

CHAPTER 11

DISPUTE SETTLEMENT

Article 11.1: Definitions

For the purposes of this Chapter:

complaining Party means any Party that requests the establishment of a panel under Article 11.8 (Establishment of a Panel);

consulted Party means the Party that has received a request for consultations under Article 11.6 (Consultations);

consulting Party means the Party that requests consultations under Article 11.6 (Consultations);

DSU means the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, set out in Annex 2 of the WTO Agreement;

panel means a panel established under Article 11.8 (Establishment of a Panel);

panelist means a member of a panel established under Article 11.8 (Establishment of a Panel);

perishable goods means a good that rapidly decays due to its natural characteristics, in particular in the absence of appropriate storage conditions;

proceeding means a panel proceeding under this Chapter, unless otherwise specified;

responding Party means a Party that has been complained against under Article 11.8 (Establishment of a Panel); and

Rules of Procedure for Panels means the rules referred to in Article 11.17 (Rules of Procedure for Panels) and established in accordance with Article 10.2 (Institutional Provisions - Functions of the Joint Commission).

Article 11.2: General Provisions

1. The Parties shall endeavor to agree on the interpretation and application of this Agreement and shall make every effort through cooperation and dialogue to reach, in good faith, a mutually satisfactory resolution of any matter that may affect its operation or application.
2. The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

Article 11.3: Scope

Unless otherwise provided in this Agreement, this Chapter shall apply:

- (a) With respect to the avoidance or settlement of any dispute that arises between the Parties regarding the interpretation or application of this Agreement; or
- (b) When a Party considers that any measure of the other Party is inconsistent with its obligation of this Agreement or that the other Party has otherwise failed to carry out its obligation under this Agreement.

Article 11.4: Urgent Circumstances

1. In urgent circumstances¹, unless otherwise provided in this Chapter, the timeframe established in this Chapter shall be halved.
2. The panel shall apply the timeframe established in Article 11.6 (Consultations) and Article 11.8 (Establishment of a Panel) when the complaining Party indicates this in the request for establishment of the panel.

Article 11.5: Choice of Forum

1. If a dispute regarding a matter arises under this Agreement and under another international trade agreement to which the disputing Parties are parties, including the WTO Agreement, the complaining Party may select the forum in which to institute a dispute settlement proceeding.
2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1 to settle the dispute, the forum selected shall be used to the exclusion of other fora.
3. If the complaining Party has, with regard to a particular measure, initiated a dispute settlement proceeding either under this Chapter or under the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. Moreover, the complaining Party shall not initiate dispute settlement proceedings under this Chapter and under the WTO Agreement, unless substantially different obligations are in dispute, or unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation, provided that the failure of the forum is not the result of a failure of a disputing Party to act diligently.
4. This Article shall not apply if the Parties agree in writing that this Article shall not apply to a particular dispute.

¹ For the purposes of this Chapter, it is understood that disputes related to perishable goods are urgent circumstances.

Article 11.6: Consultations

1. The Parties shall endeavor to agree on the interpretation and application of the provisions of this Agreement and to resolve any dispute thereof by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations, with respect to any matter described in Article 11.3 (Scope), by means of a written request to the contact point of the other Party, designated under Article 10.5 (Institutional Provisions - Contact Points), and shall give the reasons for the request, including identification of the measures or other matters at issue, and an indication of the factual and legal basis of the complaint, including the applicable provisions of the Agreement and the reasons for the applicability of those provisions. The consulted Party shall reply within 10 days of the date of the receipt of the request.
3. Consultations shall be held no later than 30 days after the date of receipt of the request and shall be deemed concluded 60 days after the date of receipt of the request, unless the Parties involved in consultations agree otherwise. Consultations on matters of urgency, including those regarding perishable goods, shall be held no later than 15 days after the date of receipt of the request, and shall be deemed concluded 30 days after the date of receipt of the request, unless the Parties involved in consultations agree otherwise.
4. Consultations may be held in person or by any technological means available to the Parties. If consultations are held in person, they shall be held alternatively in the territory of each Party, with the first meeting held in the territory of the consulted Party, unless the Parties involved in consultations agree otherwise. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.
5. If consultations are not held within the timeframe laid down in paragraph 3, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of a panel in accordance with Article 11.8 (Establishment of a Panel).
6. In consultations under this Article, a Party may request that the other Party make available personnel of its government agency or other regulatory body who have expertise in the matter at issue.

