

CHAPTER 15

DISPUTE SETTLEMENT

Article 15.1: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 15.2: Scope of Application

1. Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.
2. The rules, procedures and time frames set out in this Chapter may be waived, varied or modified by mutual agreement.

Article 15.3: Consultations

1. Except as otherwise provided in this Agreement, either Party may request consultations with the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.
2. The requesting Party shall deliver the request to the other Party and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.
3. Consultations shall be held within 30 days after the date of receipt of the request for consultations. Consultations on matters regarding perishable goods¹ shall commence within 10 days after the date of receipt of the request.
4. The Parties shall at all times endeavour to agree on the interpretation and application of the Agreement and shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall :

¹ For greater certainty, the term “perishable goods” means perishable agricultural and fish goods classified in Chapters 1 through 24 of the Harmonized System.

- (a) provide sufficient information to enable a full examination of how the measure or other matter might affect the operation and application of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations which the other Party has designated as confidential, on the same basis as the Party providing the said information.

Article 15.4: Referral to the Administrative Commission, Good Offices, Conciliation and Mediation

1. Except as otherwise provided in this Agreement, the provisions of this Article shall apply whenever:

- (a) a Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of a measure of the other Party that is inconsistent with this Agreement;
- (b) a Party considers that any benefit the Party could reasonably have expected to accrue to it under Chapters 2 (*Trade in Goods*), 3 (*Rules of Origin*) and 10 (*Cross-Border Trade in Services*), is being nullified or impaired as the result of a measure that is not inconsistent with this Agreement; or
- (c) the Parties are unable to agree on compensatory adjustments pursuant to Headnotes of Section A and Section B of Annex III (*Financial Services Annexes*).

2. The Parties shall first seek to resolve a dispute described in paragraph 1 above through consultations under Article 15.3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultation.

3. If the Parties fail to resolve a matter pursuant to Article 15.3 within:

- (a) 60 days after the date of receipt of the request for consultations;
- (b) 15 days after the date of receipt of the request for consultations in matters regarding perishable goods; or
- (c) such other period as they may agree,

a Party may in writing refer the matter to the Administrative Commission established under Article 17.1 (*Administrative Commission of the Agreement*) which shall endeavour to resolve the dispute.

4. Good offices, conciliation and mediation are procedures that are initiated on a voluntary basis if the Parties so agree.
5. Proceedings involving good office, conciliation and mediation, and in particular the positions of the Parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under these procedures.
6. Good offices, conciliation or mediation may be requested at any time by either Party to a dispute. They may begin at any time and be terminated at any time.
7. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel appointed under Article 15.6.

Article 15.5: Choice of Forum

1. Disputes regarding any matter arising under this Agreement as well as the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.
2. Once a Party has requested the establishment of an arbitral panel under Article 15.6 or under the WTO Agreement, the forum selected shall be used to the exclusion of the others. 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. For the purposes of this Article, dispute settlement proceedings under Article 15.6 or Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement* are deemed to be initiated upon a request for an arbitral panel by the Party.

Article 15.6: Request for an Arbitral Panel

1. If the Administrative Commission has not resolved a dispute within:
 - (a) 75 days after the date of receipt of the request for consultations pursuant to Article 15.3;
 - (b) 30 days after the date of receipt of the request for consultations pursuant to Article 15.3 in a matter regarding perishable goods;
or
 - (c) such other period as the Parties may agree;

the complaining Party may request, in writing, for the establishment of an arbitral panel. The request shall identify the specific measure at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. The complaining Party shall deliver the request to the other Party.

2. The Parties shall establish an arbitral panel upon receipt of such a request.

3. Unless otherwise agreed by the Parties, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 15.7: Composition of Arbitral Panels

1. The arbitral panel referred to in Article 15.6 shall consist of three members. Each Party shall appoint a panelist within 30 days of the receipt of the request under Article 15.6.1, and the Parties shall within 30 days of the appointment of the second of them, designate by common agreement the third panelist who shall chair the arbitral panel. The chair shall not be a national of either Party and shall not have his or her usual place of residence in the territory of either Party.

2. If the third panelist has not been designated within 30 days of the appointment of the second panelist, the Director-General of the World Trade Organisation shall, at the request of either Party, appoint the chair of the arbitral panel within a further period of 30 days.

3. If one of the Parties does not appoint its panelist within 30 days of the receipt of the request under Article 15.6.1, the other Party may inform the Director-General of the WTO who shall appoint the chair of the arbitral panel within a further 30 days and the chair shall, upon appointment, request the Party which has not appointed a panelist to do so within 14 days. If after such period, that Party has still not appointed a panelist, the chair shall inform the Director-General of the WTO who shall make this appointment within a further 30 days.

4. If a panelist appointed under this Article resigns or becomes unable to act, a successor panelist shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist resigns or becomes unable to act, and ending on the date the replacement is appointed.

5. Any person appointed as a member of the arbitral panel:

- (a) 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; and
- (b) shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence².

6. Persons appointed as a member of the arbitral panel shall comply with a Code of Conduct to be established by the Parties by the date of entry into force of this Agreement.

