

CHAPTER 13

DISPUTE SETTLEMENT

Article 143: Cooperation

The Parties shall at all times endeavor 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 that might affect its operation when a dispute occurs.

Article 144: Scope of Application

Unless otherwise provided in this Agreement, wherever a Party considers that the other Party has failed to carry out its obligations in this Agreement, the dispute settlement provisions of this Chapter shall apply.

Article 145: Choice of Forum

1. Where a dispute arises under this Agreement and under other agreements including another free trade agreement to which the Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested an Arbitral Tribunal under an agreement referred to in the paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 146: Consultation

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.
2. The request for consultations shall be submitted in writing and 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. The complaining Party shall deliver the request to the Party complained against.
3. If a request for consultations is made, the Party complained against shall reply to

the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of not more than 30 days after the date of receipt of the request, with a view of reaching a mutually satisfactory solution. If the Party complained against does not respond within the aforesaid 10 days, or does not enter into consultations within the aforesaid 30 days, then the complaining Party may proceed directly to request the establishment of an Arbitral Tribunal.

4. The consultations shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

Article 147: Establishment of an Arbitral Tribunal

1. If the consultation referred to in Article 146 fails to resolve a matter within 60 days after receipt of the request for consultations, the complaining Party may request, in writing, the establishment of an Arbitral Tribunal to consider the matter.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measures at issue and provide brief summary of the legal basis of the complaining Party sufficient to present the problem clearly, and shall deliver the request to the other Party. An Arbitral Tribunal is established upon receipt of a request.

Article 148: Composition of an Arbitral Tribunal

1. An Arbitral Tribunal shall be composed of three members.

2. Within 15 days after the establishment of an Arbitral Tribunal, each Party shall appoint one member of the Arbitral Tribunal respectively.

3. The Parties to the dispute shall designate by common agreement the appointment of the third arbitrator within 30 days after the establishment of an Arbitral Tribunal. The arbitrator thus appointed shall chair the Arbitral Tribunal.

4. If any member(s) of the Arbitral Tribunal has not been designated or appointed within 30 days after the establishment of an Arbitral Tribunal, at the request of any Party to the dispute, the Director-General of the WTO is expected to designate the member(s) within a further 30 days. If one or more members are designated according to this paragraph, the Director-General of the WTO is expected to designate the Chair of an Arbitral Tribunal.

5. The Chair of the Arbitral Tribunal shall not be a national of any of the Parties to the dispute, nor have his or her usual place of residence in the territory of any of the

Parties to the dispute, nor be employed by any of the Parties to the dispute, nor have dealt with the matter in any capacity.

6. All arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the Arbitral Tribunal shall be suspended during the appointment of the successor.

Article 149: Functions of Arbitral Tribunal

1. The function of an Arbitral Tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.
2. Where an Arbitral Tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement.
3. The Arbitral Tribunal shall consider this Agreement in accordance with customary rules of interpretation of public international law. The Arbitral Tribunal, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

Article 150: Rules of Procedure of an Arbitral Tribunal

1. Unless the Parties otherwise agree, the Arbitral Tribunal proceedings shall be conducted in accordance with the Rules of Procedure set out in Annex 9.

2. The Arbitral Tribunal shall, apart from the rules set out in this Article, regulate its own procedures in relation to the rights of the Parties to the dispute to be heard and its deliberations in consultation with the Parties to the dispute.

3. The Arbitral Tribunal shall take its decisions by consensus; provided that where an Arbitral Tribunal is unable to reach consensus it may take its decisions by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the Arbitral Tribunal report by individual arbitrators shall be anonymous.

4. Unless the Parties to the dispute otherwise agree within 20 days from the date of the establishment of the Arbitral Tribunal, the terms of reference 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 Arbitral Tribunal pursuant to Article 147 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

5. Unless otherwise agreed by the Parties, the remuneration of the arbitrators and other expenses of the Arbitral Tribunal shall be borne by the Parties to the dispute in equal shares.

