

3. The EPA Consultative Committee shall carry out its activities on the basis of consultations by the Committee of Senior Officials or on its own initiative and make recommendations to the Committee of Senior Officials. Representatives of the Parties shall attend the meetings of the EPA Consultative Committee.

4. The EPA Consultative Committee shall adopt its rules of procedure within three (3) months from its establishment, in agreement with the Committee of Senior Officials.

PART VII

DISPUTE AVOIDANCE AND SETTLEMENT

ARTICLE 109

Scope and Objective

1. This Part applies to any dispute concerning the interpretation and application of the provisions of this Agreement, unless otherwise provided.

2. The objective of this Part is to avoid or settle in good faith any dispute between the Parties concerning the interpretation and application of this Agreement and, where possible, to arrive at a mutually agreed solution.

TITLE I

DISPUTE AVOIDANCE

ARTICLE 110

Consultations

1. The Parties shall enter into consultations and endeavour to resolve in good faith any dispute concerning the interpretation and application of this Agreement with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Committee of Senior Officials, identifying the measure at issue and the provisions of the Agreement that it considers the measure not to be in conformity with.
3. Consultations shall take place, unless the Parties agree otherwise, in the territory of the Party complained against and shall be held within twenty (20) days of the date of the receipt of the request. The consultations shall be deemed concluded within sixty (60) days of the date of the receipt of the request of the Party complained against, unless the Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held as soon as is practically possible and in any event within fifteen (15) days of the date of the receipt of the request, and shall be deemed concluded within thirty (30) days of the date of the receipt of the request, unless the Parties agree to continue consultations.

5. If the Party to which the request for consultations is made does not respond to that request within ten (10) days of the date of its receipt thereof, or if consultations are not held within the respective time frames laid down in paragraphs 3 and 4 of this Article, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, either Party may request settlement of the dispute by arbitration in accordance with Article 112.

6. The Parties may agree to amend the time limits referred to in paragraphs 3 to 5, in light of the difficulties or complexities of the case experienced by either Party.

ARTICLE 111

Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.

2. Either Party may proceed to arbitration under Article 112 without recourse to mediation.

3. Unless the Parties agree on a mediator within fifteen (15) days of the date of the agreement to request mediation, the Chairperson of the Committee of Senior Officials, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 125 and are not nationals of either Party. The selection shall be made within twenty five (25) days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator shall convene a meeting with the Parties no later than thirty (30) days after being selected. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting and notify an opinion no later than forty five (45) days after having been selected.
4. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator's opinion is non-binding.
5. The Parties may agree to amend the time limits referred to in paragraph 3. The mediator may also decide to amend those time limits upon request of any of the Parties or on his or her own initiative, in light of the difficulties experienced by the Party concerned or the complexities of the case.
6. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during those proceedings shall remain confidential.

TITLE II

DISPUTE SETTLEMENT

ARTICLE 112

Initiation of the Arbitration Procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 110, the complaining Party may give notice to initiate the procedure for the establishment of an arbitration panel, which shall be established in accordance with Article 113.
2. The notice for establishment of an arbitration panel shall be made in writing to the Party complained against and to the Committee of Senior Officials. The complaining Party shall identify in its notice the specific measures at issue, and it shall clearly explain how such measures constitute a breach of the provisions of this Agreement.

ARTICLE 113

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within ten (10) days of the date of the submission of the notice for the establishment of an arbitration panel to the Committee of Senior Officials, the Parties shall consult each other in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, each Party will select an arbitrator, from the list of arbitrators established under Article 125, within five (5) days. If one of the Parties fails to appoint its arbitrator, upon request of the other Party, that Party's arbitrator shall be selected by lot by the Chairperson of the Committee of Senior Officials, or the Chairperson's delegate from the sub-list of that Party established under Article 125.
4. Unless the Parties reach an agreement concerning the Chairperson of the arbitration panel within the time frame established in paragraph 2 of this Article, the two arbitrators shall in turn appoint a third arbitrator as the Chairperson of the panel, from the list established under Article 125, within five (5) days of their appointment and shall notify the Committee of Senior Officials of the appointment. In the event of a failure to appoint the Chairperson of the panel, either Party may ask the Chairperson of the Committee of Senior Officials or the Chairperson's delegate to select by lot the Chairperson of the arbitration panel from the sub-list of Chairpersons, contained in the list established under Article 125, within five (5) days.
5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected and have accepted their appointment in accordance with the rules of procedure adopted under Article 120.

ARTICLE 114

Interim Panel Report

1. The arbitration panel shall notify the Parties of an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than ninety (90) days from its date of establishment. Where it considers that this deadline cannot be met, the Chairperson of the arbitration panel must notify the Parties and the Committee of Senior Officials in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than one hundred and twenty (120) days after the date of the establishment of the arbitration panel. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within fifteen (15) days of the notification of the report.
2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its interim report within thirty (30) days, and in any case no later than forty five (45) days, after its establishment. A Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within seven (7) days of the notification of the interim report.
3. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The final arbitration panel ruling shall include a discussion of the arguments made at the interim review stage and shall respond clearly to the questions and observations of the Parties.

