

Chapter 15
Dispute Settlement

Article 204
Scope of Application

1. Unless otherwise provided for in this Agreement, the dispute settlement procedure of this Chapter shall apply with respect to the avoidance and the settlement of disputes between the Parties regarding the interpretation or application of this Agreement. Any time period, other rules and procedures for arbitral tribunals provided for in this Chapter may be modified by mutual consent of the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to Chapters 5, 6, 12, 13 and 14.

Article 205
Cooperation

The Parties shall at all times endeavor to agree on the interpretation or application of this Agreement, and shall make every attempt through cooperation or other means provided for in this Agreement, to arrive at a prompt and mutually satisfactory resolution of any matter concerning the interpretation or application of this Agreement.

Article 206
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 the Parties, and end at any time upon the request of either Party.
2. Until the award of the arbitral tribunal is issued, if the Parties agree, good offices, conciliation, or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

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

Article 207
Choice of Forum

1. Where a dispute arises regarding any matter covered under this Agreement and another international agreement to which both Parties are parties, including the WTO Agreement, the Party requesting consultations (hereinafter referred to in this Chapter as "the complaining Party") may select the forum in which to settle the dispute.

2. Unless otherwise agreed by the Parties, once the complaining Party has requested the establishment of an arbitral tribunal under an agreement referred to in paragraph 1 with respect to a particular dispute, that procedure selected shall be used to the exclusion of any other procedure for that particular dispute.

Article 208
Consultations

1. Either Party may request in writing consultations to the other Party with respect to any matter regarding the interpretation or application of this Agreement referred to in Article 204.

2. The complaining Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal and factual basis for the complaint.

3. The Party to which the request for consultations is made (hereinafter referred to in this Chapter as "the Party complained against") shall respond in writing within 10 days following the date of receipt of such request.

4. The Parties shall start holding consultations in good faith within:

- (a) 15 days after the date of receipt of the request for consultations in cases of urgency; or

Note: Cases of urgency include those which concern goods or services that lose their quality or current condition in a short period of time; they include perishable goods or such services which lose their trade value after a determined date.

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

5. The Party complained against shall endeavor to make available pertinent government agencies or other regulatory bodies which have expertise in the matter subject to consultations.

6. Consultations under this Article shall be confidential and without prejudice to the right of either Party in any further proceedings. During consultations each Party shall provide sufficient information to enable a full examination of the matter at issue including how it might affect the operation and application of this Agreement and treat any confidential information exchanged on the same basis as the Party providing such information.

7. Consultations may be held in person or by any technological means available to the Parties. Unless otherwise agreed by the Parties; if in person, consultations shall be held alternatively in each Party.

Article 209 Establishment of Arbitral Tribunals

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against to consider the matter:

- (a) if the Party complained against does not respond within 10 days, or does not enter into consultations within 30 days after the date of receipt of the request for such consultations; or

- (b) if the Parties fail to resolve the matter through the consultations under Article 208 within 50 days or within 30 days in cases of urgency, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

Note: For greater certainty, no request for the establishment of an arbitral tribunal based only on nullification or impairment of benefits without allegation of non-compliance with the obligations of this Agreement shall be accepted.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify the reason of the request, the measure or other issue referred to and the legal and factual basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions of the applicable international law.

3. Unless otherwise agreed by the Parties, the arbitral tribunal shall be selected and carry out its functions in a manner consistent with the provisions of this Chapter.

Article 210 Composition of the Arbitral Tribunal

1. The Parties shall apply the following procedures in establishing an arbitral tribunal:

- (a) the arbitral tribunal shall comprise three members;

- (b) within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, each Party shall appoint one arbitrator who may be its national, propose up to four candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal pursuant to subparagraph (e), and notify the other Party in writing of the appointment and its proposed candidates;
- (c) the Parties shall endeavor to agree on and appoint the third arbitrator who shall be the chair within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, from among the candidates proposed pursuant to subparagraph (b);
- (d) if a Party has not appointed the one arbitrator pursuant to subparagraph (b), or if the Parties fail to agree on the third arbitrator pursuant to subparagraph (c), the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to subparagraph (b);
- (e) the chair of the arbitral tribunal shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be or have been employed by either Party, nor have dealt with the subject raised on the dispute in any capacity; and
- (f) the date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

2. If an arbitrator appointed under this Article resigns or otherwise becomes unable to act, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the replacement arbitrator is appointed.

Article 211
Qualifications of Arbitrators

Arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, impartiality, reliability and sound judgment; and
- (c) be independent of and not be affiliated with or take instructions from either Party.

Article 212
Functions of Arbitral Tribunals

1. The functions of the arbitral tribunal shall be:
 - (a) to make an objective assessment of the matter before it, including that of the facts of the case and the applicability of and conformity with this Agreement, and make the necessary findings and rulings for the resolution of the dispute; and
 - (b) to consult regularly with the Parties offering them equal opportunities for such consultations and provide adequate opportunities for the development of a mutually satisfactory resolution.
2. The arbitral tribunal may adopt additional rules and procedures consistent with the provisions of this Chapter.

Article 213
Proceedings of the Arbitral Tribunal

1. The Parties have the right to, at least, one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings.

2. The meetings of the arbitral tribunal, the hearing before it, the deliberations, as well as all the documents submitted to it, shall be kept confidential.

3. Notwithstanding paragraph 2, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to which such a request is made may agree to the request and submit such summary, or refuse the request without needing to ascribe any reasons or justification.