Article 11.7: Good Offices, Conciliation, or Mediation

1. The Parties may, at any time, agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation. Procedures for good offices, conciliation, or mediation may begin at any time. They may be suspended or terminated at any time upon the request of either the complaining Party or the responding Party.
2. If the disputing Parties so agree, good offices, conciliation, or mediation may continue while the proceedings of the panel provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation, or 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 other proceeding.

Article 11.8: Establishment of a Panel

1. The consulting Party under Article 11.6.2 (Consultations), may request, by means of a written notice addressed to the contact point of the responding Party, the establishment of a panel if the Parties fail to resolve the matter within:

- (a) the timeframe established in Article 11.6.3 (Consultations); or
- (b) any other period as the Parties may agree.

2. The complaining Party shall include in the request to establish a panel an identification of the specific measure or other matter at issue and a brief summary of the factual and legal basis of the complaint, including the applicable provisions of the Agreement and the reasons for the applicability of those provisions, sufficient to present the problem clearly.

3. A panel shall be established upon receipt of the request.

4. The date of the establishment of a panel shall be the date on which the third panelist is appointed, according to Article 11.9 (Composition of Panels).

11.9: Composition of Panels

1. The panel shall be composed of three panelists, including a chair, in a manner consistent with this Chapter and the Rules of Procedure for Panels, unless the Parties otherwise agree.

2. Each disputing Party shall appoint a panelist within 30 days after the receipt of the request under Article 11.8 (Establishment of a Panel) and propose a list of up to three candidates to serve as the third panelist who shall be the chair in case is not appointed. The two appointed panelists shall designate by common agreement the third panelist within 15 days after the appointment of the second panelist. The Parties shall, within seven days after the date of the designation of the third panelist, approve or disapprove the appointment of that panelist, who shall, if approved, chair of the panel and not fall under any of the following criteria:

- (a) being a national of Indonesia or Peru;
- (b) having usual place of residence in the territory of a Party;
- (c) be employed by either Party; or

(d) have dealt with the dispute in any capacity.

3. If the chair appointment has not been made within 45 days after the date of receipt of the request for the establishment of a panel, the chair shall be appointed, on request of either Party, by lot from the list of the candidates proposed in accordance with paragraph 2. The appointment by lot shall be undertaken within seven days after the date of receipt of the request for appointment by lot, unless the Parties otherwise agree. If more than one panelist, including the chair, is to be selected by lot, the chair shall be selected first.

4. All panelists shall:

- (a) comply with the Code of Conduct for Panelists established in accordance with Article 10.2 (Institutional Provisions – Functions of the Joint Commission);
- (b) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (c) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;
- (d) be independent of, and not be affiliated with or take instructions from a Party;
- (e) not have been involved in an alternative dispute settlement proceeding referred to in Article 11.7 (Good Offices, Conciliation, or Mediation) regarding the same dispute unless the disputing Parties agree otherwise; and
- (f) be nationals of states having diplomatic relations both with Indonesia and Peru.

5. Exclusion of a panelist shall take place in case of violation of the Code of Conduct for Panelists and in accordance with the procedures detailed in the Rules of Procedure for Panels. If a panelist has failed to comply with the Code of Conduct for Panelists, the Parties may remove the panelist, waive the violation or request the panelist to ameliorate the violation within a specified period of time. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panelist may continue to serve.

6. If a panelist appointed under this Article resigns or becomes unable to serve, a successor panelist shall be appointed within 30 days, or within 15 days in cases of urgency, in accordance with the procedure as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. Any period of time applicable to the proceeding shall be suspended beginning on the date when the panelist resigns or becomes unable to act and ending on the date when a replacement is selected.

