

CHAPTER 16 DISPUTE SETTLEMENT

Article 16.1 Objective

The objective of this Chapter is to avoid and settle any dispute between the Parties concerning the interpretation or application of this Agreement with a view to arrive at, where possible, a mutually acceptable solution.

Article 16.2 Scope

Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of the provisions of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with the obligations under the provisions of this Agreement; or
- (b) the other Party has otherwise failed to carry out its obligations under the provisions of this Agreement.

Article 16.3 Choice of Forum

1. Where a dispute regarding any matter referred to in Article 16.2 (Scope) arises under this Agreement and under the WTO Agreement, or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
3. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible *fora*.
4. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

Article 16.4
Consultations

1. The Parties shall at all times endeavour 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 solution agreed to by the Parties.
2. A Party shall seek consultations, by means of a written request to the other Party, and shall give the reasons for the request, identification of the measures at issue, the applicable provisions of the Agreement referred to in Article 16.2 (Scope), and the reasons for the applicability of such provisions.
3. Consultations shall be held within thirty (30) days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within sixty (60) days of the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
4. Consultations on matters of urgency, including those regarding perishable goods, shall be held within fifteen (15) days of the date of receipt of the request, and shall be deemed concluded within thirty (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 (10) days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 of this Article or in paragraph 4 of this Article respectively, or if consultations have been concluded and no solution has been agreed upon by the Parties, the complaining Party may request the establishment of an arbitration panel in accordance with Article 16.5 (Initiation of Arbitration Procedure).

Article 16.5
Initiation of Arbitration Procedure

The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request the specific measure at issue, and explain how such measure constitutes a breach of the applicable provisions of the Agreement referred to in Article 16.2 (Scope) in a manner sufficient to present the legal basis for the complaint clearly.

Article 16.6
Terms of Reference

Unless the Parties otherwise agree within twenty (20) days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference of the arbitration panel 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 arbitration panel pursuant to Article 16.5 (Initiation of Arbitration Procedure) and to make findings, determinations and any recommendations for resolution of the dispute, and issue a written report, as provided in Article 16.9 (Arbitration Panel Report)”.

Article 16.7
Composition and Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three (3) members. Each Party shall appoint a member within thirty (30) days of the receipt of the request referred to in Article 16.5 (Initiation of Arbitration Procedure) and the two members shall, within thirty (30) days of the appointment of the second of them, designate by agreement the third member. Such designation shall be notified to the Parties and accompanied by a brief profile of the third member and any disclosures as required under paragraph 3 of Annex 16-A (Code of Conduct for Arbitrators).
2. The Parties shall, within ten (10) days of receiving the notification of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, act as the chairperson of the arbitration panel. If a Party fails to respond within the said period, that Party shall be deemed to disapprove the appointment of that member.
3. If the third member has not been designated within thirty (30) days of the appointment of the second member, or one of the Parties disapproves the appointment of the third member, the Director-General of the WTO shall, at the request of either Party, appoint within a further period of thirty (30) days, the third member who shall act as the chairperson of the arbitration panel.
4. If one of the Parties does not appoint a member within thirty (30) days of the receipt of the request referred to in Article 16.5 (Initiation of Arbitration Procedure), the other Party may inform the Director-General of the WTO who shall appoint within a further period of thirty (30) days, the third member who shall act as the chairperson of the arbitration panel, and the chairperson shall, upon appointment, request the Party which has not appointed a member to do so within fourteen (14) days. If after such period, that Party has still not appointed a member, the chairperson shall inform the Director-General of the WTO who shall make this appointment within a further period of thirty (30) days.

5. For the purposes of paragraphs 3 and 4 of this Article, in the event that the Director-General of the WTO is a national of either Party, the Deputy Director-General of the WTO or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.
6. Any person appointed as a member of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the bases of objectivity, reliability, sound judgment and independence, and shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings and in accordance with Annex 16-A (Code of Conduct for Arbitrators) and shall serve in their individual capacities and not be affiliated with, nor take instructions from either Party. If a Party considers that a member of the arbitration panel is in violation of these requirements, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chairperson shall not be a national of either Party or have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.
7. If a member of the arbitration panel appointed under this Article becomes unable to participate in the proceeding or resigns or is to be removed according to paragraph 6 of this Article, a successor shall be selected in the same manner as prescribed for the appointment of the original member. The successor shall have all the powers and duties of the original member. In such a case, the work of the arbitration panel and any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the original member becomes unable to participate in the proceeding or resigns, or on the date the Parties agree to remove the member according to paragraph 6 of this Article. The work of the arbitration panel and any time period applicable to the arbitration panel proceedings shall resume on the date the new member is appointed.
8. The date of establishment of the arbitration panel shall be the date on which the last of the three members is appointed.

