

CHAPTER 10
DISPUTE SETTLEMENT

ARTICLE 10.1

Scope and Coverage

1. The provisions of this Chapter shall apply to the settlement of any disputes, including through consultations, concerning the interpretation or application of this Agreement.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party²⁰. The forum thus selected shall be used to the exclusion of the other.
3. For the purposes of paragraph 2, dispute settlement procedures under the WTO Agreement are deemed to be selected by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 10.4.
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify in writing all other Parties of its intention.

ARTICLE 10.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation or mediation shall be confidential and without prejudice to the Parties' rights in any further proceedings.

²⁰ For the purposes of this Chapter, the terms "Party", "Party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

ARTICLE 10.3

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Article.
2. A Party may request in writing consultations with another Party with respect to any matter referred to in paragraph 1 of Article 10.1. The Party making the request shall provide the reasons for the request, including any indication of the legal basis for the complaint. That Party shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply to the request within 10 days from the date of receipt. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise.
3. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the date of receipt of the request for consultations. If the Party to which the request is made does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 10.4.
4. The Parties to the dispute shall provide sufficient information to enable a full examination of how the measure or other matter is inconsistent with this Agreement and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
5. The consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.
6. The Parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 10.4

Establishment of Arbitration Panel

1. If the consultations referred to in Article 10.3 fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, from the date of receipt of the request for consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration process.

2. The request for the establishment of an arbitration panel shall identify the specific measure or other matter at issue and provide a brief summary of the legal and factual basis of the complaint.

3. Unless the Parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for 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 10.4 and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

4. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel should be established to examine complaints relating to the same matter.

5. A Party which is not a Party to the dispute shall be entitled, on delivery of a written notice to the Parties to the dispute and the arbitration panel, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the Parties to the dispute, attend hearings and make oral statements. When delivering such a written notice, that Party shall include an explanation of its particular interest in the dispute.

ARTICLE 10.5

Composition of the Arbitration Panel

1. The arbitration panel shall comprise three members.

2. Each Party to the dispute shall appoint a member within 30 days from the date of receipt of the request to establish an arbitration panel.

3. The Parties to the dispute shall appoint by common agreement the third member, who shall chair the arbitration panel, within 45 days from the date of receipt of the request to establish an arbitration panel.

4. The Chair shall not be a national or permanent resident of one of the Parties to the dispute and shall not have his or her usual place of residence in any of the Parties to the dispute.

5. If all the members have not been appointed within 45 days from the date of receipt of the request to establish an arbitration panel, the President of the International Court of Justice should, at the request of either Party to the dispute, make the necessary appointments within 30 days from the date of receipt of the request to the President of the International Court of Justice. If the President of the International Court of Justice is a national or permanent resident of one of the Parties to the dispute, or is unable to act,

the Vice-President or the next most senior Member who is not a national or permanent resident of one of the Parties to the dispute should make the appointment within 30 days from the date of receipt of the request.

6. For the purpose of paragraph 2, where there are multiple Parties as the complaining Party or as the Party complained against, unless they have agreed to another method of appointment of members, the multiple Parties shall jointly appoint a member.

7. All members shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party;
- (d) not have dealt with the matter under dispute in any capacity; and
- (e) serve in their individual capacities and not as government representatives or representatives of any organisation.

8. The date of establishment of the arbitration panel shall be the date on which the Chair is appointed.

9. Any member may be challenged if circumstances give rise to justifiable doubts as to the member's compliance with this Chapter or the Model Rules of Procedures referred to in paragraph 1 of Article 10.6. A Party to the dispute who intends to make a challenge shall send a notice of its challenge to the other Party to the dispute, the member being challenged and the other members within 30 days after the appointment or after the circumstances became known. The notification shall be in writing and shall state the reasons for the challenge. If the other Party to the dispute does not agree to the challenge or the challenged members does not withdraw, the decision on the challenge should be made by the President of the International Court of Justice within 30 days from the date of receipt of the request. If the President of the International Court of Justice is a national or permanent resident of one of the Parties to the dispute, or is unable to act, the decision on the challenge should be made by the Vice-President or the next most senior Member who is not a national or permanent resident of one of the Parties to the dispute within 30 days from the date of receipt of the request.

