

- (d) reporting the findings and the outcome of discussions of the Sub-Committee, and where necessary, making recommendations to the Joint Committee regarding issues relating to the implementation of this Chapter, including the measures to be taken by the Parties; and
 - (e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments of the Parties; and
 - (b) co-chaired by officials of the Governments of the Parties.
4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.
5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Article 106
Non-Application of Chapter 10

The dispute settlement procedures provided for in Chapter 10 shall not apply to this Chapter.

Chapter 10
Dispute Settlement

Article 107
Scope

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

3. Notwithstanding paragraph 2, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

Article 108 Consultations

1. Either Party may request in writing consultations to the other Party concerning any matter on the interpretation or application of this Agreement.

2. The Party to which the request for consultations is made (hereinafter referred to in this Chapter as "the Party complained against") shall reply to such request and enter into consultations with the Party that requested the consultations (hereinafter referred to in this Chapter as "the complaining Party") in good faith within 30 days after the date of receipt of the request, with a view to reaching a prompt and mutually satisfactory resolution of the matter. In cases of urgency, including those which concern perishable goods, the Party complained against shall enter into consultations within 15 days after the date of receipt of the request.

3. The complaining 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.

4. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 109 Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

Article 110 Establishment of Arbitral Tribunals

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against:

- (a) if the Party complained against does not enter into the consultations under Article 108 within 30 days, or within 15 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations; or
- (b) if the Parties fail to resolve the dispute through the consultations under Article 108 within 60 days or within 30 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:

- (a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (b) the factual basis for the complaint.

3. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3. If the Parties fail to agree on the third arbitrator, the Parties shall request the two arbitrators appointed pursuant to paragraph 3 to appoint the third arbitrator. If the arbitrators are not able to reach agreement on the third arbitrator within 30 days after the date of receipt of the request, the Director-General of the World Trade Organization may be requested by either Party to appoint the third arbitrator taking into account the candidates proposed pursuant to paragraph 3.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

6. An arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 111 Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 110:

- (a) should 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 with this Agreement;
- (b) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually satisfactory resolution;
- (c) shall make its award in accordance with this Agreement and applicable rules of international law;
- (d) shall set out, in its award, its findings of law and fact, together with the reasons therefor;
- (e) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 114; and
- (f) cannot, in its award, add to or diminish the rights and obligations of the Parties provided in this Agreement.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

4. Any information obtained by the arbitral tribunal pursuant to paragraph 3 shall be made available to the Parties.

Article 112 Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties.

3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

4. Notwithstanding paragraph 3, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to which such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.

5. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

6. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

7. The arbitral tribunal shall, within 90 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 or 60 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.

8. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

10. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 113 Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 7 and 8 of Article 112 and paragraph 9 of Article 114 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time upon the request of either Party. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties.

Article 114 Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 112.

2. The Party complained against shall, within 30 days after the date of issuance of the award, notify the complaining Party of the period which it assesses to be reasonable and necessary in order to implement the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.

4. If no satisfactory compensation or any alternative arrangement has been agreed within 20 days after the date of expiry of that implementation period pursuant to paragraph 3, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

5. If the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, it may refer the matter to an arbitral tribunal.

6. If the arbitral tribunal to which the matter is referred pursuant to paragraph 5 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

7. The suspension of the application of concessions or other obligations under paragraphs 4 and 6 may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

- (a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;
- (b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;
- (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and
- (d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

8. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 4, 6 or 7 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

9. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3, 4 and 5 of Article 110. Unless the Parties agree a different period, the arbitral tribunal established under this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 115
Modification of Time Periods

Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 116
Expenses

Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless otherwise agreed by the Parties.

Chapter 11
Final Provisions

Article 117
Table of Contents and Headings

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 118
Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 119
General Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following that calendar year in which this Agreement enters into force, and every five years thereafter, unless otherwise agreed by the Parties.

Article 120
Amendment

1. This Agreement may be amended by agreement between the Parties.

2. Such amendment shall be approved by the Parties in accordance with their respective internal procedures, and shall enter into force on the date to be agreed upon by the Parties.