

CHAPTER FOURTEEN

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 14.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually acceptable solution.

ARTICLE 14.2

Scope

This Chapter applies to any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement, except as otherwise expressly provided.

SECTION B

CONSULTATIONS

ARTICLE 14.3

Consultations

1. The Parties shall endeavour to resolve any dispute concerning the interpretation and application of the provisions referred to in Article 14.2 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade Committee, which shall give the reasons for requesting consultations, including the identification of the measures at issue, the applicable provisions referred to in Article 14.2 (Scope), and the reasons for considering the measures as incompatible with such provisions.
3. Consultations shall be held within 30 days of the date of receipt of the request and, unless the Parties agree otherwise, shall take place on the territory of the Party complained against. The consultations shall be deemed to be concluded within 60 days of the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be confidential, and shall be without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods and, where appropriate, seasonal goods or services, shall be held within 15 days of the date of receipt of the request, and shall be deemed concluded within 30 days of the date of receipt of the request, unless the Parties agree otherwise.

5. If the Party to which the request is made does not respond to the request for consultations within ten days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 14.4 (Initiation of Arbitration Procedure).

SECTION C

DISPUTE SETTLEMENT PROCEDURES

SUB-SECTION A

ARBITRATION PROCEDURES

ARTICLE 14.4

Initiation of Arbitration Procedure

1. Where the Parties have failed to resolve a dispute by recourse to consultations as provided for in Article 14.3 (Consultations), the complaining Party may request the establishment of an arbitration panel in accordance with this Article.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and to the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 14.2 (Scope) in a manner sufficient to clearly present the legal basis for the complaint.

ARTICLE 14.5

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within five days of the date of receipt of the request referred to in paragraph 1 of Article 14.4 (Initiation of Arbitration Procedure) by the Party complained against, the Parties shall enter into consultations in order to agree on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the choice of chairperson of the arbitration panel within ten days of entering into the consultations referred to in paragraph 2, within 20 days of entering into consultations referred to in paragraph 2, the chairperson of the Trade Committee or the chairperson's delegate shall select one arbitrator who will serve as a chairperson by lot from the list referred to under paragraph 1 of Article 14.20 (Lists of Arbitrators).
4. In the event that the Parties are unable to agree on the arbitrators within ten days of entering into the consultations referred to in paragraph 2:
 - (a) each Party may select one arbitrator, who will not act as a chairperson, from the individuals on the list established under paragraph 2 of Article 14.20 (Lists of Arbitrators), within 15 days of entering into the consultations referred to in paragraph 2; and

- (b) if either Party fails to select an arbitrator under subparagraph 4(a), the chairperson of the Trade Committee or the chairperson's delegate shall select any remaining arbitrator by lot from among the individuals proposed by that Party pursuant to paragraph 2 of Article 14.20 (Lists of Arbitrators), within 20 days of entering into consultations referred to in paragraph 2.

5. Should the list provided for in paragraph 2 of Article 14.20 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 4:

- (a) where both Parties have proposed individuals pursuant to paragraph 2 of Article 14.20 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within 15 days of entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chairperson of the Trade Committee or the chairperson's delegate shall select the arbitrator by lot from among the individuals proposed by the Party which failed to select its arbitrator; or
- (b) where only one Party has proposed individuals pursuant to paragraph 2 of Article 14.20 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within 15 days of entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chairperson of the Trade Committee or the chairperson's delegate shall select the arbitrator by lot from among the individuals proposed.

6. Should the list provided for in paragraph 1 of Article 14.20 (Lists of Arbitrators) not be established at the time required for the purposes of paragraph 3, the chairperson shall be selected by lot from among former Members of the WTO Appellate Body, none of whom shall be natural persons of a Party.

7. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.

8. The replacement of arbitrators shall take place only for the reasons detailed in Rules 19 to 25 of Annex 14-A and in accordance with the procedures thereunder.

ARTICLE 14.6

Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.

ARTICLE 14.7

Interim Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions of this Agreement, and the basic rationale behind any findings and recommendations, not later than 90 days from the date of establishment of the arbitration panel. Where the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the arbitration panel issue its interim report later than 120 days after the date of its establishment.

2. Any Party may submit a written request for the arbitration panel to review specific aspects of the interim report within 30 days of its notification.
3. In cases of urgency, including those involving perishable goods or, where appropriate, seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within half of the period allowed under paragraph 1, and any Party may submit a written request for the arbitration panel to review specific aspects of the interim report within 15 days of its notification.
4. 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. The findings of the final ruling of the arbitration panel shall include a sufficient discussion of the arguments made at the interim review stage, and shall clearly address the written comments of the two Parties.

