

CHAPTER 18

CONSULTATIONS AND DISPUTE SETTLEMENT

ARTICLE 1801

Scope

1. This Chapter shall apply to the avoidance and settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement except for Chapter 6, Chapter 12 and Chapter 15. In relation to Chapter 11, this Chapter shall only apply to Article 1102.
2. Subject to Paragraph 4, nothing in this Chapter shall affect the rights of the Parties to have recourse to a dispute settlement procedure available under any other international agreement to which they are parties.
3. If a Party decides to have recourse to a dispute settlement procedure under another international agreement, it shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
4. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are parties, that procedure shall be used to the exclusion of any other procedure for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.
5. Paragraph 4 shall not apply where the Parties expressly agree to have recourse to dispute settlement procedures under this Chapter and another international agreement.
6. For the purposes of this Article, a dispute settlement procedure under the WTO Agreement shall be regarded as initiated by a Party's request for a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

第十八章

磋商与争端解决

ARTICLE 1801

范围

1. 本章适用于当事人就本协定第6章、第12章和第15章以外的解释、实施或适用问题所发生的争议的避免和解决。关于第11章，本章仅适用于第1102条。
- 2.除第4段的规定外，本章的任何内容均不影响当事人根据其作为缔约方的任何其他国际协定所享有的诉诸争端解决程序的权利。
3. 如果一方决定根据另一项国际协议寻求争端解决程序，则应在该方采取行动之前，以书面形式通知另一方其意图将争议提交给特定的论坛。
4. 一旦根据本章或任何一方当事人是缔约方的其他国际协议，当事人之间就特定争议启动了争端解决程序，则该程序应优先于该特定争议的任何其他程序。如果根据不同的国际协议存在实质上分离且不同的权利或义务而引起争议，则本段不适用。
5. 在当事人明确同意根据本章和另一项国际协议寻求争端解决程序的情况下，第4段不适用。
6. 根据本条文的定义，根据世界贸易组织协定进行的争端解决程序应被视为由一方根据关于争端解决规则和程序的谅解第6条提出的专家组请求所启动。

ARTICLE 1802

Consultations

1. A Party shall accord adequate opportunity for consultations requested by the other Party with respect to any matter affecting the interpretation, implementation or application of this Agreement.
2. If a request for consultations is made, the Party to which the request is made shall reply to the request within seven days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations of any matter raised in accordance with this Article.

ARTICLE 1803

Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.
2. Good offices, conciliation or mediation may continue while procedures of an arbitral tribunal established in accordance with this Chapter are in progress.

ARTICLE 1804

Request to Establish an Arbitral Tribunal

1. If the consultations referred to in Article 1802 fail to settle a dispute within 60 days of the date after receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to establish an arbitral tribunal.
2. The request to establish an arbitral tribunal shall identify:
 - (a) the specific measures at issue;

ARTICLE 1802

磋商

1. 一方应就影响本协定解释、实施或适用的任何事项，给予另一方请求磋商的充分机会。
2. 如果提出磋商请求，收到请求的当事人应在收到请求之日起七日内予以答复，并在收到请求之日起三十日内进行磋商，以期达成双方均可接受的解决方案。
3. 当事人应尽一切努力通过磋商，就根据本条提出的事项达成双方均可接受的解决方案。

ARTICLE 1803

翰旋、调解和调解

1. 当事人可以随时同意翰旋、调解或调解。他们可以随时开始，也可以随时终止。
2. 翰旋、调解或调解可以在根据本章节设立的仲裁庭的程序进行期间继续进行。

ARTICLE 1804

设立仲裁庭的请求

1. 如果第1802条所述的磋商在收到磋商请求之日起60天内未能解决争议，提出磋商请求的一方当事人可以向另一方当事人提出书面请求设立仲裁庭。
2. 设立仲裁庭的请求应明确：
 - (a) 有关的具体措施；

