



CHAPTER 12

DISPUTE SETTLEMENT

Article 12.1: Scope

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

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

Article 12.2: Definitions

For the purposes of this Chapter, the following definitions shall apply, unless the context provides otherwise:

Complaining Party means a Party that requests the establishment of an arbitral panel under Article 12.7;

Consulting Party means a Party that requests consultations under Article 12.5;

perishable goods mean goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions; and

Responding Party means a Party that has been complained against under Article 12.7.

Article 12.3: General Provisions

1. A panel established under this Chapter shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.



3. The Parties are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute.

4. Any timeframe provided for in this Chapter may be modified by agreement between the Parties.

Article 12.4: Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the Parties are party or the WTO Agreement, the Complaining Party may select the dispute settlement procedure in which to settle the dispute.

2. Once the Complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

3. For the purposes of this Article, the Complaining Party shall be deemed to have selected a forum in which to settle the dispute when it has requested the establishment of an arbitral panel pursuant to Article 12.7 or requested the establishment of, or referred a matter to, a similar dispute settlement panel or arbitral tribunal under another international trade agreement.

Article 12.5: Consultations

1. The Consulting Party may request in writing consultations to the other Party with respect to any matter described in Article 12.1, including any matter relating to a measure that the other Party proposes to take (proposed measure).⁷ The other Party shall accord due consideration to a request of consultation made by the Consulting Party and shall accord adequate opportunity for such consultations.

2. The Consulting Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.

3. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

⁷ For greater certainty, the establishment of an arbitral panel shall not be requested on any matter relating to a proposed measure.



4. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

5. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 12.6: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Procedures for such alternative methods of dispute resolution may begin at any time and may be terminated at any time by either Party.

2. If the Parties agree, such procedures referred to in paragraph 1 may continue while the matter is being examined by a panel established or reconvened under this Chapter.

3. Proceedings involving such procedures referred to in paragraph 1, and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 12.7: Establishment of Arbitral Panels

1. The Complaining Party that requested consultations under Article 12.5 may request in writing the establishment of an arbitral panel, if the Parties fail to resolve the matter within:

- (a) 60 days after the date of receipt of the request for consultations under Article 12.5.1; or
- (b) 30 days after the date of receipt of the request for consultations under Article 12.5.1 in cases of urgency, including those which concern perishable goods.

2. The establishment of an arbitral panel shall not be requested on any matter relating to a proposed measure.

3. Any request to establish an arbitral panel pursuant to this Article shall identify:

- (a) the specific measure at issue;



- (b) the legal basis of the complaint, including any provision of this Agreement alleged to have been breached and any other relevant provision; and
 - (c) the factual basis for the complaint.
4. The arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.
5. The date of the establishment of an arbitral panel shall be the date on which the chair is appointed.

Article 12.8: Terms of Reference of Arbitral Panels

Unless the Parties agree otherwise within 20 days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference of the arbitral 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 arbitral panel pursuant to Article 12.7, to make findings of law and fact and determinations on whether the measure is not in conformity with the Agreement together with the reasons therefore, and to issue a written report for the resolution of the dispute. The arbitral panel may make recommendations for resolution of the dispute, subject to the agreement between the Parties.”

Article 12.9: Composition of Arbitral Panels

1. An arbitral panel shall comprise three panellists. All appointments and nominations of panellists under this Article shall conform fully with the requirements in paragraphs 5 and 6.
2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral panel, appoint one panellist who may be its national and propose up to three candidates to serve as the third panellist who shall be the chair of the arbitral panel. The third panellist shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
3. The Parties shall agree on and appoint the third panellist within 45 days after the date of receipt of the request for the establishment of an arbitral panel, taking into account the candidates proposed pursuant to paragraph 2.



4. If a Party has not appointed a panellist pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third panellist pursuant to paragraph 3, the panellist or panellists not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.

5. All panellists shall:

- (a) have expertise or experience in law, international trade or other matters covered by this Agreement;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not be affiliated with or receive instructions from, the government of either Party; and
- (d) comply with a code of conduct, to be provided in the Rules of Procedure referred to in Article 12.17.

6 Panellists shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. The Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral panel.