Article 11.10: Terms of Reference

Unless the disputing Parties otherwise agree no later than 20 days after the date of receipt of the request for the establishment of the panel, the terms of reference of the panel shall be to:

- (a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel pursuant to Article 11.8 (Establishment of a Panel), and
- (b) make findings, determinations, and any recommendations, if any, together with its reasons therefore, for resolution of the dispute, and issue a written report, as provided in Article 11.12 (Initial and Final Panel Report).

Article 11.11: Proceedings of the Panel

1. The panel shall meet in closed session, unless the disputing Parties decide otherwise.
2. Each disputing Party shall be given the opportunity to provide at least one written submission and one oral hearing to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a disputing Party to the panel, including any comments on the initial report and responses to questions put by the panel, shall be made available to the other disputing Party.
3. The panel shall endeavor to consult with the disputing Parties, as appropriate, and provide adequate opportunities for the development of a mutually satisfactory resolution or mutually agreed solution.
4. The panel shall make every effort to take any decision by consensus. If a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.
5. At the request of a disputing Party, or on its own initiative, the panel may obtain information from any source it deems appropriate for the panel proceedings. The panel also has the right to seek the opinion of experts as it deems appropriate. The panel shall consult the disputing Parties before choosing those experts. Any information obtained in this manner shall be disclosed to the disputing Parties and submitted for their comments. If the panel takes that information into account in the preparation of its report, it shall also take into account any comment by the disputing Parties on that information.
6. The deliberations of the panel and the documents submitted to it shall be kept confidential.
7. Notwithstanding paragraph 6, either disputing Party may make public statements as to its views regarding the dispute, but shall treat as confidential any information and written submissions submitted by the other disputing Party to the panel which that Party has designated as confidential. If a disputing Party has provided information or written submissions designated as confidential,

that Party shall, no later than 30 days after a request by the other disputing Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

Article 11.12: Initial and Final Panel Report

1. The panel shall issue an initial report to the disputing Parties setting out:
 - (a) a summary of the submissions and arguments of the disputing Parties;
 - (b) the findings of fact, together with reasons;
 - (c) its determination as to the interpretation or application of the provisions of this Agreement, whether:
 - (i) a measure at issue is inconsistent with the obligations of this Agreement; or
 - (ii) a responding Party has otherwise failed to carry out its obligations under this Agreement;
 - (d) any other determination requested in the terms of reference; and
 - (e) if there is a determination of inconsistency, its recommendation that responding Party bring the measure into conformity with the obligations under this Agreement and, if the disputing Parties agree, on the means to resolve the dispute,

no later than 150 days, or 120 days in case of urgency, after the date of establishment of the panel.
2. Where the panel considers that deadline in paragraph 1 cannot be met, the chair of the panel must notify the disputing Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its initial report. Under no circumstances any delay shall not exceed an additional period of 30 days unless the Parties agree otherwise.
3. The panel shall base its report on the relevant provisions of this Agreement, including interpretation issued by the Joint Commission.
4. Panelists may present separate opinions on matters not unanimously agreed in the report of the panel.
5. Any disputing Party may submit a written request for the panel to review precise aspects of the initial report within 30 days of its issuance. The panel shall consider any written comments on the initial report by the disputing Parties within 15 days from the date of receipt of the written comments. After considering any such written comments by the disputing Parties, the panel may modify its report and make any further examination it considers appropriate.

6. The panel shall issue its final report to the disputing Parties, including separate opinions on matters not unanimously agreed, if any, no later than 45 days, or 30 days in case of urgency, after the issuance of the initial report. If it considers that this deadline cannot be met, the chair of the panel shall notify the disputing Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances shall the panel issue its final report later than 210 days after the date of its establishment. The final report shall set out the matters listed in paragraph 1, include a sufficient discussion of the arguments made at the initial review stage and address clearly the written comments of the disputing Parties.

7. The final report of the panel shall be unconditionally accepted by the disputing Parties with regard to a particular dispute. In its findings and recommendations, the panel cannot add to or diminish the rights and obligations provided in this Agreement.

