c) the Parties fail to resolve the dispute through consultations within 45 days, or within 25 days in cases of urgency, after the date of receipt of the request for consultations, unless the Parties agree otherwise.

2. The request for the establishment of a panel pursuant to paragraph 1 shall be made in writing to the Party complained against. In its complaint, the complaining Party shall explicitly identify:

- (a) the measure at issue;
- (b) the legal basis specifying the relevant covered provisions in such a manner as to clearly present how such measure is inconsistent with those provisions; and
- (c) the factual basis.

ARTICLE 21.8

Composition of a panel

1. A panel shall be composed of three arbitrators.
2. No later than 10 days after the date of receipt of the request for the establishment of a panel by the Party complained against, the Parties shall consult with a view to reaching an agreement on the composition of the panel.
3. If the Parties do not reach an agreement on the composition of the panel within the time period provided for in paragraph 2, each Party shall appoint an arbitrator from the sub-list for that Party established pursuant to Article 21.9 no later than five days after the expiry of the time period provided for in paragraph 2. If a Party fails to appoint an arbitrator within that time period, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the expiry of the time period, an arbitrator from the sub-list for the Party that has failed to appoint an arbitrator established pursuant to Article 21.9. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the arbitrator to his or her representative.
4. If the Parties do not reach an agreement on the chairperson of the panel within the time period provided for in paragraph 2, on request of a Party, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the date of delivery of the request, the chairperson of the panel from the sub-list of chairpersons established pursuant to Article 21.9. That request shall be notified simultaneously to the other Party. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the chairperson of the panel to his or her representative.
5. Should the lists provided for in Article 21.9 not be established or not contain at least nine individuals as referred to in that Article, the following procedures apply:
 - (a) for the selection of the chairperson:
 - (i) if the sub-list of chairpersons contains at least two individuals agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select by lot the chairperson from those individuals no later than five days after the date of delivery of the request referred to in paragraph 4;
 - (ii) if the sub-list of chairpersons contains one individual agreed by the Parties, that individual shall act as chairperson; or
 - (iii) if the Parties fail to select a chairperson pursuant to subparagraph (i) or (ii) or if the sub-list of chairpersons contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall, no later than five days after the date of delivery of the request referred to in paragraph 4, select by lot the chairperson from the individuals who had been formally proposed by a Party as chairperson at the time of establishing or updating the list of arbitrators referred to in Article 21.9. A Party may propose a new individual, if an individual who had been formally proposed as chairperson by that Party is no longer available; and
 - (b) for the selection of an arbitrator other than the chairperson:
 - (i) if the sub-list of a Party contains at least two individuals agreed by the Parties, that Party shall select an arbitrator from those individuals no later than five days after the expiry of the time period provided in paragraph 2;
 - (ii) if the sub-list of a Party contains one individual agreed by the Parties, that individual shall act as an arbitrator; or

- (iii) if an arbitrator cannot be selected pursuant to subparagraph (i) or (ii) or if the sub-list of arbitrators of a Party contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select an arbitrator applying *mutatis mutandis* the procedure referred to in subparagraph (a).

6. The date of establishment of the panel shall be the date on which the last of the three arbitrators has notified to the Parties the acceptance of his or her appointment.

ARTICLE 21.9

List of arbitrators

1. The Joint Committee shall, at its first meeting pursuant to paragraph 2 of Article 22.1, establish a list of at least nine individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: a sub-list for each Party and a sub-list of individuals who are not nationals of either Party and who shall act as the chairperson of the panel. Each sub-list shall include at least three individuals. For the establishment or an update of the sub-list of chairpersons, each Party may propose up to three individuals. The Joint Committee will ensure that the number of individuals on the list of arbitrators is always maintained at the level required by this paragraph.

2. The Joint Committee may establish an additional list, consisting of individuals with demonstrated expertise in specific sectors covered by this Agreement, which may be used to compose the panel.

ARTICLE 21.10

Qualifications of arbitrators

All arbitrators shall:

- (a) have demonstrated expertise in law, international trade and other matters covered by this Agreement and, in case of a chairperson, also have experience in arbitration proceedings;
- (b) be independent of, and not be affiliated with or take instructions from, either Party;
- (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and
- (d) comply with the Code of Conduct.

ARTICLE 21.11

Replacement of arbitrators

If in arbitration proceedings under this Chapter, any of the arbitrators of the original panel is unable to participate, withdraws, or needs to be replaced because that arbitrator does not comply with the requirements of the Code of Conduct, the procedure set out in Article 21.8 shall apply.

ARTICLE 21.12

Functions of panels

The panel established pursuant to Article 21.7:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of, and conformity of the measures at issue with, the covered provisions;
- (b) shall set out, in its decisions, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and
- (c) should consult regularly with the Parties and provide adequate opportunities for achieving a mutually agreed solution.

ARTICLE 21.13

Terms of reference

1. Unless the Parties agree otherwise no later than 10 days after the date of the establishment of the panel, the terms of reference of the panel shall be:

‘to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to decide on the conformity of the measure at issue with the relevant covered provisions of this Agreement and to issue a report in accordance with Articles 21.18 and 21.19’.