7. If a panellist appointed under this Article is incapacitated, becomes unable to act or resigns, a successor shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 2, 3 and 4, which shall be applied, respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original panellist. The work of the arbitral panel shall be suspended for a period beginning on the date the original panellist is incapacitated, becomes unable to act or resigns. The work of the arbitral panel shall resume on the date the successor is appointed.

Article 12.10: Functions of Panels

1. The arbitral panels shall make an objective assessment of the matter before it, including an objective assessment of:

- (a) the facts of the case;
- (b) the applicability of and conformity with the provisions of this Agreement that are relevant to the matter before the panel;
- (c) whether the measure of the Responding Party is inconsistent with its obligations under this Agreement; and



(d) whether the Responding Party has otherwise failed to carry out its obligations under this Agreement.

2. The arbitral panel shall make the findings, determinations, and, if applicable, recommendations as referred to in the Terms of Reference and necessary for the resolution of the dispute.

3. The arbitral panel shall make the findings, determinations, and, when applicable, recommendations, in accordance with this Agreement.

4. The arbitral panel shall make its findings, determinations, and, when applicable, recommendations, including its report, by consensus. If a panel is unable to reach consensus, it may make its findings, determinations, and, when applicable, recommendations, including its report, by majority vote.

Article 12.11: Proceedings of Arbitral Panels

1. The arbitral panels shall meet in closed session. The meetings of the arbitral panels with the Parties shall be closed to the public, unless the Parties agree otherwise. The arbitral panels shall hold their hearings in closed session, unless the Parties agree otherwise.

2. The arbitral panels established under this Chapter shall, after consulting the Parties, set out their respective timeframes, including precise deadlines for submissions by the Parties, in accordance with the Rules of Procedure referred to in Article 12.17.

3. The Parties shall have the opportunity to provide at least one written submission to set out the facts, arguments and counter-arguments, and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitral panels, including any comments on the draft report and responses to questions put by the arbitral panels, shall be made available to the other Party.

4. The arbitral panels should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. After notifying the Parties, and subject to such terms and conditions as the Parties may agree, if any, within 10 days, the arbitral panels may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitral panels shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

6. The deliberations of the arbitral panels and the documents submitted to them shall be kept confidential. The Parties shall be present only when invited by the arbitral



panels to appear before them. There shall be no *ex parte* communications with the arbitral panels concerning matters under consideration by them.

7. Notwithstanding paragraph 6, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, the information and written submissions submitted by the other Party to the arbitral panel which that other Party has designated as confidential. If a Party has provided information or written submissions designated to be confidential, that Party shall, within 28 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

8. Each Party shall bear the cost of its appointed panellist at its own expenses. The cost of the chair of an arbitral panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

9. Before the arbitral panel presents its final report, if the Parties agree, the arbitral panel may at any stage of the proceedings propose the Parties that the dispute be settled amicably.

Article 12.12: Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral panel suspend its work at any time for a period not exceeding 12 consecutive months from the date of such agreement. In the event of such a suspension, the timeframes set out in paragraphs 2 and 6 of Article 12.13 and paragraph 7 of Article 12.16 shall be extended by the amount of time that the work was suspended. If the work of the arbitral panel has been suspended for more than 12 consecutive 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 of the arbitral panel by jointly notifying the chair of the arbitral panel at any time before the issuance of the report to the Parties.

Article 12.13: Report

1. The draft and final reports of the arbitral panel shall be drafted without the presence of the Parties. The arbitral panel shall base its reports on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to it.

2. The arbitral panel shall, within 180 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft report. The arbitral panel shall provide the draft report no later than 30 days before the deadline for completion of the final report. The arbitral



panel shall accord adequate opportunity to the Parties to review the entirety of the draft report and shall include a discussion of any comments made by the Parties in the final report.