10. If a member appointed under this Article resigns or becomes unable to act, a successor shall be appointed, within 21 days from the date a written notice is received by the Parties to the dispute of the need for a successor, 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. The work of the arbitration panel shall be suspended pending appointment of the successor.

ARTICLE 10.6

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the Parties to the dispute, the procedures of the arbitration panel shall be governed by Model Rules of Procedures which shall be adopted by the Joint Committee within one year from the date of entry into force of this Agreement.
2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law.
3. Unless the Parties to the dispute agree otherwise, the arbitration panel shall decide on the place of the hearings. The hearings of the arbitration panel shall be open to the public, unless the Parties to the dispute agree otherwise.
4. Decisions of the arbitration panel shall be taken by a majority of the members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose which members are associated with majority or minority opinions.
5. The arbitration panel may, at the request of any Party to the dispute, allow one or more Parties to be joined in the arbitration as a Party to the dispute, unless the arbitration panel finds, after giving all Parties, including the Party to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those Parties. The arbitration panel may give a single ruling or several rulings in respect of all Parties so involved in the arbitration.

ARTICLE 10.7

Panel Reports

1. The arbitration panel shall normally submit an initial report containing its findings and rulings to the Parties to the dispute within 90 days from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. A Party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days from the date of receipt of the report. The arbitration panel shall normally present to the Parties to the dispute a final report within 30 days from the date of receipt of the initial report.
2. The final report, as well as any report under Articles 10.9 and 10.10, shall be communicated to the Parties. The reports shall be made public, unless the Parties to the dispute decide otherwise.
3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the Parties to the dispute.

ARTICLE 10.8

Suspension or Termination of Arbitration Panel Proceedings

1. Where the Parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the Parties to the dispute agree otherwise.
2. A complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal shall be without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.
3. The Parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chair of that arbitration panel.
4. An arbitration panel may, at any stage of the proceedings, prior to release of the final report, propose that the Parties to the dispute seek to settle the dispute amicably.

ARTICLE 10.9

Implementation of the Final Panel Report

1. The Party complained against shall promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the Parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days, from the date of the issuance of the final report, either Party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall normally be given within 60 days from the date of receipt of that request.
2. The Party complained against shall, promptly or within the reasonable period of time as agreed or determined pursuant to paragraph 1, notify the other Party to the dispute of the measure adopted in order to comply with the ruling in the final report, and provide a detailed description of how the measure ensures compliance sufficient to allow the other Party to the dispute to assess the measure.
3. In case of disagreement as to the existence or consistency of a measure taken to comply with the ruling in the final report in accordance with paragraph 1, such disagreement shall be decided by the same arbitration panel upon request of either Party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 10.10. The ruling of the arbitration panel shall normally be given within 90 days from the date of receipt of the request.

ARTICLE 10.10

Compensation and Suspension of Benefits

1. If the arbitration panel has found in accordance with paragraph 3 of Article 10.9 that the Party complained against failed to properly comply with the ruling in the final panel report, or the Party complained against has notified the complaining Party that it does not intend to comply with the ruling, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the date of receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure or other matter that the arbitration panel has found to be inconsistent with this Agreement.
2. In considering what benefits to suspend, the complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitration panel has found to be inconsistent with this Agreement. The 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.
3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the date of receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure or matter found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 45 days from the date of receipt of that request. Benefits shall not be suspended until the arbitration panel has given its ruling.
4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure or other matter found to be inconsistent with this Agreement, has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the Parties to the dispute have resolved the dispute otherwise.
5. At the request of a Party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits shall be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of receipt of that request.

ARTICLE 10.11

Other Provisions

1. Whenever possible, the arbitration panel referred to in Articles 10.9 and 10.10 shall comprise the same members who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement member shall be conducted in accordance with the selection procedure for the original member.
2. Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties to the dispute.
3. When an arbitration panel considers that it cannot comply with any timeframe imposed on it under this Chapter, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the additional time required. Any additional time required should not exceed 30 days unless the Parties to the dispute otherwise agree.