2. If the Parties agree on other terms of reference than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than three days after their agreement.

ARTICLE 21.14

Decision on urgency

If a Party so requests, the panel shall decide, no later than 15 days after the date of its establishment, whether a dispute concerns matters of urgency.

ARTICLE 21.15

Panel proceedings

1. Any hearing of the panel shall be open to the public unless the Parties agree otherwise or the submissions and arguments of a Party contain confidential information. Hearings held in closed session shall be confidential.

2. Unless the Parties agree otherwise, the venue shall alternate between the Parties with the first hearing to be held in the Party complained against.

3. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel which that Party has designated as confidential. Where that Party submits a confidential version of its written submissions to the panel, it shall also, on request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public with an explanation as to why the non-disclosed information is confidential.

4. The deliberations of the panel shall be kept confidential.

5. The Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. The Parties shall make available to each other any information or written submissions submitted to the panel, including any comments on the descriptive part of the interim report, responses to questions of the panel and written comments on those responses.

6. The interim report and the final report shall be drafted without the presence of the Parties, and in light of the information provided and the statements made. The arbitrators shall assume full responsibility for the drafting of the reports and shall not delegate this responsibility to any other person.

7. The panel shall attempt to make its decisions, including its final report, by consensus. It may also make its decisions, including its final report, by majority vote where a decision cannot be arrived at by consensus. Dissenting opinions of arbitrators shall not be published.

8. The decisions of the panel shall be final and binding on the Parties. They shall be unconditionally accepted by the Parties. They shall not add to or diminish the rights and obligations of the Parties under this Agreement. They shall not be construed as creating rights for and obligations on persons.

ARTICLE 21.16

Rules of interpretation

The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in panel and Appellate Body reports adopted by the DSB.

ARTICLE 21.17

Receipt of information

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.
2. On request of a Party, or on its own initiative, the panel may seek from any source any information, including confidential information, it considers appropriate. The panel also has the right to seek the opinion of experts as it considers appropriate.
3. Natural persons of a Party or legal persons established in a Party may submit *amicus curiae* briefs to the panel in accordance with the Rules of Procedure.
4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may submit comments on that information to the panel.

ARTICLE 21.18

Interim report

1. The panel shall issue an interim report to the Parties setting out a descriptive part and its findings and conclusions no later than 120 days after the date of its establishment in a manner enabling the Parties to review it. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances shall the delay exceed 30 days after the deadline.
2. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report no later than 15 days after the date of issuance of the interim report. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.
3. In cases of urgency,
 - (a) the panel shall make every effort to issue its interim report no later than 60 days after the date of its establishment and shall in no circumstances issue the interim report later than 75 days after the date of its establishment; and
 - (b) each Party may submit to the panel written comments and a written request to review precise aspects of the interim report no later than seven days after the date of issuance of the interim report.

ARTICLE 21.19

Final report

1. The panel shall issue its final report to the Parties no later than 30 days after the date of issuance of the interim report. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. In cases of urgency, the panel shall make every effort to issue its final report no later than 15 days after the date of issuance of the interim report and shall in no circumstances issue the final report later than 30 days after the date of issuance of the interim report.
3. The final report shall include an adequate discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.
4. The Parties shall make the final report publicly available in its entirety no later than 10 days after the date of its issuance unless they decide, in order to protect confidential information, to publish the final report only in parts, or not to publish the final report.

ARTICLE 21.20

Compliance with the final report

1. The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report issued pursuant to Article 21.19.
2. The Party complained against shall, no later than 30 days after the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance. If there is disagreement between the Parties on the length of the reasonable period of time, the complaining Party may, no later than 20 days after the date of receipt of the notification made in accordance with this paragraph by the Party complained against, request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against. The original panel shall notify its determination to the Parties no later than 30 days after the date of submission of the request.
3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.
4. The Party complained against shall inform the complaining Party in writing of its progress to comply with the final report at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.

ARTICLE 21.21

Compliance review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time for compliance with the final report, notify the complaining Party of any measures taken to comply with the final report.
2. Where there is disagreement on the existence of measures taken to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to examine the matter. That request shall be notified simultaneously to the Party complained against.
3. The request referred to in paragraph 2 shall provide the factual and legal basis for the complaint, including the specific measures at issue, in such a manner as to clearly present how such measures are inconsistent with the relevant covered provisions.
4. The panel shall notify its decision to the Parties no later than 90 days after the date of referral of the matter.

ARTICLE 21.22

Temporary remedies in case of non-compliance

1. The Party complained against shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory compensation or any alternative arrangement if:
 - (a) in accordance with Article 21.21 the original panel finds that the measures taken to comply with the final report as notified by the Party complained against are inconsistent with the relevant covered provisions;

- (b) the Party complained against fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time determined in accordance with paragraph 2 of Article 21.20; or
- (c) the Party complained against notifies the complaining Party that it is impracticable to comply with the final report within the reasonable period of time determined in accordance with paragraph 2 of Article 21.20.