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

ARTICLE 1805

Establishment of an Arbitral Tribunal

1. An arbitral tribunal shall consist of three members. Each Party shall appoint a member within 30 days after the receipt of the request under Article 1804. The two members appointed shall, within 30 days after the appointment of the second of them, designate by common agreement the third member.
2. The Parties shall, within seven days after the date of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, chair the tribunal.
3. If the third member has not been designated within 30 days after the date of the appointment of the second member, or if one or both of the Parties disapproves the appointment of the third member, the Parties shall consult each other in order to jointly appoint within a further period of 30 days the chair of the arbitral tribunal.
4. An arbitral tribunal shall be regarded as established on the day on which the appointment of the third member of the tribunal has been approved or agreed by the Parties in accordance with this Article.
5. If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the member being replaced and the successor shall have all the powers and duties of the member being replaced.
6. A person appointed as a member of an arbitral tribunal:
 - (a) shall have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;
 - (b) shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence; and
 - (c) shall be independent of, and not be affiliated with or take instructions from, either Party.

- (b) 投诉的法律依据，包括本协定据称被违反的条款以及任何其他相关条款；以及
- (c) 投诉的事实依据。

ARTICLE 1805

仲裁庭的设立

1. 仲裁庭应当由三名成员组成。每方应在收到第1804条规定的请求后30天内任命一名成员。在第二位成员任命后的30天内，两位被任命的成员应通过共同协议指定第三位成员。
2. 各方应在第三位成员指定之日起七天内批准或不予批准该成员的任命，如果获得批准，该成员应主持仲裁庭。
3. 如果在第二位成员任命之日起30天内未指定第三位成员，或者一方或双方不批准第三位成员的任命，各方应相互协商，在进一步的30天内共同任命仲裁庭的主席。
4. 根据本条的规定，仲裁庭应被视为在各方批准或同意任命仲裁庭的第三位成员之日起成立。
5. 如果根据本<文章>任命的<成员>辞职或无法履行职责，应按照为被替换的<成员>任命 successor<成员> 的规定方式任命 successor<成员>， successor<成员> 应拥有被替换的<成员>的所有权力和职责。
6. 被任命为<仲裁庭>的<成员>：
 - (a) 应具备法律、国际贸易、本协定涵盖的其他事项或国际贸易协定项下产生的争议解决的专业知识或经验；(b) 应严格基于客观性、可靠性、公正判断和独立性进行选择；并且(c) 应独立于当事人，且不与任何一方有关联或接受任何一方的指示。

7. A person appointed as chair of an arbitral tribunal shall not be a national of, nor have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

ARTICLE 1806

Functions of Arbitral Tribunals

- 1. An arbitral tribunal established under Article 1804:
 - (a) shall consult the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute;
 - (b) shall make its award in accordance with this Agreement and applicable rules of international law;
 - (c) shall set out, in its award, its findings of law and fact, together with its reasons; and
 - (d) may, in addition to its findings of law and fact, include in its award options for the Parties to consider in implementing the award.
- 2. The award of an arbitral tribunal shall be final and binding on the Parties.
- 3. An arbitral tribunal shall attempt to make its decision, including its award, by consensus but may also make such decisions by majority vote.

ARTICLE 1807

Proceedings of Arbitral Tribunals

- 1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by an arbitral tribunal to appear before it.
- 2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose information submitted by the other Party to an arbitral tribunal which the latter Party has designated as confidential.

7. 被任命为仲裁庭主席的人员不得是任何一方的国民，也不得在其领土内通常居住，不得受雇于任何一方，也不得以任何身份处理该争议。

ARTICLE 1806

仲裁庭的职能

- 1. 根据 第1804条 设立的仲裁庭：
 - (a) 应当根据适当情况咨询当事人，并提供充分的机会以达成争议的相互满意的解决；
 - (b) 应当根据本协定和适用的国际法作出裁决；(c) 应当在其裁决中列明其法律和事实的认定，并说明理由；以及(d) 除了其法律和事实的认定外，还可在其裁决中包括当事人实施裁决时可以考虑的选项。
- 2. 仲裁庭的裁决对当事人具有终局约束力。
- 3. 仲裁庭应尝试通过协商作出其决定，包括其裁决，但也可通过多数票作出此类决定。