Article 16.8
Proceedings of the Arbitration Panel

1. The arbitration panel shall meet in closed session, unless the Parties decide otherwise.
2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the achievement of a mutually satisfactory resolution.
5. The arbitration panel shall make every effort to take any decision by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.
6. 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. The arbitration panel also has the right to seek the relevant opinion 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.
7. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.
8. Notwithstanding paragraph 7 of this Article, 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 arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within thirty (30) days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

Article 16.9

Interim Arbitration Panel Report and Final Arbitration Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out:
 - (a) a summary of the submissions and arguments of the Parties;
 - (b) the findings of fact, together with reasons;
 - (c) its determination as to the interpretation or application of the provisions of this Agreement or whether a measure at issue is inconsistent with the provisions of this Agreement or whether a Party has failed to carry out its obligations under the provisions of this Agreement, or any other determination requested by the Parties in the terms of reference; and

- (d) if there is a determination of inconsistency, its recommendation that the Party complained against bring the measure into conformity with the obligations under this Agreement and, if the Parties agree, on the means to resolve the dispute,

not later than ninety (90) days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties 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 one hundred and twenty (120) days after the date of its establishment.

2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within thirty (30) days of its notification.
3. 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 final report of the arbitration panel shall set out the matters listed in paragraph 1 of this Article, include a sufficient discussion of the arguments made at the interim review stage, and answer clearly to the written comments of the two Parties.
4. The arbitration panel shall issue its final report to the Parties within one hundred and fifty (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 in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. Under no circumstances should the arbitration panel issue its final report later than two hundred and seventy (270) days after the date of its establishment.
5. In cases of urgency, including those involving perishable goods:
 - (a) the arbitration panel shall make every effort to issue its interim and final reports to the Parties within half of the respective time periods under paragraphs 1 and 4 of this Article. Under no circumstances should the arbitration panel issue its final report later than ninety (90) days after the date of its establishment;
 - (b) any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within half of the time period under paragraph 2 of this Article.
6. Any findings, determinations and recommendations in the final report of the arbitration panel shall be final and binding on the Parties and shall not create any rights or obligations to any person. For greater certainty, nothing in the final report may add to or diminish the rights and obligations of the Parties under this Agreement.

Article 16.10
Implementation of the Arbitration Panel Report

1. The Party complained against shall take any measure necessary to comply in good faith with the determinations and recommendations in the final report, and the Parties shall endeavour to agree on the time period for the Party complained against to comply with such determinations and recommendations.
2. No later than thirty (30) days after the receipt of the final report, the Party complained against shall notify the complaining Party of the time it will require for compliance (hereinafter referred to as “reasonable period of time”), if immediate compliance is not practicable.
3. If there is disagreement between the Parties on the reasonable period of time to comply with the determinations and recommendations in the final report, the complaining Party shall, within fifty (50) days of the date of issuance of the final report, request in writing to the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party. The original arbitration panel shall issue its determination on the length of the reasonable period of time to the Parties within twenty (20) days from the date of the submission of the request.
4. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination on the length of the reasonable period of time shall be thirty-five (35) days¹ from the date of the submission of the request referred to in paragraph 3 of this Article.
5. The Party complained against shall inform the complaining Party in writing of its progress to comply with the determinations and recommendations in the final report at least one (1) month before the expiry of the reasonable period of time.
6. The reasonable period of time may be extended by the agreement of the Parties.
7. The Party complained against shall notify the complaining Party before the end of the reasonable period of time of any measure that it has taken to comply with the determinations and recommendations in the final report.
8. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 7 of this Article with the provisions referred to in Article 16.2 (Scope), the complaining Party may request in writing the original arbitration panel to determine on the matter. Such request shall identify the specific measure at issue and the provisions referred to in Article 16.2

¹ For greater certainty, the period of thirty-five (35) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

(Scope) with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly, and it shall explain how such measure is inconsistent with the provisions referred to in Article 16.2 (Scope). The original arbitration panel shall notify its determination within forty-five (45) days of the date of the submission of the request.

9. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) and Annex 16-B (Rules of Procedure for Arbitration) shall apply. The time limit for issuing the determination shall be sixty (60) days² from the date of the submission of the request referred to in paragraph 8 of this Article.

