

CHAPTER 15 DISPUTE SETTLEMENT

SECTION A: OBJECTIVE AND SCOPE

ARTICLE 15.1 Objective

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

ARTICLE 15.2 Cooperation

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

ARTICLE 15.3 Scope of Application

This Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions"), unless otherwise provided in this Agreement.

ARTICLE 15.4 Contact Points

1. Each Party shall designate a contact point within thirty (30) days from the date of entry into force of this Agreement to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

SECTION B: CONSULTATIONS AND MEDIATION

ARTICLE 15.5 Request for Information

Before a request for consultations, good offices or mediation is made pursuant to Articles 15.6 (Consultations) or 15.7 (Good Offices or 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 thirty (30) days after the date of receipt of the request.

ARTICLE 15.6

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 15.3 (Scope of Application) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual and legal basis specifying the covered provisions that it considers applicable.
3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than ten (10) days after the date of receipt of the request. Consultations shall be held within thirty (30) days of the date of receipt of the request. The consultations shall be deemed to be concluded within thirty (30) days of the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations on matters of urgency, including those regarding perishable goods, shall be held within fifteen (15) days of the date of receipt of the request. The consultations shall be deemed to be concluded within those fifteen (15) days, unless the Parties agree otherwise.
5. During consultations, each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure is affecting the operation and application of this Agreement.
6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
7. Consultations may be held in person or by any other means of communication, as the Parties may agree. Consultations, if held in person, shall take place in the territory of the Party to which the request is made, unless the Parties agree otherwise.
8. If the Party to which the request is made does not respond to the request for consultations within ten (10) days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 15.8 (Establishment of a Panel).

ARTICLE 15.7

Good Offices or Mediation

1. The Parties may at any time agree to enter into procedures for good offices or mediation. They may begin at any time and be terminated by either Party at any time.
2. Proceedings involving good offices or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice

to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices or mediation may continue during the panel procedures, as set out in Section C.

SECTION C: PANEL PROCEDURES

ARTICLE 15.8

Establishment of a Panel

1. If the Parties fail to resolve the dispute through recourse to consultations as provided for in Article 15.6 (Consultations), the Party that sought consultations may request the establishment of a panel.

2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent with those provisions.

3. When a request is made by the complaining Party in accordance with paragraph 1, a panel shall be established.

ARTICLE 15.9

Composition of a Panel

1. Unless the Parties agree otherwise, a panel shall consist of three panellists.

2. Unless the Parties agree otherwise, the panellists shall neither be nationals of the Parties to the dispute nor have their permanent place of residence in the territory of a Party to the dispute.

3. Within twenty (20) days after the establishment of a panel, each Party shall appoint a panellist. The Parties shall, by mutual agreement, within forty (40) days after the establishment of a panel, appoint the third panellist, who shall serve as the chairperson of the panel.

4. If either Party fails to appoint a panellist within the time period established in paragraph 3, the other Party may request that the WTO Director General to designate a panellist within twenty (20) days of that request.

5. If no agreement is reached on the appointment of the chairperson of the panel within the time period established in paragraph 3, the Parties shall within the next ten (10) days, exchange their respective lists comprising three nominees each who shall not be nationals of either Party. The chair shall then be appointed by draw of lot from the lists within ten (10) days after the expiry of the time period during which the Parties shall exchange their respective lists of nominees. The selection by lot of the chairperson of the panel shall be made by the Joint Committee.

6. If a Party fails to submit its list of three nominees within the time period established in paragraph 5, the chairperson shall be appointed by draw of lot from the list submitted by the other Party.

7. The date of composition of the panel shall be the date on which the last of the three selected panellists has notified to the Parties the acceptance of his or her appointment.

ARTICLE 15.10
Requirements for Panellists

1. Each panellist shall:
 - (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement,
 - (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;
 - (d) comply with the Code of Conduct for Panellists established in Annex 15A (Code of Conduct for Panellists); and
 - (e) be chosen strictly on the basis of objectivity, reliability, and sound judgment.
2. The chairperson shall also have experience in dispute settlement procedures.
3. Persons who provided good offices or mediation to the Parties, pursuant to Article 15.7 (Good Offices or Mediation) in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panellists in that matter.

ARTICLE 15.11
Replacement of Panellists

If any of the panellists of the original panel becomes unable to act, withdraws or needs to be replaced because that panellist does not comply with the requirements of the Code of Conduct, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist, and the successor shall have the powers and duties of the original panellist. The work of the panel shall be suspended during the appointment of the successor panellist.

ARTICLE 15.12
Functions of the Panel

Unless the Parties agree otherwise, the panel:

- (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 measure at issue with the covered provisions; and

- (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and
- (c) may consult with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 15.13

Terms of Reference

1. Unless the Parties agree otherwise within fifteen (15) days after the date of 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 make findings on the conformity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to resolve the dispute, and to deliver a report in accordance with Articles 15.18 (Interim Report) and 15.19 (Final Report)”.

2. If the Parties agree on terms of reference other than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than five (5) days after their agreement.

ARTICLE 15.14

Decision on Urgency

1. If a Party so requests, the panel shall decide, within fifteen (15) days of its composition, whether the dispute concerns matters of urgency.
2. In cases of urgency, the applicable time periods set out in Articles 15.18 (Interim Report) and 15.19 (Final Report) shall be half of the time prescribed therein.

ARTICLE 15.15

Rules of Interpretation

1. 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.
2. When appropriate, the panel may also take into account relevant interpretations in reports of prior panels established under this Chapter and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

ARTICLE 15.16

Rules of Procedure of the Panel

1. Unless the Parties agree otherwise, the panel shall follow the model rules of procedure set out in Annex 15B (Rules of Procedure for the Panel).