ARTICLE 1807

仲裁庭的程序

- 1. 仲裁庭应当举行闭门会议。当事人仅在仲裁庭邀请其出庭时才出席会议。
- 2. 仲裁庭的审议及其提交给仲裁庭的文件应当保密。本条文的内容均不得妨碍一方公开其自身立场或提交的陈述，但一方不得披露向仲裁庭提交的信息，该信息由另一方指定为保密信息。

3. The Parties shall transmit to the tribunal written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:
- (a) for the Party which requested the establishment of the arbitral tribunal, within 21 days after the date of the establishment of that tribunal; and
 - (b) for the other Party, within 21 days after the date of the transmission of the written submission of the Party which requested the establishment of the arbitral tribunal.
4. At its first substantive meeting with the Parties, an arbitral tribunal shall ask the Party which requested the establishment of the tribunal to present its submission. At the same meeting, the arbitral tribunal shall ask the other Party to present its submission.
5. Formal rebuttals shall be made at the second substantive meeting of an arbitral tribunal. The Party which did not request the establishment of the tribunal shall have the right to present its submission first. Before the meeting, the Parties shall submit written rebuttals to the tribunal.
6. An arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting or in writing.
7. The Parties shall make available to an arbitral tribunal a written version of their oral statements.
8. The submissions, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the draft award made in accordance with Article 1809 (2), written versions of oral statements and responses to questions put by an arbitral tribunal, shall be made available to the other Party.
9. An arbitral tribunal shall have no *ex parte* communications concerning a dispute it is considering.
10. At the request of a Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may set. This paragraph does not apply to information and technical advice provided by any person or body as part of the submissions referred to in paragraphs 4 to 6.
11. An arbitral tribunal shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter.

3. 当事人应当向仲裁庭提交书面陈述，其中陈述案件事实和论点，并应在以下时间限制内提交：
- (a) 对于请求设立仲裁庭的当事人，应在仲裁庭设立之日起21日内；以及 (b) 对于另一方当事人，应在请求设立仲裁庭的当事人的书面提交之日起21日内。
4. 在仲裁庭与当事人举行第一次实质性会议时，仲裁庭应要求请求设立仲裁庭的当事人提交其提交内容。在同一会议上，仲裁庭应要求另一方当事人提交其提交内容。
5. 正式反驳应在仲裁庭的第二次实质性会议上进行。未请求设立仲裁庭的当事人有权首先提交其提交内容。在会议前，当事人应向仲裁庭提交书面反驳。
6. 仲裁庭可以随时向当事人提出问题，并要求他们在会议过程中或以书面形式进行解释。
7. 当事人应当向仲裁庭提供其口头陈述的书面版本。
8. 第4至6段的提交的陈述、反驳和陈述应当当着当事人的面进行。每一方的书面陈述，包括根据第1809条第2款对裁决草案所做的任何评论、口头陈述的书面版本以及对仲裁庭提出的问题的回答，应当提供给另一方。
9. 仲裁庭不得就其正在审议的争议进行任何单方面通信。
10. 应一方的要求或自行主动，仲裁庭可以寻求其认为适当的任何个人或机构的情报和技术建议，但需经当事人同意，并遵守当事人可能规定的条款和条件。本段不适用于第4至6段中提到的任何个人或机构作为提交的陈述的一部分提供的情报和技术建议。
11. 仲裁庭应与当事人协商，自行规定其关于当事人陈述权及自身审议的程序，若本章未对此作出规定，则应自行规定。

Suspension or Termination of Proceedings

1. Where the Parties agree, an arbitral tribunal may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitral tribunal has been suspended for more than 12 months, the tribunal's authority for considering the dispute shall lapse unless the Parties agree otherwise.
2. The Parties may agree at any time to terminate the proceedings of an arbitral tribunal established under this Agreement by jointly notifying the chair of that arbitral tribunal.
3. An arbitral tribunal may, at any stage of the proceedings prior to release of its final award, propose that the Parties seek to settle the dispute amicably.