Article 16.11

Compensation and Suspension of Concessions or Other Obligations

1. If the Party complained against fails to notify any measure taken to comply with the determinations and recommendations in the final report before the expiry of the reasonable period of time, or if the arbitration panel determines that no measure taken to comply exists or that the measure notified under paragraph 7 of Article 16.10 (Implementation of Arbitration Panel Report) is inconsistent with that Party's obligations under the provisions referred to in Article 16.2 (Scope), the Party complained against shall, enter into negotiations with the complaining Party with a view to developing mutually acceptable agreement on compensation.
2. If no agreement on compensation is reached within thirty (30) days after the end of the reasonable period of time or, where applicable, the issuance of the arbitration panel determination under paragraph 8 of Article 16.10 (Implementation of the Arbitration Panel Report) that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 16.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party, to suspend concessions or obligations arising from any provision referred to in Article 16.2 (Scope) at a level equivalent to the nullification or impairment caused by the violation. 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 implement the suspension at any moment after the expiry of twenty-five (25) days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 5 of this Article.
3. The compensation referred to in paragraph 1 of this Article and the suspension referred to in paragraph 2 of this Article shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the final report of the arbitration panel.

² For greater certainty, the period of sixty (60) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2 of this Article:
 - (a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the final report of the arbitration panel referred to in Article 16.9 (Interim Arbitration Panel Report and Final Arbitration 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(s), it may suspend concessions or other obligations with respect to other sector(s); and
 - (c) the complaining Party will take into consideration those concessions or other obligations the suspension of which would least disturb the functioning of the this Agreement.
5. 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 the original arbitration panel to determine the matter. Such request shall be notified to the complaining Party before the expiry of the twenty-five (25) day period referred to in paragraph 2 of this Article. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its determination on the level of the suspension of concessions or other obligations to the Parties within thirty (30) days of the date of the submission of the request. Concessions or other obligations shall not be suspended until the original arbitration panel has notified its determination, and any suspension shall be consistent with the arbitration panel determination.
6. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The period for issuing the determination shall be forty-five (45) days³ from the date of the submission of the request referred to in paragraph 5 of this Article.
7. The suspension of concessions or other obligations shall be temporary and shall not be applied after:
 - (a) the Parties have reached a mutually agreed solution pursuant to Article 16.14 (Mutually Agreed Solution); or
 - (b) the Parties have reached an agreement on whether the measure notified under paragraph 1 of Article 16.12 (Review of Any Measure Taken to Comply After the Suspension of Concessions or Other Obligations) brings the Party

³ For greater certainty, the period of forty-five (45) days does not include the days suspended pursuant to paragraph 7 of Article 16.7 (Composition and Establishment of the Arbitration Panel).

complained against into conformity with the provisions referred to in Article 16.2 (Scope); or

- (c) any measure found to be inconsistent with the provisions referred to in Article 16.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as determined under paragraph 2 of Article 16.12 (Review of Any Measure to Comply After the Suspension of Concessions or Other Obligations).

Article 16.12

Review of Any Measure Taken to Comply After the Suspension of Concessions or Other Obligations

1. The Party complained against shall notify the complaining Party of any measure it has taken to comply with the final report of the arbitration panel and of its request for the termination of the suspension of concessions or other 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 16.2 (Scope) within thirty (30) days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to determine the matter. Such request shall be notified simultaneously to the other Party. The arbitration panel determination shall be notified to the Parties within forty-five (45) days of the date of the submission of the request. If the complaining Party does not request the arbitration panel to determine the matter, or the arbitration panel determines that any measure taken to comply is in conformity with the provisions referred to in Article 16.2 (Scope), the suspension of concessions or other obligations shall be terminated.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 16.7 (Composition and Establishment of the Arbitration Panel) shall apply. The time limit for issuing the determination shall be sixty (60)⁴ days from the date of the submission of the request referred to in paragraph 2 of this Article.

Article 16.13

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 not exceeding twelve (12) 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

⁴ For greater certainty, the period of 60 days does not include the days suspended pursuant to paragraph 7 of Article 17.7(Composition and Establishment of the Arbitration Panel).

both Parties. If the complaining Party does not request the resumption of the arbitration panel’s work before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Chapter shall be deemed terminated. Subject to Article 16.3 (Choice of Forum), the suspension and termination of the arbitration panel’s work are without prejudice to the rights of either Party in another proceeding.

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

Article 16.14
Mutually Agreed Solution

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

Article 16.15
Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by Annex 16-B (Rules of Procedure for Arbitration).
2. Any time period or other rules and procedures for arbitration panels provided for in this Chapter may be modified by mutual agreement of the Parties.

Article 16.16
Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 16.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the 1969 *Vienna Convention on the Law of Treaties*.

Article 16.17
Expenses

Each Party shall bear the cost of its appointed arbitrator and its own expenses and legal costs. The cost of the chairperson of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.