2. If the complaining Party decides not to make a request in accordance with paragraph 1 or if a request is made and no mutually satisfactory compensation nor any alternative arrangement has been agreed within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may notify the Party complained against in writing that it intends to suspend the application to the Party complained against of concessions or other obligations under the covered provisions. The notification shall specify the level of intended suspension of concessions or other obligations.

3. The complaining Party shall have the right to implement the suspension of concessions or other obligations referred to in the preceding paragraph 15 days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration in accordance with paragraph 6.

4. The suspension of concessions or other obligations:

- (a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the Party complained against to comply with the final report; and
- (b) may be applied to sectors that are subject to dispute settlement in accordance with Article 21.2 other than the sector or sectors in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension is effective in inducing compliance.

5. The suspension of concessions or other obligations or the compensation or any alternative arrangement referred to in this Article shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions which has been found in the final report has been removed, or until the Parties have agreed on a mutually satisfactory compensation or any alternative arrangement.

6. If the Party complained against considers that the suspension of concessions or other obligations does not comply with paragraph 4, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify to the Parties its decision on the matter no later than 30 days after the date of submission of the request. Concessions or other obligations shall not be suspended until the original panel has notified its decision. The suspension of concessions or other obligations shall be consistent with the decision.

ARTICLE 21.23

Compliance review after the adoption of temporary remedies

1. Upon the notification by the Party complained against to the complaining Party of the measure taken to comply with the final report:

- (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 21.22, the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or
- (b) in a situation where mutually satisfactory compensation or an alternative arrangement has been agreed, the Party complained against may terminate the application of such compensation or arrangement no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the Party complained against. The decision of the panel shall be notified to the Parties no later than 45 days after the date of submission of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions, the suspension of concessions or other obligations, or the application of the compensation or alternative arrangement, shall be terminated no later than 15 days after the date of the decision. Where relevant, the level of suspension of concessions or other obligations, or of the compensation or alternative arrangement, shall be adapted in light of the decision of the panel.

ARTICLE 21.24

Suspension and termination of proceedings

On the joint request of the Parties, the panel shall suspend at any time the proceedings for a period agreed by the Parties not exceeding 12 consecutive months. In the event of such suspension, the relevant time periods shall be extended by the period of time for which the proceedings of the panel were suspended. The panel shall resume the proceedings at any time upon the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the chairperson of the panel, as well as to the other Party, where applicable. If the proceedings of the panel have been suspended for more than 12 consecutive months, the authority for establishment of the panel shall lapse and the proceedings of the panel shall be terminated. The Parties may agree at any time to terminate the proceedings of the panel. The Parties shall jointly notify such agreement to the chairperson of the panel.

SECTION D

General provisions

ARTICLE 21.25

Administration of the dispute settlement procedure

1. Each Party shall:
 - (a) designate an office which shall be responsible for the administration of the dispute settlement procedure under this Chapter;
 - (b) be responsible for the operation and costs of its designated office; and
 - (c) notify the other Party in writing of the office's location and contact information no later than three months after the date of entry into force of this Agreement.
2. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

ARTICLE 21.26

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 21.2.
2. If a mutually agreed solution is reached during panel proceedings or a mediation procedure, the Parties shall jointly notify the agreed solution to the chairperson of the panel or the mediator. Upon such notification, the panel proceedings or the mediation procedure shall be terminated.
3. Each Party shall take the measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures it has taken to implement the mutually agreed solution.

ARTICLE 21.27

Choice of forum

1. Where a dispute arises with regard to the alleged inconsistency of a particular measure with an obligation under this Agreement and a substantially equivalent obligation under any other international agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 1, that Party shall not initiate dispute settlement proceedings in another forum with respect to that particular measure unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
3. For the purpose of paragraph 2:
 - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with paragraph 1 of Article 21.7;
 - (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and
 - (c) dispute settlement proceedings under any other agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement panel in accordance with the relevant provisions of that agreement.
4. Nothing in this Agreement shall preclude a Party from implementing the suspension of concessions or other obligations authorised by the DSB. A Party shall not invoke the WTO Agreement to preclude the other Party from suspending concessions or other obligations under the covered provisions.

ARTICLE 21.28

Time period

1. All time periods provided for in this Chapter shall be counted from the date following the act or fact to which they refer.
2. Any time period referred to in this Chapter may be modified for a particular dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal. On request of a Party, the panel shall decide whether to modify the time period referred to in paragraph 2 and subparagraph 3(b) of Article 21.18, stating the reasons for its decision, *inter alia*, in view of the complexity of the particular dispute.

ARTICLE 21.29

Expenses

Unless the Parties agree otherwise, the expenses of the panel, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares in accordance with the Rules of Procedure.

ARTICLE 21.30

Rules of Procedure and Code of Conduct

The panel proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators, to be adopted by the Joint Committee at its first meeting pursuant to subparagraph 4(f) of Article 22.1.