8. Subject to the requirement to protect confidential information, and no later than 15 days after the presentation of the final report, the Parties shall release the final report to the public. A panel shall not, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 11.13: Implementation of the Panel Report

1. Each disputing Party shall take any measure necessary to promptly comply in good faith with the final report of the panel. If, in its final report, the panel determines that a measure at issue is inconsistent with the obligations under this Agreement, or that the responding Party has otherwise failed to carry out its obligations under this Agreement, the responding Party shall, whenever possible, eliminate the non-conformity with this Agreement.

2. No later than 30 days after the issuance of the final report of the panel, the responding Party shall notify the complaining Party of the time it will require for compliance with the final report (reasonable period of time), if immediate compliance is not practicable. The disputing Parties shall endeavor to agree on the reasonable period of time.

3. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the issuance of the final report of the panel, either Party may, no later than 50 days after the issuance of the final report, request in writing the original panel to determine the length of the reasonable period of time. That request shall be notified simultaneously to the other disputing Party. The original panel shall issue to the disputing Parties its determination on the length of the reasonable period of time no later than 90 days after the date of the submission of the request.

4. In the event that any member of the original panel is no longer available, the procedures set out in Article 11.8 (Establishment of a Panel) and Article 11.9 (Composition of Panels) shall apply. The time limit for issuing the determination on the length of the reasonable period of time shall be no later than 35 days² after the date of the submission of the request referred to in paragraph 3.

² For greater certainty, the period of 35 days shall not include any days suspended pursuant to Article 11.9.6 (Composition of Panels).

5. The responding Party shall notify the complaining Party within the reasonable period of time of any measure that it has taken to comply with the final report of the panel. The reasonable period of time may be extended by mutual agreement of the disputing Parties at any time before its expiry.

6. In the event that there is disagreement between the disputing Parties concerning the existence or the consistency of any measure notified under paragraph 5 with the provisions of this Agreement, the complaining Party may request in writing that the original panel make a determination on the matter. That request shall be notified simultaneously to the other Party, and shall identify any specific measure at issue and the provisions referred to in Article 11.3 (Scope) that it considers the measure to be inconsistent with, in a manner sufficient to present the disagreement clearly. The original panel shall issue to the disputing Parties its determination no later than 45 days after the date of the receipt of the request.

7. In the event that any member of the original panel is no longer available, the procedures set out in Article 11.8 (Establishment of a Panel) and Article 11.9 (Composition of Panels) shall apply. The time limit for issuing the determination shall be no later than 60 days³ after the date of the receipt of the request referred to in paragraph 6.

Article 11.14: Compensation and Suspension of Concessions or Other Obligations

1. The responding Party shall, if requested by the complaining Party, enter into negotiation no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

- (a) the responding Party fails to notify any measure taken to comply with the final report of the panel;
- (b) the responding Party has notified the complaining Party that it does not intend to eliminate the non-conformity; or
- (c) following the expiry of the reasonable period of time established in accordance with Article 11.13 (Implementation of the Panel Report), there is disagreement between the Parties as to whether the responding Party has eliminated the non-conformity.

2. If the disputing Parties fail to agree on compensation within 30 days after:

- (a) the expiry of the reasonable period of time; or
- (b) the disputing Parties agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement,

³ For greater certainty, the period of 60 days shall not include any days suspended pursuant to Article 11.9.6 (Composition of Panels).

the complaining Party shall be entitled, upon notification to the responding Party, to suspend concessions or other obligations arising from this Agreement of equivalent effect to those affected by the measure that the panel has found to be inconsistent with this Agreement. The notification shall specify the level of concessions or other obligations that the complaining Party intends to suspend and indicate the reasons on which the suspension is based. The complaining Party may begin implementing the suspension 20 days after the delivery of its notification to the responding Party, subject to paragraph 4.

3. 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 as that in which the final report of the panel referred to in Article 11.12 (Initial and Final Panel Report) has found an inconsistency 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, it may suspend concessions or other obligations with respect to other sectors; and
- (c) the complaining Party will take into consideration those concessions or other obligations the suspension of which would least disturb the functioning of this Agreement.