ARTICLE 115

Arbitration Panel Ruling

1. The arbitration panel shall notify its ruling to the Parties and to the Committee of Senior Officials within one hundred and twenty (120) days from the date of its establishment.

Notwithstanding the first subparagraph, where that deadline cannot be met, the Chairperson of the arbitration panel shall notify the Parties and the Committee of Senior Officials in writing, stating the reasons for the delay and the date on which the panel plans to issue its ruling. Under no circumstance shall the ruling be notified later than one hundred and fifty (150) days from the date of its establishment.

2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel:

- (a) shall notify its ruling within sixty (60) days from the date of its establishment;
- (b) may give a preliminary ruling, as soon as that is practically possible, and in any event within seven (7) days of its establishment, on whether it deems the case to be urgent.

3. The arbitration panel ruling shall include recommendations as to how the Party complained against could bring itself into compliance.

4. Notwithstanding paragraphs 6 to 10 on the reasonable period of time, the Party complained against shall take any measure necessary to comply immediately and in good faith with the arbitration panel ruling.

5. If immediate compliance is not possible, the Parties shall endeavour to agree on the period of time to comply with the ruling. In such a case, the Party complained against shall, no later than twenty one (21) days after the notification of the arbitration panel ruling to the Parties, notify the complaining Party and the Committee of Senior Officials of the time it will require for compliance.

6. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within fourteen (14) days of the notification made under paragraph 1, request in writing the arbitration panel to determine the length thereof. Such request shall be notified simultaneously to the Party complained against and to the Committee of Senior Officials. The arbitration panel shall notify its ruling to the Parties and to the Committee of Senior Officials within twenty one (21) days from the date of the submission of the request.

7. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 113 shall apply. The time limit for notifying the ruling shall be thirty five (35) days from the date of the submission of the request referred to in paragraph 6 of this Article.

8. In determining the length of the reasonable period of time, the arbitration panel shall take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by such Party as being necessary to ensure compliance, and in particular, the panel shall take into account the difficulties the EAC Partner State(s) may encounter due to lack of requisite capacity.

9. The reasonable period of time may be extended by agreement between the Parties.

ARTICLE 116

Review of Any Measure Taken to Comply with the Arbitration Panel Ruling

1. The Party complained against shall notify the complaining Party and the Committee of Senior Officials before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. Where, at the end of the reasonable period of time, the Party complained against has not complied with paragraph 1 of this Article, the complaining Party may take, upon notification to the Party complained against and to the Committee of Senior Officials, appropriate measures in accordance with Article 118(2).

3. Where there is a disagreement between the Parties as to whether the Party complained against has brought itself into compliance with the provisions of this Agreement, either Party may request in writing the arbitration panel to rule on the matter. Such a request shall identify the specific measure at issue and it shall explain clearly how such measure is incompatible or compatible with the provisions of the Agreement and the arbitration panel ruling.

4. The arbitration panel shall endeavour to notify its ruling within forty-five (45) days of the date of the submission of the request referred to in paragraph 3. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within thirty (30) days of the date of the submission of the request.

5. In the event that the original arbitration panel is, or some of its members are, unable to reconvene within fifteen (15) days, the procedures set out in Article 113 shall apply. In such cases, the time limit for notifying the ruling shall be eighty (80) days from the date of the submission of the request referred to in paragraph 3 of this Article.

ARTICLE 117

Temporary Remedies in case of Non-Compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 116(1) is not compatible with the obligations of the Party complained against under the provisions of this Agreement, the complaining Party shall be entitled, upon notification to the Party complained against, to adopt appropriate measures.

2. In adopting such measures, the complaining Party shall endeavour to select measures that least affect the attainment of the objectives of this Agreement, and shall take into consideration their impact on the economy of the Party complained against. In addition, where the EU has obtained the right to adopt such measures, it shall select measures which are specifically aimed at bringing into compliance the EAC Partner State whose measures were found to be in breach of this Agreement.

3. At any time after the expiry of the reasonable period of time, the complaining Party may request the Party complained against to provide an offer for temporary compensation, and the Party complained against shall present such an offer.

4. Compensation or retaliatory measures shall be temporary and shall be applied only until any measure found to breach the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions, or until the Parties have agreed to settle the dispute.

ARTICLE 118

Review of Any Measure Taken to Comply after the Adoption of Appropriate Measures

1. The Party complained against shall notify the other Party and the Committee of Senior Officials of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the application of appropriate measures by the complaining Party.

2. Where the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within thirty (30) days of the date of the submission of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such a request shall be notified to the Party complained against and to the Committee of Senior Officials. The arbitration panel ruling shall be notified to the Parties and to the Committee of Senior Officials within forty-five (45) days of the date of the submission of the request.

3. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, it shall determine whether the complaining Party may continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated immediately following the date of the ruling.

4. In the event that the original arbitration panel is, or some of its members are, unable to reconvene, the procedures laid down in Article 113 shall apply. The period for notifying the ruling shall be sixty (60) days from the date of the submission of the request referred to in paragraph 2 of this Article.

TITLE III

COMMON PROVISIONS

ARTICLE 119

Mutually Agreed Solution

The Parties may reach an agreed solution to a dispute under this Part at any time and shall notify the Committee of Senior Officials thereof. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to that requirement, and the proceedings shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedure, the proceedings shall be terminated.

ARTICLE 120

Rules of Procedure

Dispute settlement procedures shall be governed by rules of procedure to be adopted by the EPA Council within six (6) months from the date of entry into force of this Agreement.

ARTICLE 121

Information and Technical Advice

At the request of either Party, or upon its own initiative, the arbitration panel may obtain information for the arbitration panel proceedings from any source it deems appropriate, including the Parties involved in the dispute. The arbitration panel shall also have the right to seek the opinion of relevant experts as it deems appropriate. Interested natural or legal persons of the Parties and other third parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with the rules of procedure adopted under Article 120. Any information obtained in such manner must be disclosed to the Parties, who may submit comments thereon.

ARTICLE 122

Language of Submissions

1. The written and oral submissions of the Parties shall be made in any official language of those Parties.
2. The Parties shall endeavour to agree on a common working language for any specific proceedings under this Part. If those Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions and interpretations at the hearings into the language chosen by the Party complained against, unless such language is an official language of that Party¹.

ARTICLE 123

Rules of interpretation

1. Arbitration panels shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties signed at Vienna on 23 May 1969.
2. The interpretations and rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in this Agreement.

¹ For the purpose of this Article, official languages are those listed in Article 146.

ARTICLE 124

Arbitration Panel Rulings Procedure

1. The arbitration panel shall make every effort to take any decision by consensus. Where a decision cannot be adopted by consensus, the matter at issue shall be decided by majority vote.
2. Any ruling of the arbitration panel shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings, recommendations or conclusions that it makes. The Committee of Senior Officials shall make the arbitration panel rulings publicly available.
3. Arbitration panel rulings shall be final and binding on the Parties.

ARTICLE 125

List of Arbitrators

1. The Committee of Senior Officials shall, not later than six (6) months from the date of entry into force of this Agreement, establish a list of at least fifteen (15) individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party to serve as arbitrators; and one sub-list of individuals that are not nationals of either Party and who shall be available to act as Chairperson of the arbitration panel. Each sub-list shall include at least five (5) individuals. The Committee of Senior Officials shall ensure that the list is always maintained at this level, in accordance with the rules of procedure adopted under Article 120.

2. Should any of the sub-lists not be established or not contain sufficient names of individuals at the time a notice is made pursuant to Article 113(2), the arbitrators shall be drawn by lot from the individuals who have been formally proposed for the respective sub-list by one or both of the Parties. If only one Party has proposed names, the three arbitrators shall be drawn by lot from among those names.

3. In case there is no list of arbitrators established under paragraph 1, or names of arbitrators proposed under paragraph 2, the Party initiating the process of arbitration shall request the Secretary-General of the Permanent Court of Arbitration to act as the appointing authority.

4. Arbitrators must have specialised knowledge of, and experience in, law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the code of conduct annexed to the rules of procedure adopted under Article 120.

ARTICLE 126

Relation to WTO Dispute Settlement

1. Arbitration panels established under this Agreement shall not adjudicate disputes on either Party's rights or obligations under the WTO agreements.

2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action within the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Title or under the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. In addition, a Party shall not seek redress for the breach of an obligation which is identical under this Agreement and under the WTO Agreement in both fora. In such case, once a dispute settlement proceeding has been initiated, a Party shall not bring a claim seeking redress for the breach of the identical obligation under the other agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. A Party may, with regard to a particular measure, institute a dispute settlement proceeding either under this Part or under the WTO Agreement, as follows:

- (a) dispute settlement proceedings under this Part shall be deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 112, and shall be deemed to be ended when the arbitration panel notifies its ruling to the Parties and to the Committee of Senior Officials under Article 115, or where a mutually agreed solution has been reached under Article 119;
- (b) dispute settlement proceedings under the WTO Agreement shall be deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU, and shall be deemed to be ended when the WTO Dispute Settlement Body adopts the report of the WTO panel or the Appellate Body, as the case may be, under Articles 16 and 17(14) of the DSU.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. The WTO Agreement shall not preclude a Party from suspending obligations under this Agreement.

ARTICLE 127

Time Limits

1. Any time limits laid down in this Part, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limit referred to in this Part may be extended by mutual agreement of the Parties.