4. Unless otherwise agreed by the Parties within 10 days from the establishment of the arbitral tribunal, the terms of reference shall be:

"To examine, in light of the relevant provisions of this Agreement, the matter referred to it in the arbitral tribunal request and to issue the award."

5. Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless otherwise agreed by the Parties.

6. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties.

7. The language of the proceedings and the documents submitted to and produced by the tribunal, including the award, shall be English. Accordingly, the Parties shall present written submissions as well as oral arguments in English.

8. Any information or written submissions presented by a Party to the arbitral tribunal, including responses to questions raised by the arbitral tribunal, shall be made available to the other Party.

9. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

10. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

Article 214 Information in the Procedure

1. On request of either Party or on its own initiative, the arbitral tribunal, to the extent that it deems appropriate, may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter concerned.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond to any request by the arbitral tribunal for such information.

3. Before the arbitral tribunal seeks information or consults experts, it shall establish appropriate procedures in consultation with the Parties. The arbitral tribunal shall provide the Parties with:

- (a) prior notification of its intention to seek information or consult experts pursuant to paragraph 1, and an adequate time period to make observations; and
- (b) a copy of any information or opinion of experts obtained pursuant to paragraph 1, and a period of time to submit comments.

4. When the arbitral tribunal takes into consideration any information or opinion of experts sought pursuant to paragraph 1 for the preparation of its award, it may also take into account any comments or observations submitted by the Parties with respect to such information or opinion of experts.

Article 215
Consolidation of Proceedings

The arbitral tribunal may consolidate two or more proceedings regarding the same measure or the same matter with the consent of the Parties.

Article 216
Award of the Arbitral Tribunal

1. The arbitral tribunal shall, within 90 days, or within 60 days in cases of urgency, after the date of its establishment, submit to the Parties its draft award, including the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 or 60 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.
2. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.
3. The award shall contain:
 - (a) findings on the facts of the case and the applicability of and conformity with this Agreement of the measure at issue, together with the reasons therefor;
 - (b) referential findings about the level of adverse trade effects caused to a Party by the other Party's failure to conform with the obligations of the Agreement; and
 - (c) at the request of either Party, suggested implementation options for the Parties to consider.
4. The arbitral tribunal shall base its awards on relevant provisions of this Agreement, applicable rules of international law, the submissions and arguments of the Parties, and any information provided pursuant to Article 214.

5. The arbitral tribunal may not, in its award, add to or diminish the rights and obligations of the Parties provided for in this Agreement.

6. The award, including its findings, of the arbitral tribunal shall be final and binding for the Parties.

Article 217 Suspension and Termination of Procedure

1. Where the Parties agree, the procedure of the arbitral tribunal may be suspended at any time for a period not exceeding 12 months. In the event of such a suspension, the time-frames set out in paragraph 4 of Article 213, paragraphs 1 and 2 of Article 216 and paragraph 5 of Article 219 shall be extended by the amount of time that it was suspended for. The procedure of the arbitral tribunal shall be resumed at any time upon the request of either Party.

2. If the procedure of the arbitral tribunal has been suspended for more than 12 months, the authority for establishing of the arbitral tribunal shall lapse, unless the Parties agree otherwise. If the authority for establishing the arbitral tribunal lapses and the Parties have not settled the dispute, nothing in this Chapter shall prevent a Party from requesting a new proceeding regarding the same matter.

3. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time by a joint notification to the chair of the arbitral tribunal before the issuance of the award to the Parties.

Article 218 Implementation of the Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 216.

2. The Party complained against shall, within 30 days after the date of issuance of the award, notify the complaining Party of the period which it assesses to be reasonable and necessary in order to implement the award.

3. If the complaining Party considers the period of time notified pursuant to paragraph 2 to be unacceptable, the Parties shall hold consultations to decide on a mutually agreed period of time in order to implement the award.

4. If the Parties are not able to agree on a period of time pursuant to paragraph 3 within 45 days after the date of the issuance of the award, the complaining Party may refer the matter to an arbitral tribunal, which shall determine a reasonable period of time to implement the award. In such arbitration, a guideline for the arbitral tribunal should be that the reasonable period of time to implement the award should not exceed 15 months from the date of issuance of the award. However, that time may be shorter or longer, depending upon the particular circumstances.

5. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraphs 2 through 4, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.

6. Where there is disagreement between the Parties as to whether the Party complained against has complied with the award of the arbitral tribunal referred to in Article 216 within the implementation period as determined pursuant to paragraphs 2 through 4, either Party may refer the matter to an arbitral tribunal.

Article 219

Non-Implementation - Suspension of Benefits

1. If no satisfactory compensation or any alternative arrangement has been agreed pursuant to paragraph 5 of Article 218 within 20 days after the date of expiry of the implementation period as determined pursuant to paragraphs 2 through 4 of Article 218, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

2. If the arbitral tribunal to which the matter is referred pursuant to paragraph 6 of Article 218 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraphs 2 through 4 of Article 218, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

3. The suspension of the application of concessions or other obligations under paragraph 1 or 2 may only be implemented at least 30 days after the date of the notification in accordance with the applicable provisions of this Article. Such suspension shall:

- (a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;
- (b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;
- (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and
- (d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors.

4. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 1, 2 or 3 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal, which then shall determine whether such requirements have been met.

5. Notwithstanding subparagraph 1(e) of Article 210, the arbitral tribunal that is established for the purposes of Article 218 and this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, the arbitrators to the arbitral tribunal that is established for the purposes of Article 218 and this Article shall be appointed pursuant to paragraph 1 of Article 210. Unless the Parties agree on a different period, the arbitral tribunal established under Article 218 and this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.