4. The responding Party may request in writing the original panel to make a determination on whether the level of concessions or other obligations that the complaining Party intends to suspend is equivalent to those affected by the measure that the panel has found to be inconsistent with this Agreement. That request shall be notified to the complaining Party before the expiry of the 20 day period referred to in paragraph 2. The original panel, having sought, if appropriate, the opinion of experts, shall issue to the disputing Parties its determination no later than 90 days after the date of the submission of the request. Concessions or other obligations shall not be suspended until the panel has issued its determination and any suspension shall be consistent with the determination of the panel.

5. In the event that any member of the original panel is no longer available, the procedures laid down in Article 11.9 (Composition of Panels) shall apply. The time limit for issuing the determination shall be no later than 45 days⁴ after the date of the submission of the request referred to in paragraph 4.

6. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 are temporary measures. Neither compensation nor suspension is preferred to full elimination of any non-conformity with this Agreement as determined in the final report of the panel. Any suspension shall only be applied until such time as the non-conformity is fully eliminated, or the non-conformity is determined in accordance with Article 11.15 (Compliance Review) to have been eliminated, or the disputing Parties have otherwise reached a mutually satisfactory solution.

⁴ For greater certainty, the period of 45 days shall not include any days suspended pursuant to Article 11.9.6 (Composition of Panels).

Article 11.15: Compliance Review

1. If the responding Party considers that it has eliminated the non-conformity with this Agreement as originally determined by the final report of the panel, it may request in writing that the original panel make a determination on the matter. That request shall be notified simultaneously to the other disputing Party. The original panel shall issue to the disputing Parties its determination no later than 90 days after the date of the receipt of the request. If the panel determines that the responding Party has eliminated the non-conformity with this Agreement, the complaining Party shall cease to apply any suspension of concessions or other obligations that it has implemented.

2. In the event that any member of the original panel is no longer available, the procedures set out in Article 11.8 (Establishment of a Panel) and Article 11.9 (Composition of Panels) shall apply. The time limit for issuing the determination shall be no later than 60 days⁵ after the date of the receipt of the request referred to in paragraph 1.

Article 11.16: Suspension and Termination of Procedures

1. The panel may suspend its work at any time on request of the complaining Party for a period not to exceed 12 consecutive months. The panel shall, at the written request of both disputing Parties, suspend its work at any time for a period agreed by the disputing Parties, not exceeding 12 consecutive months, and shall resume its work at the end of this agreed period at the written request of the complaining Party, or before the end of this agreed period at the written request of both disputing Parties. In the event of a suspension, the timeframe set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the complaining Party does not request the resumption of the work of the panel before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Chapter shall be deemed terminated.

2. The disputing Parties may, at any time, agree in writing to terminate the dispute settlement procedures initiated pursuant to this Chapter.

Article 11.17: Rules of Procedure for Panels

Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure for Panels as established in accordance with Article 10.2 (Institutional Provisions – Functions of the Joint Commission).

⁵ For greater certainty, the period of 60 days shall not include any days suspended pursuant to Article 11.9.6 (Composition of Panels).

Article 11.18: Rules of Interpretation

1. The panel shall interpret this Agreement in accordance with customary rules of treaties interpretation of public international law, as reflected in the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May, 1969.
2. The panel shall take into account the interpretations issued by the Joint Commission, in accordance with Article 10.2.2(d) (Institutional Provisions – Function of the Joint Commission).
3. When appropriate, the panel may also take into account relevant interpretations in reports of prior panels established under this Chapter. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations, and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

Article 11.19: Expenses

Each disputing Party shall bear the cost of its appointed panelist and its own expenses and legal costs. Unless the disputing Parties otherwise agree, the cost of the chair of the panel and other expenses associated with the conduct of the proceedings shall be borne by the disputing Parties in equal shares.

Article: 11.20: Time Limits

1. All time limits laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer, unless otherwise specified.
2. Any time limit referred to in this Chapter may be modified by mutual agreement of the disputing Parties.