

CHAPTER 16

DISPUTE SETTLEMENT

ARTICLE 16.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for settling disputes between the Parties⁹² concerning the interpretation and application of the provisions of this Agreement with a view to reaching a mutually agreed solution.

ARTICLE 16.2

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 16.3

Request for Information

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Articles 16.4 (Consultations) or 16.5 (Good Offices, Conciliation and Mediation) 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 16.4

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Article.

⁹² For the purposes of this Chapter, the terms “Party”, “party to the dispute”, “complaining Party” and “Party complained against” can denote one or more Parties.

2. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise.
3. The parties to the dispute shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
4. The parties to the dispute shall enter into consultations no later than 30 days, and 15 days for urgent matters, 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 to the dispute agree otherwise. Where both parties to the dispute 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 to the dispute agree otherwise.
5. Consultations may be held in person or by any other means of communication agreed by the parties to the dispute.
6. Consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.
7. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 16.5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may begin and be terminated at any time. They may continue while proceedings of a panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.

ARTICLE 16.6

Establishment of a Panel

1. The Party that sought consultations pursuant to Article 16.4 (Consultations) 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 to the dispute agree not to enter into consultations; or
 - (c) the parties to the dispute 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 to the dispute 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 the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.
3. A copy of any request to establish a panel made under paragraph 1 shall be communicated to the other Parties.
4. Where more than one Party requests the establishment of a panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single panel should be established to examine complaints relating to the same matter.

ARTICLE 16.7

Composition of a Panel

1. The panel shall be composed of three arbitrators. One of the arbitrators shall chair the panel. The chair of the panel shall not be a national or permanent resident of either party to the dispute.
2. On receipt of the request for the establishment of a panel by the Party complained against, the parties to the dispute shall consult with a view to agreeing on the composition of the panel.
3. If the parties to the dispute do not reach agreement on the arbitrators other than the chair of the panel within 10 days of receipt of the request to establish a panel, or any extension agreed in writing, each party to the dispute shall appoint an arbitrator to the panel. The arbitrators shall be appointed within 10 days of the expiry of the first time period mentioned in this paragraph (as extended, if so agreed).

4. If the complaining Party fails to appoint its arbitrator in accordance with paragraph 3, the dispute settlement proceedings shall lapse.
5. If the Party complained against fails to appoint its arbitrator in accordance with paragraph 3, the complaining Party shall be entitled, within 10 days of the expiry of the second time period mentioned in that paragraph, to request that the appointing authority appoint an arbitrator within 15 days of receiving the request. If the complaining Party fails to make such a request, the dispute settlement proceedings shall lapse.
6. If the parties to the dispute do not reach agreement on the chair of the panel within 50 days of receipt of the request to establish a panel, or any extension agreed in writing, the two arbitrators appointed in accordance with paragraphs 2 to 5 shall, within 10 days of the appointment of the second of them, appoint the third arbitrator who shall chair the panel.
7. If the chair has not been appointed within the second time period specified in paragraph 6, either party to the dispute shall be entitled, within 10 days, to request that the appointing authority appoint the arbitrator that shall chair the panel within 15 days of receiving the request. If no such request is made, the dispute settlement proceedings shall lapse.
8. A person being approached in connection with a possible appointment as an arbitrator, shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose such circumstances to the parties to the dispute and the other arbitrators unless they have already been informed.
9. Any arbitrator may be challenged if a party considers that there are circumstances that give rise to justifiable doubts as to the member's independence or impartiality or the member has otherwise not complied with any Code of Conduct. If a party to the dispute does not agree with the challenge or the challenged member of the panel does not withdraw, the party making the challenge may request the appointing authority to decide on the challenge. In the event of a successful challenge, the member in question shall be replaced.
10. If any arbitrator is unavailable, withdraws, or needs to be replaced, the replacement shall be selected in accordance with the procedure set out in this Article.
11. The date of establishment of the panel shall be the date on which the last arbitrator is appointed.
12. The Secretary-General of the Permanent Court of Arbitration shall act as the appointing authority.

