

CHAPTER 21

DISPUTE SETTLEMENT

Article 21.1: 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 21.2: Scope of Application⁵²

Except as otherwise provided in this Agreement, wherever a Party considers that a measure of the other Party is inconsistent with its obligations under this Agreement or the other Party has otherwise failed to carry out its obligations under this Agreement, the dispute settlement provisions of this Chapter shall apply.

Article 21.3: Choice of Forum

1. Where a dispute regarding the same measure arises under this Agreement and under any other agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested establishment of, or otherwise referred a matter to, a panel or tribunal under an agreement referred to in paragraph 1, the forum selected with respect to the same measure shall be used to the exclusion of other fora.

Article 21.4: Consultations

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 made in writing and shall set out the reasons for the request, including identification of the measure at issue and an

⁵² For greater certainty, this Chapter does not apply to proposed measures and/or claims in cases where there is no violation (nullification or impairment of a benefit in cases where there is no violation of the provisions of the Treaty).

indication of the legal basis for the complaint. The complaining Party shall deliver the request to the responding Party.

3. If a request for consultations is made, the responding Party shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within a period of no more than:

(a) 15 days after the date of receipt of the request for urgent matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

4. If the responding Party does not reply or enter into consultations within the timeframe specified in paragraph 3, then the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

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

Article 21.5: Good Offices, Conciliation and Mediation

1. The Parties may at any time voluntarily agree to good offices, conciliation and mediation. These procedures may begin at any time and be terminated at any time.

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

Article 21.6: Establishment of an Arbitral Tribunal

1. If the consultation referred to in the Article 21.4 fails to resolve a matter within 60 days or 30 days in relation to urgent matters concerning perishable goods, 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 a brief summary of the legal basis of the complaint sufficient to present the problem clearly, and shall deliver the request to the responding Party. An arbitral tribunal is established upon receipt of a request.

Article 21.7: Composition of an Arbitral Tribunal

1. An arbitral tribunal shall comprise three members.

2. Within 15 days after the establishment of an arbitral tribunal, each Party shall appoint one arbitrator of the arbitral tribunal respectively.
3. The Parties shall appoint by common agreement 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 arbitrator of the arbitral tribunal has not been appointed within 30 days after the establishment of an arbitral tribunal, either Party may request that the Director-General of the WTO designate an arbitrator within 30 days of that request. If one or more arbitrators are designated according to this paragraph, the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal. In the event that the Director General of the WTO is a national of either Party or unable to perform this task, the Deputy Director-General of the WTO who is not a national of either Party shall be requested to perform such task.
5. The chair of the arbitral tribunal shall:
 - (a) not be a national of either Party;
 - (b) not have his or her usual place of residence in the territory of either Party;
 - (c) not be employed by either Party; and
 - (d) not 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, either 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 or the document that is in force, unless otherwise agreed by the Parties; and
 - (e) not have participated in the dispute in any other capacity in accordance with Article 21.5.
7. If an arbitrator appointed under this Article resigns or becomes unable to act, a

successor shall be appointed in the same manner and timeframe 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 replacement of the successor.

8. The procedures set out in this Article shall apply in those cases where the original arbitral tribunal, or some of its members, are unable to reconvene pursuant to Articles 21.13, 21.14, 21.15 and 21.16. In these cases, the period for notifying the report shall be counted from the date on which the last arbitrator is appointed.

Article 21.8: Functions of Arbitral Tribunal

1. The function of an arbitral tribunal is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Except as the Parties 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 21.6 and to make findings of law and fact together with the reasons as well as recommendations, if any, for the resolution of the dispute."

3. Where an arbitral tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.

4. 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 21.9: Rules of Procedure of an Arbitral Tribunal

1. Except as the Parties agree otherwise, the arbitral tribunal shall follow the rules of procedure set out in Annex and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with Annex.

2. Except as the Parties otherwise agree, the remuneration of the arbitrators and other expenses of the arbitral tribunal shall be borne by the Parties in equal shares.

Article 21.10: Suspension or Termination of Proceedings

1. The Parties 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 authority for establishment of the arbitral tribunal shall lapse except as the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings of an arbitral tribunal.