2. The panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules of procedure.

ARTICLE 15.17

Receipt of Information

1. Upon the 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. At the request of a Party, or on its own initiative, a panel may seek information or technical advice from any known source that it deems appropriate, provided that the Parties agree and subject to any terms and conditions agreed by the Parties.
3. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

ARTICLE 15.18

Interim Report

1. The panel shall deliver an interim report to the Parties within ninety (90) days after the date of composition of the panel. 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 deliver its interim report.
2. The interim report shall include a descriptive part and the panel's findings and conclusions.
3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within ten (10) days of the date of issuance of the interim report. A Party may comment on the other Party's request within seven (7) days of the delivery of the request.
4. 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.

ARTICLE 15.19

Final Report

1. The panel shall deliver its final report to the Parties within one hundred and twenty (120) days of the date of composition of the panel. 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 deliver its final report.
2. The final report shall include a 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.

3. The final report shall be made public within fifteen (15) days of its delivery to the Parties, unless the Parties agree otherwise to publish the final report only in parts or not to publish the final report.

ARTICLE 15.20 **Implementation of the Final Report**

1. Where the panel finds that the responding Party has acted inconsistently with a covered provision, the responding Party shall take any measure necessary to comply promptly and in good faith with the findings and conclusions in the final report.
2. The responding Party shall, no later than thirty (30) days after delivery of the final report, notify the complaining Party of the length of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

ARTICLE 15.21 **Reasonable Period of Time for Compliance**

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, no later than thirty (30) days after the date of receipt of the notification made by the responding Party in accordance with paragraph 2 of Article 15.20 (Implementation of the Final Report), request, in writing, that the original panel determine the length of the reasonable period of time. Such request shall be notified simultaneously to the responding Party. The thirty (30)-day period referred to in this paragraph may be extended by mutual agreement of the Parties.
2. The original panel shall deliver its decision to the Parties within thirty (30) days of 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.

ARTICLE 15.22 **Compliance Review**

1. The responding Party shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one (1) month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.
2. The responding Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.
3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request, in writing, that the original panel decide on the matter. Such request shall be notified simultaneously to the responding Party.

4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the responding Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.

5. The panel shall deliver its decision to the Parties within sixty (60) days of the date of delivery of the request.

ARTICLE 15.23

Temporary Remedies in Case of Non-Compliance

1. If the responding Party:

- (a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time;
- (b) notifies the complaining Party in writing that it is not possible to comply with the final report within the reasonable period of time; or
- (c) the original panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the responding Party is inconsistent with the covered provisions,

the responding Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory agreement or any necessary compensation.

2. If the Parties fail to reach a mutual satisfactory agreement or to agree on compensation within thirty (30) days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the responding Party that it intends to suspend the application to that Party of benefits or other obligations under this Agreement. The notification shall specify the level of intended suspension of benefits or other obligations.

3. The complaining Party may begin the suspension of benefits or other obligations referred to in the preceding paragraph thirty (30) days after the date when it served notice on the responding Party, unless the responding Party made a request under paragraph 7.

4. The suspension of benefits or other obligations:

- (a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the responding Party to comply with the final report; and
- (b) shall be restricted to benefits accruing to the responding Party under this Agreement.

5. In considering what benefits to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement or have caused nullification or impairment;¹
- (b) the complaining Party may suspend benefit in other sectors, if it considers that it is not practicable or effective to suspend benefits or other obligations in the same sector.

6. The suspension of benefits or other obligations 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 reached a mutually agreed solution or agreed on any necessary compensation.

7. If the responding Party considers that the suspension of benefits does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than fifteen (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 of its decision on the matter no later than thirty (30) days of the receipt of the request from the responding Party. Benefits or other obligations shall not be suspended until the original panel has delivered its decision. The suspension of benefits or other obligations shall be consistent with this decision.

ARTICLE 15.24

Review of any Measure Taken to Comply After the Adoption of Temporary Remedies

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

- (a) in a situation where the right to suspend benefits or other obligations has been exercised by the complaining Party in accordance with Article 15.23 (Temporary Remedies in Case of Non-Compliance), the complaining Party shall terminate the suspension of benefits or other obligations no later than thirty (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 necessary compensation has been agreed, the responding Party may terminate the application of such compensation no later than thirty (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

¹ For the purposes of this paragraph, "sector" means: (i) with respect to goods, all goods; (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors.

within thirty (30) days after the date of receipt of the notification, the complaining Party shall request, in writing, that the original panel examine the matter. That request shall be notified simultaneously to the responding Party. The decision of the panel shall be notified to the Parties no later than forty-five (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 benefits or other obligations, or the application of the compensation, shall be terminated no later than fifteen (15) days after the date of the decision. If the panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

ARTICLE 15.25

Suspension and Termination of Proceedings

If both Parties so request, the panel shall suspend its work for a period agreed by the Parties and not exceeding twelve (12) consecutive months. In the event of a suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than twelve (12) consecutive months, the authority of the panel shall lapse and the dispute settlement proceeding shall be terminated.

SECTION D: GENERAL PROVISIONS

ARTICLE 15.26

Choice of Forum

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both parties.
2. When 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 another international trade agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.
3. 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 2, 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.
4. For the purpose of paragraph 3:
 - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 15.8 (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 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.

ARTICLE 15.27

Costs

1. Unless the Parties agree otherwise, the costs of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.
2. Each Party shall bear its own expenses and legal costs in the panel proceedings.

ARTICLE 15.28

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 15.3 (Scope of Application).
2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel proceedings shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 15.29

Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

ARTICLE 15.30

Annexes

The Joint Committee may modify Annex 15A (Code of Conduct for Panellists) and Annex 15B (Rules of Procedure for the Panel).