ARTICLE 16.8

Qualifications of Arbitrators

All arbitrators shall:

- (a) have expertise in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, any Party, nor have dealt with the case in any capacity;
- (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 any Code of Conduct.

ARTICLE 16.9

Terms of Reference

1. Unless the parties to the dispute 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:
 - (a) examine, in the light of the relevant provisions of this Agreement, the matter or matters referred to in the request for the establishment of the panel;
 - (b) make findings of law and fact and determinations on the conformity of the measure or measures at issue with the relevant provisions of this Agreement, together with the reasons therefor. The panel may suggest ways in which the Party complained against could implement the determinations; and
 - (c) issue a written report in accordance with Article 16.14 (Panel Reports).
2. If the parties to the dispute 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 16.10

Urgent Cases

In cases of urgency, including those related to perishable goods, the panel and the parties to the dispute shall make every effort to accelerate the proceedings to the greatest extent possible. If a party to the dispute so requests, the panel shall decide, no later than 10 days after the date of its establishment, whether the dispute contains matters of urgency.

ARTICLE 16.11

Panel Proceedings

1. The panel should consult regularly with the parties to the dispute and provide adequate opportunities for achieving a mutually agreed solution. In doing so, the panel shall always ensure that it shares information or makes requests of all parties to the dispute simultaneously.
2. Any hearing of the panel shall be open to the public unless the parties to the dispute agree otherwise or the arbitration panel decides to close the hearing for the duration of any discussion of confidential information. Hearings held in closed session shall be confidential.
3. The parties to the dispute shall mutually determine the location of the hearing. If the parties to the dispute are unable to so agree the hearings shall be held in Geneva, Switzerland.
4. The panel and the parties to the dispute 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 any 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.
5. The deliberations of the panel shall be kept confidential.
6. The parties to the dispute shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. All documents or information submitted by a Party to the panel, shall, at the same time, be transmitted by that Party to the other party to the dispute. A written submission, request, notice or other document shall be considered received when it has been delivered to the addressee through diplomatic channels.
7. 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.

8. 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.
9. The decisions of the panel shall be final and binding on the parties to the dispute. They shall be unconditionally accepted by the parties to the dispute. They shall not add to or diminish the rights and obligations of any Party under this Agreement.
10. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

ARTICLE 16.12

Rules of Interpretation

The panel shall interpret the relevant provisions of this Agreement 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 Dispute Settlement Body of the WTO.

ARTICLE 16.13

Receipt of Information

1. On request of a party to the dispute, or on its own initiative, the panel may seek from the parties to the dispute relevant information it considers necessary and appropriate. The parties to the dispute shall respond promptly and fully to any request by the panel for information.
2. On request of a party to the dispute, 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.
4. Any information obtained by the panel under this Article shall be made available to the parties to the dispute and the parties to the dispute may submit comments on that information to the panel.

ARTICLE 16.14

Panel Reports

1. The panel shall issue an interim report to the parties to the dispute setting out its findings and determinations, together with the reasons therefor, no later than 100 days after the date of its establishment.
2. Each party to the dispute may submit to the panel written comments and request the panel 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 to the dispute 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
 - (b) each party to the dispute shall make every effort to submit to the panel any written comments or requests for it to review precise aspects of the interim report no later than 10 days after the date of issuance of the interim report.
4. The panel shall issue its final report to the parties to the dispute no later than 30 days after the date of issuance of the interim report.
5. 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.
6. The final report shall address any written comments and requests made by the parties to the dispute on the interim report.
7. The parties to the dispute shall make the final report publicly available in its entirety no later than 10 days after the date of its issuance subject to the protection of confidential information.

ARTICLE 16.15

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 16.14 (Panel Reports).
2. If it is impracticable to comply immediately, 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 to the dispute shall endeavour to agree on the reasonable period of time required for compliance. If there is disagreement between the parties to the dispute 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 the first sentence of this paragraph by the Party complained against, request in writing the original panel⁹³ 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 to the dispute no later than 30 days after the date of submission of the request.

ARTICLE 16.16

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 final report, 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 do not comply with the final report.
4. The panel shall notify its decision to the parties to the dispute no later than 90 days after the date of referral of the matter referred to in paragraph 2.

