

CHAPTER 10 DISPUTE SETTLEMENT

Article 10.1: Definitions

For purposes of this Chapter:

arbitration panel means a panel established under Article 10.7;

arbitrator means a member of an arbitration panel established under Article 10.7;

candidate means an individual who is under consideration for appointment as the third arbitrator under Article 10.9;

complaining Party means a Party that requests the establishment of an arbitration panel under Article 10.7;

Party complained against means the Party that is alleged to be in violation of this Agreement, as referred to in Article 10.3; and

proceeding, unless otherwise specified, means an arbitration panel proceeding under this Chapter.

Article 10.2: Objective

1. The objective of this Chapter is to provide an effective, efficient, and transparent process for the avoidance or settlement of disputes arising under this Agreement.
2. 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 arrive at a mutually satisfactory resolution of any matter raised in accordance with this Chapter.

Article 10.3: Scope

Except as otherwise provided for in this Agreement or agreed by the Parties, this Chapter shall apply:

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation and application of this Agreement; or

- (b) wherever a Party considers that:
 - (i) a measure of the other Party is inconsistent with its obligations under this Agreement; or
 - (ii) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 10.4: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora, unless the forum selected fails for procedural or jurisdictional reasons to initiate a dispute settlement proceeding.

Article 10.5: Consultations

1. Each Party may request consultations with respect to any matter arising under this Agreement, pursuant to Article 10.3.
2. A request for consultations shall be submitted in writing and shall give the reasons for the request, including the identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.
3. If a request for consultations is made, the Party complained against shall reply within 10 days of the date of the receipt of the request. The Parties shall enter into consultations in good faith within 30 days of the date of receipt of the request with a view to reaching a mutually satisfactory solution. Consultations shall take place, unless the Parties otherwise agree, in the territory of the Party complained against.
4. In cases of urgency, including those concerning perishable goods, the Parties shall enter into consultations within 15 days of the date of receipt of the request by the Party complained against.
5. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure at issue might affect the

interpretation and application of this Agreement, and give confidential treatment to the information exchanged during consultations.

6. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

Article 10.6: 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 both Parties and be terminated at any time upon request of either Party.

2. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.

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

Article 10.7: Establishment of the Arbitration Panel

1. The complaining Party that made a request for consultations under Article 10.5 may request in writing the establishment of an arbitration panel to the Party complained against,

- (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations in accordance with paragraphs 3 and 4 of Article 10.5; or
- (b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request, the measure or other matter at issue, and the factual and legal basis for the complaint sufficient to present the problem clearly.

Article 10.8: Terms of Reference of the Arbitration Panel

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 10.7, and to make findings of law and fact together with the reasons for the resolution of the dispute, conclusions, and recommendations”.

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

Article 10.9: Composition of the Arbitration Panel

1. Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.

2. Each Party shall 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 arbitration panel within 30 days of the date of receipt of the request for the establishment of the arbitration panel. The Parties shall endeavour to agree on and appoint the third arbitrator who shall serve as the chair of the arbitration panel within 45 days of the date of receipt of the request for the establishment of the arbitration panel, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the Parties shall meet within seven days and select the chair by lot from the list of candidates proposed by both Parties.

3. The candidates for the third arbitrator referred to in paragraph 2 shall not be nationals of either Party, nor have their usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.

5. All arbitrators shall have expertise or experience in law, international trade or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall

be independent, serve in his or her individual capacities and not be affiliated with, nor take instructions from, either Party or organization related to the dispute, and shall comply with Annex 10-B.

6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 10-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.

7. If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceeding, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

Article 10.10: Proceedings of the Arbitration Panel

1. The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international laws, taking due account of the interpretation adopted by the Parties.

6. The arbitration panel shall aim to make its decisions, including its

reports, by consensus but may also make its decisions, including its report, by majority vote.

7. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained from any relevant source or experts and an opportunity to provide comments.

8. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

9. Notwithstanding paragraph 8, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions delivered by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

10. The reports of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement, and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

11. The reports of the arbitration panel shall contain both the descriptive parts summarizing the submissions or arguments of the Parties, and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its reports. The findings and determinations and, if applicable, any recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

12. The venue for the arbitration panel proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitration panel proceedings to be held in the capital of the Party complained against.

Article 10.11: Suspension or Termination of Proceedings

1. Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon request of a Party, the arbitration panel proceedings shall be resumed after such suspension. In the event of such suspension, the

timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If, in any case, each period of the suspension of the work of the arbitration panel exceeds 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree. This lapse shall not prejudice the rights of the complaining Party to request, at a later stage, the establishment of an arbitration panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of an arbitration panel by jointly so notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties.

3. Before the arbitration panel makes its decision, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

Article 10.12: Interim Report

1. Unless the Parties otherwise agree, the arbitration panel shall, within 90 days of the date of the establishment of the arbitration panel, issue to the Parties an interim report containing the descriptive parts, the findings and determinations, and, if applicable, any recommendations as to:

- (a) whether the measure at issue is inconsistent with the obligations of this Agreement; or
- (b) whether a Party has otherwise failed to carry out its obligations under this Agreement,

as well as the applicability of the relevant provisions and the basic rationale behind any findings.

2. Where the arbitration panel considers that the deadline for interim report cannot be met, it may extend the period with the consent of the Parties with the written notification 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 120 days after the date of the establishment of the arbitration panel.

3. Either Party may submit written comments to the arbitration panel on its interim report within 15 days of the issuance of the report. 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.

Article 10.13: Final Report

1. Unless the Parties otherwise agree, the arbitration panel shall issue a final report to the Parties within 30 days of the date of issuance of the interim report.
2. Where the arbitration panel considers that the deadline for its final report cannot be met, it may extend the period with the consent of the Parties with the written notification stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances should the final report be issued later than 150 days after the date of the establishment of the arbitration panel.
3. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under paragraph 1 of Article 10.12 and paragraph 1 of Article 10.13.

Article 10.14: Implementation of the Final Report

1. The determinations of the arbitration panel in the final report shall be final and binding on the Parties and shall not be subject to appeal.
2. If, in its final report, the arbitration panel determines that the Party complained against has not conformed to its obligations under the relevant provisions of this Agreement, unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity immediately, or if this is not practicable, within a reasonable period of time.
3. The reasonable period of time referred to in paragraph 2 shall be mutually agreed by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the date of issuance of the final report of the arbitration panel, either Party may refer the matter to the original arbitration panel, which shall determine the reasonable period of time.
4. The Party complained against shall notify to the complaining Party the implementing measures that it has taken to comply with the determinations of the arbitration panel, before the expiry of the reasonable period of time agreed by the Parties or determined by the original arbitration panel in accordance with paragraph 3. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the final report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to the original arbitration panel.

5. The arbitration panel that is established for purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 10.9. The arbitration panel shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

Article 10.15: Non-Implementation, Compensation and Suspension of Concessions or Other Obligations

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies to the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to paragraph 4 of Article 10.14 determines that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days of the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time, provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement. The complaining Party may begin suspending concessions or other obligations 30 days after the notification of such suspension.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- (a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that in which the report of the

arbitration panel referred to in Article 10.13 has found a failure to comply with the obligations under this Agreement;

- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based; and
- (c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

5. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, or 4 have not been met, it may refer the matter to an arbitration panel.

6. The arbitration panel that is established for purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 10.9. The arbitration panel established under this Article shall issue its report to the Parties within 45 days after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

Article 10.16: Rules of Procedure

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure for Arbitration set out in Annex 10-A. The Parties in consultation with the arbitration panel may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2. Any period of time or other rule of procedure for arbitration panel provided for in this Chapter and Annex 10-A may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Article 10.17: Expenses

1. Unless the Parties otherwise agree, each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs.
2. Unless the Parties otherwise agree, the costs of the chair of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal shares by the Parties.

Article 10.18: Annexes

Annexes 10-A and 10-B shall form an integral part of this Chapter.