ARTICLE 14.8

Arbitration Panel Ruling

1. The arbitration panel shall issue its ruling to the Parties and to the Trade Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its ruling. Under no circumstances should the arbitration panel issue its ruling later than 180 days after the date of its establishment.

2. In cases of urgency, including those involving perishable goods or, where appropriate, seasonal goods or services, the arbitration panel shall make every effort to issue its ruling within 75 days of the date of its establishment. Under no circumstances should the arbitration panel issue its ruling later than 90 days after the date of its establishment.

SUB-SECTION B

COMPLIANCE

ARTICLE 14.9

Compliance with the Arbitration Panel Ruling

Each Party shall take any measure necessary to comply in good faith with the ruling of the arbitration panel, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

ARTICLE 14.10

Reasonable Period of Time for Compliance

1. No later than 30 days after the receipt of the notification of the ruling of the arbitration panel to the Parties, the Party against which the complaint was made shall notify the complaining Party and the Trade Committee of the time it will require to comply with the ruling of the arbitration panel (hereinafter referred to as "reasonable period of time"), if immediate compliance is not possible.
2. If there is disagreement between the Parties on the reasonable period of time for compliance with the ruling of the arbitration panel, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, the complaining Party shall request in writing that the original arbitration panel determine the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the Trade Committee. The original arbitration panel shall issue its ruling to the Parties, and shall notify the Trade Committee thereof, within 20 days of the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be 35 days from the date of the submission of the request referred to in paragraph 2.
4. The Party against which the complaint was made shall inform the complaining Party in writing of its progress in complying with the ruling of the arbitration panel at least one month before the expiry of the reasonable period of time.

5. The reasonable period of time may be extended by mutual agreement of the Parties.

ARTICLE 14.11

Review of Any Measure Taken to Comply with the Arbitration Panel Ruling

1. The Party complained against shall notify the complaining Party and the Trade Committee, before the end of the reasonable period of time, of any measures that it has taken to comply with the ruling of the arbitration panel.
2. In the event that there is disagreement between the Parties concerning the existence of any measures notified under paragraph 1 or the consistency of such measures with the provisions referred to in Article 14.2 (Scope), the complaining Party may request in writing that the original arbitration panel rule on the matter. Such request shall identify the specific measure at issue and the provisions referred to in Article 14.2 (Scope) with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly. Such request shall also explain how the measure in question is inconsistent with the provisions referred to in Article 14.2 (Scope). The original arbitration panel shall notify its ruling within 45 days of the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

ARTICLE 14.12

Temporary Remedies in Case of Non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the ruling of the arbitration panel before the expiry of the reasonable period of time, or if the arbitration panel rules that no such measures were taken or that the measure notified under paragraph 1 of Article 14.11 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) is inconsistent with that Party's obligations under the provisions referred to in Article 14.2 (Scope), the Party against which the complaint was made shall enter into negotiations with the complaining Party with a view to reaching a mutually acceptable agreement on compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or within 30 days of the issuance of the ruling of the arbitration panel under Article 14.11 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) that no measures were taken to comply with the ruling of the arbitration panel or that a measure taken to comply with that ruling is inconsistent with the provisions referred to in Article 14.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 14.2 (Scope) at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of obligations that the complaining Party intends to suspend. The complaining Party may implement the suspension at any moment after the expiry of ten days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.

3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing that the original arbitration panel rule on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the ten-day period referred to in paragraph 2. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling, and any suspension shall be consistent with the ruling of the arbitration panel.

4. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 14.5 (Establishment of the Arbitration Panel) shall apply. The period for issuing the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 3.

5. The suspension of obligations shall be temporary and shall not be applied after:

- (a) the Parties have reached a mutually agreed solution pursuant to Article 14.15 (Mutually Agreed Solution); or
- (b) the Parties have reached an agreement on whether the measure notified under paragraph 1 of Article 14.13 (Review of Any Measure Taken to Comply After the Suspension of Obligations) brings the Party complained against into conformity with the provisions referred to in Article 14.2 (Scope); or

- (c) any measure found to be inconsistent with the provisions referred to in Article 14.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 2 of Article 14.13 (Review of Any Measure Taken to Comply After the Suspension of Obligations).

ARTICLE 14.13

Review of Any Measure Taken to Comply After the Suspension of Obligations

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for the termination of the suspension of obligations applied by the complaining Party.
2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 14.2 (Scope) within 30 days of the date of receipt of the notification, the complaining Party shall request in writing that the original arbitration panel rule on the matter. Such request shall be notified simultaneously to the other Party and the Trade Committee. The ruling of the arbitration panel shall be notified to the Parties and the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 14.2 (Scope), the suspension of obligations shall be terminated.