Article 15.8: Functions of Arbitral Panels

1. The function of an arbitral panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. The findings and recommendations of the arbitral panel shall be set out in a final report presented to the Parties pursuant to Article 15.13.
2. Findings and recommendations of an arbitral panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.
3. Arbitral panels appointed under this Chapter shall interpret and apply the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

Article 15.9: Rules of Procedure

1. The Parties shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure that:
 - (a) the right of a hearing before the arbitral panel and the opportunity to present allegations and rebuttals in writing; and
 - (b) the hearings before the arbitral panel, the deliberations and the preliminary report, as well as all the writings and communications presented in be confidential.
2. Unless the Parties agree otherwise, the arbitral panel shall conduct the proceedings in accordance with the Model Rules of Procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules, or the provisions of this Chapter.

² For greater certainty, a person appointed as a member of the panel shall not be a government official of either Party.

3. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral panel pursuant to Article 15.6, and to make findings, determinations and recommendations as provided in Article 15.12.2 and to present the written reports referred to in Article 15.12 and Article 15.13.”

4. If the complaining Party wishes to argue that a matter has nullified or impaired benefits in the sense of Article 15.4.1(b), the terms of reference shall so indicate.

5. If a Party wishes the arbitral panel to make findings as to the degree of adverse trade effects on either Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Article 15.4.1(b), the terms of reference shall so indicate.

6. The arbitral panel may rule on its own jurisdiction.

7. An arbitral panel may make its findings and recommendations upon the default of a Party.

8. An arbitral panel shall make its decision by consensus; provided that where an arbitral panel is unable to reach consensus it may make its decision by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed upon. No arbitral panel may disclose which panelists are associated with majority or minority opinions in its initial or final reports.

9. An arbitral panel shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral panel to appear before it.

10. The panel hearings, deliberations, initial reports, all documents submitted to and all communications with the arbitral panel shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

11. A Party may disclose to other persons such information in connection with the arbitral proceedings as it considers necessary for the preparation of

the case, but it shall ensure that those persons maintain the confidentiality of any information.

Article 15.10: Location of Panel Hearings

The location of the proceedings of the arbitral panel shall be decided by mutual agreement of the Parties, failing which shall alternate between the capitals of the Parties in alphabetical order.

Article 15.11: Role of Experts

On request of a Party or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 15.12: Initial Report

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of the Agreement, the submissions and arguments of the Parties, and on any information before it pursuant to Article 15.11.
2. Unless the Parties otherwise agree, the arbitral panel shall, within 90 days after the last panelist is selected, present to the Parties an initial report containing:
 - (a) findings of fact, including any findings pursuant to a request under Article 15.9.5, together with reasons;
 - (b) its determination as to whether the measure at issue is inconsistent with this Agreement or cause nullification or impairment in the sense of Article 15.4.1(b) or any other determination requested in the terms of reference; and
 - (c) its recommendations, if any, for resolution of the dispute.
3. If the arbitral panel considers that it cannot provide its report within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 120 days.
4. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report or within such other period as the Parties may agree. A copy of the comments submitted shall be provided to the other Party.

5. After considering any such written comments on the initial report, the arbitral panel, on its own initiative or on the request of either Party, may request or receive the views of a Party, reconsider its report and make any further examination it considers appropriate.

Article 15.13: Final Report

1. The arbitral panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 45 days of presentation of the initial report, unless the Parties otherwise agree.

2. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

Article 15.14: Suspension and Termination of Proceedings

1. The Parties may agree to suspend the work of the arbitral panel at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral panel has been suspended for more than 12 months, the authority for establishment of the arbitral panel shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings before an arbitral panel at any time by jointly notifying the chair of the arbitral panel to this effect.

Article 15.15: Implementation of Final Report

1. On the receipt of the final report of an arbitral panel, the Parties shall agree on the resolution of the dispute, including the reasonable period of time necessary to implement the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the arbitral panel.

2. If, in its final report, the arbitral panel determines that a Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification and impairment in the sense of Article 15.4.1(b), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

Article 15.16: Non-Implementation – Compensation and Suspension of Benefits

1. If an arbitral panel has made a determination of the type described in Article 15.15.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 15.15.1 within 45 days of receiving the final report, or such

other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

2. If the Parties:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
- (b) have agreed on compensation or on a resolution pursuant to Article 15.15.1 and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement;

such complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend³. The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the arbitral panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

- (a) the level of benefits proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the non-conformity or the nullification or impairment that the arbitral panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original arbitral panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The arbitral panel shall reconvene, as soon as possible, after delivery of the request and shall present its determination to the disputing Parties within 90 days after it reconvenes to review a request under sub-paragraph (a) or (b), but in any case no later than 120 days after such request. Where the original arbitral panel cannot hear the matter for any reason, a new arbitral panel shall be appointed pursuant to the procedures set out in Article 15.7. If the arbitral panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the arbitral panel has determined under paragraph 3 or, if the arbitral panel has

³ For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under the Agreement the suspension of which a complaining Party considers will have an effect equivalent to that of the disputed measure and shall be restricted to benefits granted to the Party complained against under this Agreement.

not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the arbitral panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. If the arbitral panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits such Party has suspended under paragraph 3.

6. In considering what benefits to suspend pursuant to paragraph 2:

- (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Article 15.4.1(b); and
- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

7. The suspension of benefits shall be temporary and shall only be applied until such time as:

- (a) the Party removes the measure found to be inconsistent with this Agreement;
- (b) the Party eliminates the nullification or impairment caused by a measure in the sense of Article 15.4.1(b) that the arbitral panel has found;
- (c) the Party that must implement the arbitral panel's recommendations has done so; or
- (d) a mutually satisfactory solution is reached.

Article 15.17: Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.