Awards of Arbitral Tribunals

1. Unless the Parties otherwise agree, an arbitral tribunal shall base its award on the submissions and arguments of the Parties and on any information it has obtained in accordance with Article 1807 (10).
2. An arbitral tribunal shall prepare a draft award and accord adequate opportunity for the Parties to review this draft. The Parties may submit to the tribunal written comments on the draft award within 14 days after the date of its receipt. The tribunal shall consider any comments received from the Parties in finalising its award.
3. An arbitral tribunal shall release to the Parties its final award on a dispute within 120 days after the date of its establishment. If the tribunal considers it cannot release its final award within 120 days, it shall inform the Parties in writing of the reasons for the delay, together with an estimate of the period within which it will issue its award.
4. The final award of an arbitral tribunal shall become a public document within 10 days of its release to the Parties.

程序的中止或终止

1. 当事人同意时，仲裁庭可随时中止其工作，中止期限不得超过12个月。若仲裁庭的工作已中止超过12个月，除非当事人另有约定，否则仲裁庭审理争议的权力应终止。
2. 当事人可以随时通过联合通知该仲裁庭的主席来终止根据本协定设立的仲裁庭的程序。
3. 在最终裁决发布之前的程序任何阶段，仲裁庭可以提议当事人友好解决争议。

仲裁庭的裁决

1. 除非当事人另有约定，仲裁庭应依据当事人的提交的陈述和论点，并依据第1807条（10）的规定所获取的任何信息作出裁决。
2. 仲裁庭应准备裁决草案，并给予当事人充分的机会审查该草案。当事人应在收到裁决草案之日起14日内向仲裁庭提交关于该草案的书面意见。仲裁庭应在最终确定其裁决时考虑从当事人收到的任何意见。
3. 仲裁庭应在设立之日起120日内向当事人发布其就争议作出的最终裁决。如果仲裁庭认为其不能在120日内发布最终裁决，应书面通知当事人延迟的原因，并估计其将发布裁决的期限。
4. 仲裁庭的最终裁决应在向当事人发布后的10天内成为公开文件。

Implementation

- 1. The Parties shall promptly comply with an award of an arbitral tribunal.
- 2. A Party shall notify the other Party in writing of any action it proposes to take to implement an award of an arbitral tribunal within 30 days after the date of the receipt of the final award by the Parties.
- 3. If a Party considers that prompt compliance with an award of an arbitral tribunal is impracticable, or if a Party which requested the establishment of an arbitral tribunal considers that an action proposed or subsequently taken by the other Party does not implement the award of the tribunal, the Parties shall immediately enter into consultations with a view to developing a mutually acceptable resolution, such as compensation or any alternative arrangement and agreeing on a reasonable period to implement any such resolution. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to full implementation of the original award.

Compensation and Suspension of Benefits

- 1. If:
 - (a) the Party which requested the establishment of an arbitral tribunal has not received any notice from the other Party under Article 1810 (2); or
 - (b) the Parties are unable to agree on a mutually acceptable resolution under Article 1810 (3) within 30 days of the commencement of consultations under Article 1810 (3); or
 - (c) the Parties have agreed on a mutually acceptable resolution under Article 1810 (3) and the Party which requested the establishment of the arbitral tribunal considers that the other Party has failed to observe the terms of such agreement,

the Party which requested the establishment of an arbitral tribunal may at any time thereafter provide written notice to the other Party that it intends to suspend the application of benefits of equivalent effect to the non-conformity found by the tribunal. The notice shall specify the level of benefits that the Party proposes to suspend. The Party which requested the establishment of an arbitral tribunal may begin suspending benefits 30 days after the date on which it provides notice to the other Party.