3. The panel shall set out in the draft and final reports:
 - (a) a descriptive section summarising the arguments of the Parties;
 - (b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;
 - (c) any other finding that the arbitral panel considers relevant to the matter;
 - (d) its determination on whether the measure is not in conformity with this Agreement;
 - (e) if agreed by the Parties, its recommendations for the resolution of the dispute; and
 - (f) its reasons for its findings and determination in subparagraphs (b), (c), (d), and, if applicable, (e).
4. When the arbitral panel considers that it cannot submit the draft report within the timeframe provided for under paragraph 2, it may extend that timeframe with the consent of the Parties.
5. After considering any written comments on the draft report, the arbitral panel may reconsider the draft report and make any further assessment it considers appropriate.
6. The arbitral panel shall submit the final report to the Parties no later than 30 days after the date of submission of the draft report. Opinions expressed in the reports by the panellists shall be anonymous. Subject to the agreement between the Parties, the reports shall include any separate opinions on matters not unanimously agreed, not disclosing which panellists are associated with majority or minority opinions.
7. The findings, determinations and, if applicable, any recommendations of the arbitral panel cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.
8. The final report shall be available to the public within 30 days of the date of issuance, subject to the requirement to protect confidential information.
9. The final report shall be final and binding on the Parties.



Article 12.14: Implementation of the Report

1. Unless the Parties agree otherwise, the Responding Party shall eliminate the non-conformity with this Agreement, as determined in the final report, immediately, or if this is not practicable, within a reasonable period of time.
2. If a reasonable period of time is required, it shall, whenever possible, be agreed between the Parties. If the Parties are unable to agree on the reasonable period of time within 45 days of the date of issuance of the final report to the Parties, either Party may request an arbitral panel as provided for in Article 12.16.7 to determine the reasonable period of time. Unless the Parties agree otherwise, such request shall be made no later than 120 days after the date of the issuance of the final report.
3. Any other detailed provision on this Article shall be provided for under the Rules of Procedure referred to in Article 12.17.

Article 12.15: Compliance Review

If there is disagreement between the Parties as to whether the Responding Party eliminated the non-conformity with this Agreement as determined in the final report, within the reasonable period of time pursuant to Article 12.14, either Party may refer the matter to an arbitral panel⁸ as provided for in Article 12.16.7. Any detailed provisions related to the compliance review arbitral panel shall be provided under the Rules of Procedure referred to in Article 12.17.

Article 12.16: Non-Implementation – Compensation and Suspension of Concessions or other Obligations

1. If the Responding Party notifies the Complaining Party that it is impracticable, or the arbitral panel to which the matter is referred pursuant to Article 12.15 confirms that the Responding Party failed to eliminate the non-conformity with this Agreement as determined in the final report within the reasonable period of time as determined pursuant to Article 12.14.2, the Responding Party shall, if so requested, enter into negotiations with the Complaining Party with a view to reach a mutually acceptable compensation.
2. If there is no agreement on acceptable compensation within 30 days of the date of receipt of the request mentioned in paragraph 1, the Complaining Party may suspend the application of concessions or other obligations under this Agreement to the Responding Party, after giving notification of such suspension 30 days in advance. Such

⁸ Consultations under Article 12.5 are not required for these procedures.



notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity with this Agreement as determined in the final report. The suspension shall only be applied until such time as the non-conformity is fully eliminated, or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- (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 referred to in Article 12.13 has found a failure to comply with the obligations under this Agreement; and
- (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 sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Responding Party considers that the requirements for the suspension of concessions or other obligations by the Complaining Party set out in paragraphs 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitral panel.

7. The arbitral panel that is established for the purposes of this Article or Article 12.14 shall have, wherever possible, as its panellists, the panellists of the original arbitral panel. If this is not possible, then the panellists to the arbitral panel that is established for the purposes of this Article or Article 12.14 shall be appointed pursuant to Article 12.9. The arbitral panel established under this Article or Article 12.14 shall issue its report within 60 days of the date when the matter is referred to it. When the arbitral panel considers that it cannot issue its report within the aforementioned 60 days period, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be available to the public within 15 days of the date of issuance, subject to the requirement to protect confidential information. The report shall be final and binding on the Parties.



Article 12.17: Rules of Procedure

The Commission shall adopt the Rules of Procedure which provide for the details of the rules and procedures of the arbitral panels established under this Chapter, upon the entry into force of this Agreement. Unless the Parties agree otherwise, the arbitral panel shall follow the Rules of Procedure adopted by the Commission and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the Rules of Procedure adopted by the Commission.

Article 12.18: Application and Modification of Rules and Procedures

Any timeframe or other rules and procedures for the arbitral panels in accordance with this Chapter, including the Rules of Procedure referred to in Article 12.17, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.