ARTICLE 16.17

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:

⁹³ For greater certainty, references in this Chapter to the original panel shall include any replacement arbitrators that have been designated pursuant to paragraph 10 of Article 16.7 (Composition of a Panel).

- (a) in accordance with Article 16.16 (Compliance Review) the original panel finds that the Party complained against has not complied with the final report;
 - (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; or
 - (c) the Party complained against notifies the complaining Party that it does not intend to or it is impracticable to comply with the final report within the reasonable period of time determined in accordance with paragraph 2 of Article 16.15 (Compliance with the Final Report).
2. If the complaining Party decides not to make a request in accordance with paragraph 1 in the case where any of the conditions in paragraphs 1(a)-(c) are met 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 they intend to suspend the application to the Party complained against of concessions or other obligations granted under this Agreement. 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 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. In considering what concessions or other obligations to suspend, the complaining Party shall apply the following principles and procedures:
 - (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement;
 - (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors that are subject to dispute settlement in accordance with Article 16.2 (Scope); and
 - (c) concessions or other obligations under Chapter 3 (Services and Investment) in respect of financial services may not be suspended under this Article unless the final report referred to in Article 16.14 (Panel Reports) concerns the interpretation and application of

concessions or other obligations under Chapter 3 (Services and Investment) in respect of financial services.

5. The suspension of concessions or other obligations or the compensation or any alternative arrangement shall be temporary and shall only apply until the measure found to be inconsistent with this Agreement in the final report has been removed or the parties to the dispute have solved the dispute otherwise.
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 the parties to the dispute of 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 16.18

Compliance Review after the Adoption of Temporary Remedies

At the request of a party to the dispute, the original panel shall rule on the conformity with the final report of any measures taken to comply with the final report adopted after the suspension of concessions or other obligations or the compensation or any alternative arrangement and, in light of such ruling, whether the suspension of concessions or other obligations or the compensation or any alternative arrangement should be terminated or modified. The ruling of the panel should be given within 30 days from the receipt of that request.

ARTICLE 16.19

Suspension and Termination of Proceedings

1. Where the parties to the dispute agree, a panel may suspend its work at any time for a period not exceeding 12 months. The panel shall resume the proceedings at any time upon the joint request of the parties to the dispute or at the end of the agreed suspension period on the written request of one of them. If the work of a panel has been suspended for more than 12 months, the panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.
2. The parties to the dispute may agree at any time to terminate the proceedings of the panel. The parties to the dispute shall jointly notify such agreement to the chair of the panel.

ARTICLE 16.20

Administration of the Dispute Settlement Procedure

The parties to the dispute may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

ARTICLE 16.21

Mutually Agreed Solution

1. The parties to the dispute may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 16.2 (Scope).
2. If a mutually agreed solution is reached during panel proceedings or a mediation procedure, the parties to the dispute shall jointly notify the agreed solution to the chair of the panel or the mediator and the other Parties. Upon such notification, the panel proceedings or the mediation procedure shall be terminated.

ARTICLE 16.22

Choice of Forum

1. If a dispute regarding the same matter arises under both this Agreement and under another international trade agreement to which the parties to the dispute 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, that Party shall not initiate dispute settlement proceedings under this Chapter or under another international agreement referred to in paragraph 1 unless the forum selected first fails to make findings 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 16.6 (Establishment of a Panel);
 - (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 Dispute Settlement Understanding; and

- (c) dispute settlement proceedings under any other trade 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.

ARTICLE 16.23

Time Period

1. All time limits laid down in this Chapter, including the limits for panels to notify their rulings, shall be counted in calendar days, the first day being the day 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 to that dispute. The panel may at any time propose to the parties to the dispute to modify any time period referred to in this Chapter, stating the reasons for the proposal.
3. If a panel considers that it cannot comply with a timeframe imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

ARTICLE 16.24

Expenses

Unless the parties to the dispute agree otherwise, the expenses of the panel, including the remuneration of its arbitrators, shall be borne by the parties to the dispute in equal shares.

ARTICLE 16.25

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 any Code of Conduct for Arbitrators, to be adopted by the Joint Committee at its first meeting.