实施

- 1. 当事人应迅速遵守仲裁庭裁决。
- 2. 一方应在仲裁庭最终裁决送达后30天内，以书面形式通知另一方其拟采取的实施仲裁庭裁决的行动。
- 3. 如果一方认为迅速履行仲裁庭裁决不可行，或者请求设立仲裁庭的一方认为另一方提出的或随后采取的行动未实施仲裁庭的裁决，当事人应立即进行磋商，以寻求相互可接受的解决方案，例如补偿或任何替代安排，并商定一个合理的期限来实施任何此类解决方案。补偿和任何替代安排都是临时措施，两者均不优于原裁决的完全履行。

补偿和福利暂停

- 1. 如果：
 - (a) 请求设立仲裁庭的当事人未收到另一方根据第1810条第（2）款发出的任何通知；或 (b) 双方在开始根据第1810条第（3）款进行磋商后的30天内，无法就相互可接受的解决方案达成一致；或 (c) 双方已根据第1810条第（3）款就相互可接受的解决方案达成一致，而请求设立仲裁庭的当事人认为另一方未能遵守该协议的条款，

申请设立仲裁庭的当事人可在之后随时向另一方提供书面通知，表明其打算暂停仲裁庭发现的不符所具有同等效果的福利的适用。通知应说明当事人拟暂停的福利水平。申请设立仲裁庭的当事人可在向另一方提供通知之日起30天后开始暂停福利。

2. In considering what benefits to suspend under this Article:
- (a) the Party which requested the establishment of an arbitral tribunal shall first seek to suspend the application of benefits in the same sector or sectors as affected by the matter that the tribunal has found to be inconsistent with this Agreement;
 - (b) the Party which requested the establishment of an arbitral tribunal may suspend the application of benefits in other sectors if it considers that it is not practicable or effective to suspend the application of benefits in the same sector; and
 - (c) the Party which requested the establishment of the arbitral tribunal shall aim to ensure that the level of suspension of benefits is of equivalent effect to the non-conformity found by the tribunal.

Any suspension of benefits under this Article shall be temporary and shall only be applied until such time as the Party that must implement an arbitral tribunal's award has done so, or until a mutually satisfactory solution is reached.

3. If the Party complained against considers that:
- (a) the level of benefits that the other Party has proposed to suspend under paragraph 2 is excessive; or
 - (b) it has eliminated the non-conformity found by the tribunal

it may, within 30 days after the other Party provides notice under Paragraph 1, request that the tribunal be reconvened to consider this matter. The Party complained against shall deliver its request in writing to the other Party. The tribunal shall reconvene within 30 days after delivery of the request to the other Party and shall present its determination to the Parties within 90 days after it reconvenes. If the tribunal determines that the level of benefits proposed to be or actually suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the non-conformity found by the tribunal, adjusted to reflect any loss sustained by a Party as a result of excessive suspension.

4. The compliance tribunal's award shall be final and binding on the Parties.

ARTICLE 1812

Expenses

Each Party shall bear the costs of its appointed member and its own expenses. The costs of the chair of an arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

2. 在考虑根据本条暂停哪些福利时:
- (a) 请求设立仲裁庭的当事人应当首先寻求暂停同一部门或受争议事项影响的部门中福利的适用; (b) 请求设立仲裁庭的当事人如果认为在同一部门暂停福利的适用不可行或无效, 则可以在其他部门暂停福利的适用; 以及 (c) 请求设立仲裁庭的当事人应当力求确保福利暂停的水平具有 与仲裁庭发现的不符具有 同等效果。

根据本条规定的任何福利暂停都应当是暂时的, 并且仅应适用至必须执行仲裁庭裁决的当事人已经执行完毕, 或者双方达成双方均可接受的解决方案为止。

3. 如果被投诉的当事人认为:
- (a) 另一方根据第2段提议暂停的福利水平过高; 或 (b) 它已经消除了仲裁庭发现的不符

它可以在另一方根据第1段提供通知后的30天内请求仲裁庭重新开庭以审议此事。被投诉的当事人应以书面形式将其请求提交给另一方。仲裁庭应在收到请求给另一方的30天内重新开庭, 并在重新开庭后90天内向当事人提出其决定。如果仲裁庭认定提议或实际暂停的利益水平过高, 则应确定其认为对仲裁庭发现的不符具有等效效果的利益水平, 并调整以反映任何一方因过度暂停而遭受的损失。

4. 合规仲裁庭的裁决对当事人具有终局性和约束力。

ARTICLE 1812

费用

每一方应承担其指定成员和自身费用的成本。仲裁庭主席的成本及其进行程序相关其他费用应由双方平均承担。