SUB-SECTION C

COMMON PROVISIONS

ARTICLE 14.14

Suspension and Termination of Arbitration Procedures

1. The arbitration panel shall, at the written request of both Parties, suspend its work at any time for a period agreed by the Parties, which shall not exceed twelve months. The arbitration panel 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 Parties. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed period, the dispute settlement procedures initiated pursuant to this Section shall be deemed terminated. Subject to Article 14.21 (Relation with WTO Obligations), the suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings.
2. At any time, the Parties may agree in writing to terminate the dispute settlement procedures initiated pursuant to this Section.

ARTICLE 14.15

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade Committee and the arbitration panel, if any, of such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedure initiated pursuant to this Section shall be suspended. The procedure shall be terminated if such approval is not required or upon notification of the completion of any such domestic procedures.

ARTICLE 14.16

Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by Annex 14-A.
2. Any meetings of the arbitration panel shall be open to the public in accordance with Annex 14-A.

ARTICLE 14.17

Submission of Information

1. At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source it deems appropriate for the arbitration panel proceedings, including from the Parties involved in the dispute. The arbitration panel also has the right to seek the relevant opinions of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.
2. Interested natural and legal persons of the Parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with Annex 14-A.

ARTICLE 14.18

Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 14.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall take into account any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as the "DSB"). The rulings of the arbitration panel shall not add to or diminish the rights and obligations provided in the provisions referred to in Article 14.2 (Scope).

ARTICLE 14.19

Arbitration Panel Decisions and Rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 14.2 (Scope), and the rationale behind any findings and conclusions that it makes. The Trade Committee shall make the ruling of the arbitration panel publicly available in its entirety, unless it decides not to do so in order to ensure the confidentiality of any information designated by either Party as confidential.

SECTION D

GENERAL PROVISIONS

ARTICLE 14.20

Lists of Arbitrators

1. Upon the entry into force of this Agreement, the Parties shall establish a list of five individuals who are willing and able to serve as the chairperson of an arbitration panel referred to in Article 14.5 (Establishment of the Arbitration Panel).

2. No later than six months after the entry into force of this Agreement, the Trade Committee shall establish a list of at least ten individuals who are willing and able to serve as arbitrators. Upon the entry into force of this Agreement, each Party shall propose at least five individuals to serve as arbitrators.

3. The Trade Committee will ensure that the list of individuals to serve as chairpersons or arbitrators, established pursuant to paragraphs 1 and 2 respectively, are maintained.

4. Arbitrators shall have specialised knowledge of or experience in law and international trade or in the settlement of disputes arising under international trade agreements. They shall be independent, shall serve in their individual capacities, shall not be affiliated with the government of either Party, and shall comply with Annex 14-B.

ARTICLE 14.21

Relation with WTO Obligations

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement proceedings.

2. Notwithstanding paragraph 1, where a Party has initiated dispute settlement proceedings with regard to a particular measure, either under this Chapter or under the WTO Agreement, it may not institute dispute settlement proceedings regarding the same measure in the other forum until the first proceedings have ended. Moreover, neither Party shall initiate dispute settlement proceedings under both this Chapter and under the WTO Agreement unless substantially different obligations under both agreements are in dispute, or unless the selected forum fails for procedural or jurisdictional reasons to make findings on the claim seeking redress in relation to that obligation, provided that the failure of the forum is not the result of a failure of a disputing Party to act diligently.

3. For the purposes of paragraph 2:

- (a) dispute settlement proceedings under the WTO Agreement shall be deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU and shall be deemed to be ended when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17(14) of the DSU; and
- (b) dispute settlement proceedings under this Chapter shall be deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 14.4 (Initiation of Arbitration Procedure) and shall be deemed to be ended when the arbitration panel issues its ruling to the Parties and to the Trade Committee under paragraph 2 of Article 14.8 (Arbitration Panel Ruling) or when the parties have reached a mutually agreed solution under Article 14.15 (Mutually Agreed Solution).

4. Nothing in this Chapter shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations as provided for under this Chapter.

ARTICLE 14.22

Time Limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days, the first day being the day following the acts or facts to which they refer, unless otherwise specified.
2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties.

ARTICLE 14.23

Review and Modification of the Chapter

The Parties may, by decision in the Trade Committee, modify this Chapter and Annexes 14-A and 14-B.