Article 151: Suspension or Termination of Proceedings

1. The Parties to the dispute may agree that the Arbitral Tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the Arbitral Tribunal has been suspended for more than 12 months, the terms of reference for establishment of the Arbitral Tribunal shall lapse unless the Parties to the dispute otherwise agree.

2. The Parties to the dispute may agree to terminate the proceedings of an Arbitral Tribunal.

Article 152: Report of Arbitral Tribunal

1. The Arbitral Tribunal shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute.

2. The Arbitral Tribunal shall present to the Parties an initial report within 90 days from the date of appointment of the final arbitrator. Each Party may submit written

comments to the Arbitral Tribunal on its initial report within 14 days of receipt of the report.

3. In exceptional cases, if the Arbitral Tribunal considers it cannot present its initial report within 90 days, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.

4. Unless the Parties to the dispute otherwise agree, the Arbitral Tribunal shall present to the Parties a final report within 45 days of presentation of the initial report.

5. The Arbitral Tribunal's report is final and has no binding force except between the Parties to the dispute and in respect of that particular case to which the report is referred to.

6. The final report shall be made available to the public no later than 15 days after the issuance of the report, subject to the protection of confidential information, unless a Party to the dispute decides not to do so.

Article 153: Implementation of Arbitral Tribunal's Report

1. If in its report the Arbitral Tribunal concludes that a Party has not conformed to its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

2. Unless the Parties to the dispute reach agreement on compensation or other mutually satisfactory solution, the Party complained against shall implement the recommendations contained in the report of the Arbitral Tribunal.

3. The Party complained against shall implement the recommendations contained in the report of the Arbitral Tribunal within a reasonable period of time if it is not practicable to comply immediately.

Article 154: Reasonable Period of Time

1. The reasonable period of time shall be mutually determined by the Parties to the dispute, or where the Parties to the dispute fail to agree on the reasonable period of time within 45 days of the issuance of the Arbitral Tribunal's report, either Party may, to the extent possible, refer the matter to the original Arbitral Tribunal, which shall determine the reasonable period of time.

2. The Arbitral Tribunal shall provide its report to the Parties to the dispute within 60 days after the date of the referral of the matter to it. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.
3. The reasonable period of time normally shall not exceed 15 months from the date of issuance of the Arbitral Tribunal's report.

Article 155: Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations of the Arbitral Tribunal, such dispute shall be referred to an Arbitral Tribunal proceeding, including wherever possible by resort to the original Arbitral Tribunal.
2. The Arbitral Tribunal shall provide its report to the Parties to the dispute within 60 days after the date of the referral of the matter to it. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.
3. Articles concerning procedure of Arbitral Tribunal in this Chapter shall apply *mutatis mutandis* to the procedure under this Article.

Article 156: Suspension of Concessions or Other Obligations

1. If the Arbitral Tribunal under the Article 155 finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the Arbitral Tribunal within the reasonable period of time established, or the Party complained against express in writing that it will not implement the recommendations, and the Parties to the dispute fail to reach an agreement on compensation, within 20 days after entering into negotiations for compensation, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.
3. In considering what concessions or other obligations to be suspended:
 - (a) the complaining Party shall first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the Arbitral Tribunal has found to be inconsistent with the obligations derived of this Agreement; and
 - (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s), it may suspend concessions or other obligations in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.
4. Upon written request of the Party concerned, the original Arbitral Tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2. If the Arbitral Tribunal cannot be established with its original members, the proceeding set out in Article 148 shall be applied.
5. The Arbitral Tribunal shall present its determination within 60 days from the request made pursuant to paragraph 4, or if an Arbitral Tribunal cannot be established with its original members, from the date on which the last arbitrator is appointed.
6. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitral Tribunal's determination pursuant to this Article.

Article 157: Post Suspension

1. Without prejudice to the procedures in Article 156, if the Party complained against considers that it has eliminated the non-conformity that the Arbitral Tribunal has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original Arbitral Tribunal within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.
2. The Arbitral Tribunal shall present its report within 60 days after the referral of the matter. If the Arbitral Tribunal concludes that the Party complained against has

eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 158: Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.