

Chapter X

Dispute Settlement

Article 57 Cooperation

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

Article 58 Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; and
- (b) wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or that the other Party has failed to carry out its obligations under this Agreement.

Article 59 Consultations

1. Either Party may request in writing consultations with the other Party with respect to any measure that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to the other Parties and to the Commission (Chapter XI).
3. Each Party shall accord adequate opportunity for consultations with another Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall as far as possible be settled through consultation between the Parties
4. The requesting Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and shall deliver the request to the other Party.
5. If a request for consultations is made, the Party to which the request is made shall reply to the request in writing within 7 days after the date of its receipt and shall

enter into consultations within a period of not more than:

- (a) 15 days after the date of receipt of the request for matters concerning perishable goods; or
- (b) 30 days after the date of receipt of the request for all other matters.

6. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

- (a) provide sufficient information to enable a full examination of how the measure might affect the operation and application of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

7. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the subject matter of consultations.

8. The consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

Article 60 Choice of Forum

1. This section is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are parties.

2. Where a dispute regarding any matter arises under this Agreement and under another agreement to which the disputing Parties are party, the complaining Party may select the forum in which to settle the dispute.

3. Once the complaining Party has requested a particular forum, the forum selected shall be used to the exclusion of other possible fora.

Article 61 Good Offices, Conciliation, and Mediation

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

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel convened under Article 62.

3. The proceedings under this Article and the positions taken by the Parties during these proceedings shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

Article 62 Request for an Arbitral Panel

1. If the Parties fail to resolve a matter within:

(a) 60 days after receipt of the request for consultations under Article 59;

(b) 30 days after receipt of the request for consultations under Article 59 in a matter regarding perishable goods; or

(c) such other period as the Parties agree,

either Party may request in writing the establishment of an arbitral panel to consider the matter.

2. The requesting Party shall state in the request the measure complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party. An arbitral panel shall be established upon receipt of a request.

Article 63 Composition of an Arbitral Panel

1. An arbitral panel shall comprise three members.

2. The complaining Party and the responding Party shall each appoint one panelist within 30 days from the deliverance of the request made under Article 62.

3. The Parties shall designate by common agreement the appointment of the third panelist within 30 days of the appointment of the second panelist. The panelist thus appointed shall chair the arbitral panel.

4. If one of the Parties does not appoint an panelist within 30 days from the date of deliverance of the request referred to in paragraph 2, at the request of the other Party to the dispute the designation shall be made by the Director-General of the WTO within a further 30 days.

5. If the chairperson of the arbitral panel has not been designated within the period according to paragraph 3, the Director General of the WTO shall at the request

of either Party appoint the chairperson of the arbitral panel within 30 days of the request.

6. All panelist shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with the code of conduct in conformity with WTO Understanding on the Rules and Procedures Governing the Settlement of Disputes, and the rules established in the document WT/DSB/RC/1 of the WTO.

7. The chairperson of the arbitral tribunal shall:

(a) not be a national of a Party

(b) not have his or her usual place of residence in the territory of a Party

(c) not have dealt with the matter in any capacity.

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

Article 64 Functions of Arbitral Panel

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

2. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference 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 arbitral panel pursuant to Article 63 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

3. Where an arbitral panel concludes that a measure is inconsistent with this

Agreement, it may recommend that the responding Party bring the measure into conformity with this Agreement. In addition to its recommendations the arbitral panel may suggest ways in which the responding Party could implement the recommendations.

4. The arbitral panel, in their findings and recommendations, cannot add to subtract from or alter the rights and obligations provided in this Agreement.

Article 65 Rules of Procedure of an Arbitral Panel

1. Unless the Parties agree otherwise, the arbitral panel proceedings shall be conducted in accordance with the rules or procedure set out in Annex III.

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

3. The arbitral panel shall endeavor to take its decisions by consensus; provided that where an arbitral panel is unable to reach consensus it may take its decisions by a majority vote.

Article 66 Expenses

1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne equally by the Parties.

2. Each Party shall bear its own expenses and legal costs of the arbitral proceedings.

Article 67 Suspension or Termination of Proceedings

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

2. The Parties may agree to terminate the proceedings of an arbitral panel in the event that a mutually satisfactory solution to the dispute has been found.

Article 68 Experts and Technical Advice

1. On request of a disputing Party, or on its own initiative, the panel may seek

information and technical advice from any person or body that it deems appropriate, provided that the disputing parties so agree and subject to such terms and conditions as such Parties may agree.

2. Before an arbitral panel seeks information or technical advice, it shall establish appropriate procedures in consultation with the Parties. The arbitral panel shall provide the Parties:

(a) advance notice of, and an opportunity to provide comments to the arbitral panel on, proposed requests for information and technical advice pursuant to paragraph 1; and

(b) a copy of any information or technical advice submitted in response to a request pursuant to paragraph 1 and an opportunity to provide comments.

3. Where the arbitral panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

Article 69 Initial Report

1. The arbitral panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties and on any information before it pursuant to Article 68.

2. Unless the Parties otherwise agree, the arbitral panel shall:

(a) within 90 days after the last panelist is selected; or

(b) in case of urgency including those relating to perishable goods within 60 days after the last panelist is selected,

present to the Parties an initial report.

3. The initial report is to contain:

(a) findings of fact;

(b) its conclusions as to whether the measure at issue has not conformed with the obligations under this Agreement or any other determination if requested in the terms of reference; and

(c) the recommendation, if any, for the resolution of the dispute.

4. In exceptional cases, if the arbitral panel considers it cannot release its initial report within 90 days or within 60 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

5. Panelists may furnish separate opinions on matters not unanimously agreed upon.

6. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report or within such other period as the Parties may agree.

7. After considering any written comments on the initial report, the arbitral panel may reconsider its report and make any further examination it considers appropriate.

Article 70 Final Report

1. The arbitral panel shall present a final report to the Parties, including any separate opinions on matters not agreed to by consensus, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. No arbitral panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The disputing Parties shall transmit to the Commission on the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Article 71 Implementation of Final Report

1. On receipt of the final report of an arbitral panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the findings and recommendation of the Panel.

2. Wherever possible, the resolution shall be removal of a major not conforming with this Agreement or a non-implementation of such a measure or, failing such a

resolution, compensation.

Article 72 Non implementation – Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement and the Party complained against has not reached agreement with the complaining Party on a mutually satisfactory resolution pursuant to Article 71 (implementation of final report) within 30 days of receiving the final report, such complaining Party may suspend the application to the responding Party of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute or the responding Party has brought its measures at issue into conformity with its obligations under this Agreement.

2. In considering what benefits to suspend pursuant to paragraph 1:

 (a) a 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 Panel has found to be inconsistent with the obligations of this Agreement; and

 (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. On the written request of any disputing Party delivered to the other Party, a panel shall be established, which should be the original panel when possible, to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

4. The panel shall present its determination within 60 days after the panel is established or such other period as the disputing Parties may agree.

Article 73 Compliance Review

1. If the responding Party considers that it has eliminated the non-conformity that the arbitral panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party has disagreement, it may refer the matter to the original arbitral panel within 60 days after receipt of such written notice.

2. The arbitral panel shall release its report within 90 days after the referral of the matter.

Article 74 Private Rights

Any question regarding conformity of a measure taken by either Party under this Agreement shall be submitted and proceeded with as provided under Chapter X of this Agreement.