Article 21.11: Report of the Arbitral Tribunal

1. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and other information, if any, it has obtained pursuant to paragraph 14 of Annex.
2. Except as the Parties to the dispute otherwise agree, the arbitral tribunal shall issue the initial report to the Parties within 120 days after the date of its composition or in case of urgent matters concerning perishable goods, within 90 days after the date of its composition.
3. In exceptional cases, if the arbitral tribunal considers it cannot issue its initial report within 120 days or within 90 days in case of urgent matters concerning perishable goods, 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 report. Any delay shall not exceed a further period of 30 days except as the Parties otherwise agree.
4. Each Party may submit written comments to the arbitral tribunal within 15 days of the issuance of the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitral tribunal shall present the Parties its final report within 30 days of issuance of the initial report, except as the Parties otherwise agree.
5. The arbitral tribunal shall make every effort to make its decisions by consensus. If the arbitral tribunal is unable to reach consensus, it may make its decision by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the arbitral tribunal's report by individual arbitrators shall be anonymous.
6. The final report of the arbitral tribunal is final and has no binding force except between the Parties and in respect of the matter to which the report refers.
7. Except as the Parties otherwise agree, the final report shall be made available to the public no later than 15 days after its issuance to the Parties, subject to the protection of confidential information.

Article 21.12: Implementation of Arbitral Tribunal's Final Report

1. Where 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 reach agreement on compensation or other mutually satisfactory solution, the responding Party shall implement the recommendations and rulings in the final report of the arbitral tribunal. If it is not practicable to comply immediately, the responding Party shall implement the recommendations and rulings within a reasonable period of time.

Article 21.13: Reasonable Period of Time

1. The reasonable period of time referred to in Article 21.12 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the issuance of the arbitral tribunal's final 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 determination to the Parties 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 in writing of the reasons for the delay together with an estimate of the period within which it will provide its determination. Any delay shall not exceed a further period of 30 days except as the Parties otherwise agree.
3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitral tribunal's final report.

Article 21.14: Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations and rulings of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures under this Chapter, including wherever possible by resort to the original arbitral tribunal.
2. The arbitral tribunal shall provide its report to the Parties 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 in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. Any delay shall not exceed a further period of 30 days except as the

Parties otherwise agree.

Article 21.15: Suspension of Concessions or Other Obligations

1. If the arbitral tribunal under Article 21.14 finds that the responding Party fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations and rulings of the arbitral tribunal within the reasonable period of time established, or the responding Party express in writing that it will not implement the recommendations and rulings, such Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 20 days after entering into negotiation for compensation, or if no such request has been made, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the responding Party 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 suspend:
 - (a) the complaining Party should 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 under 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 responding Party, 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 and/or whether paragraph 3 has not been followed. If the arbitral tribunal cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 21.7.
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 21.16: Post Suspension

1. Without prejudice to the procedures in Article 21.15, if the responding Party 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 issue its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the arbitral tribunal concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 21.17: Private Rights

Neither 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.

ANNEX 21

RULES OF PROCEDURE OF ARBITRAL TRIBUNAL

First Written Submissions

1. The complaining Party is proposed to deliver its first written submission no later than 20 days after the appointment of the last arbitrator. The Responding Party is proposed to deliver its first written submission no later than 30 days after the date of delivery of the complaining Party's first written submission, except as the arbitral tribunal otherwise decides.
2. A Party shall provide a copy of its first written submission to each of the arbitrators and to the other Party. A copy of the documents shall also be provided in electronic format.

Hearings

3. The chair of the arbitral tribunal shall fix the date and time of the hearing after consultation with the Parties and other members of the arbitral tribunal. The venue of the hearings shall be agreed by the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the first hearing to be held in the territory of the Party complained against. The chair of the arbitral tribunal shall notify in writing to the Parties of the date, time and venue of the hearing. Unless either Party disagrees, the arbitral tribunal may decide not to convene a hearing.
4. The arbitral tribunal may convene additional hearings.
5. All arbitrators shall be present at hearings.
6. The hearings of the arbitral tribunal shall be held in closed session.

Supplementary Written Submissions

7. Within 20 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing. The supplementary written submissions shall be delivered in accordance with paragraph 2 of these Rules.

Questions in Writing

8. The arbitral tribunal may at any time during the proceedings put questions in

writing to the Parties.

9. A Party shall deliver the written reply to the arbitral tribunal and the other Party in accordance with the timetable established by the arbitral tribunal. Each Party shall be given the opportunity to provide written comments on the reply of the other Party.

Confidentiality

10. The arbitral tribunal's hearings and the documents submitted to it shall be kept confidential. Nothing in this Chapter shall preclude a Party from disclosing statements of its own positions to the public. The information submitted by a Party to the arbitral tribunal which that Party has designated as confidential shall be treated as confidential.

***Ex parte* Contacts**

11. The arbitral tribunal shall not meet or contact a Party in the absence of the other Party.

12. No Party may contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators.

13. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or both Parties in the absence of other arbitrators.

Role of Experts

14. Upon request of a Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as such Parties may agree. Any information so obtained shall be provided to the Parties for comments.

Working Language

15. Except as otherwise agreed by the Parties, the working language of the dispute settlement proceedings shall be English.