

CHAPTER 20
DISPUTE SETTLEMENT

ARTICLE 20.1
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 agreed solution.

ARTICLE 20.2
Cooperation

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

ARTICLE 20.3
Scope of Application

1. Except as provided in paragraphs 2 and 3, this Chapter shall apply with respect to the avoidance or settlement of any dispute between the Parties concerning the interpretation or application of this Agreement (hereinafter referred to as “covered provisions”), 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 otherwise failed to carry out its obligations under this Agreement.
2. This Chapter shall not cover non-violation complaints and other situation complaints.
3. The covered provisions shall include all provisions of this Agreement with the exception of:
 - (a) Chapter 5 (Trade Remedies);
 - (b) Chapter 8 (Investment Facilitation);

- (c) Chapter 12 (Competition);
- (d) Chapter 14 (Trade and Sustainable Development);
- (e) Chapter 15 (Indigenous Peoples Economic and Trade Cooperation);
- (f) Chapter 16 (Small and Medium-Sized Enterprises); and
- (g) Chapter 17 (Economic Cooperation).

ARTICLE 20.4
Contact Point

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

ARTICLE 20.5
Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 20.3 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 delivered to the other Party identifying the reasons for the request, including the measure or other matter at issue and a description of its factual basis, and the legal basis for the complaint.
3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request.
4. Unless agreed otherwise, the Parties shall enter consultations within a period of no more than:
 - (a) 15 days after the receipt of the request for consultation on matters of urgency including those which concern perishable goods, or seasonal goods or seasonal services that rapidly lose their value; or

- (b) 30 days after the date of receipt of the request of all other matters.
- 5. Unless the Parties agree otherwise, consultations shall be deemed concluded within:
 - (a) 30 days of the receipt of the request for consultations on matters which concern perishable goods; or
 - (b) 60 days of the receipt of the request for consultations regarding all other matters.
- 6. During consultations each Party shall provide sufficient information to allow a complete examination of how the measure, or other matter subject to consultations, might affect the operation or application of this Agreement.
- 7. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be designated as confidential for the purposes of Article 1.5 (Confidential Information), and without prejudice to the rights of either Party in any further proceedings.
- 8. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.

ARTICLE 20.6
Good Offices, Conciliation or Mediation

- 1. The Parties may at any time agree to voluntarily undertake good offices, conciliation or mediation. These procedures may begin at any time and be terminated by either Party at any time.
- 2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential for the purposes of Article 1.5 (Confidential Information), and without prejudice to the rights of either Party in any further proceedings.
- 3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the panel procedures proceed.

ARTICLE 20.7
Establishment of a Panel

- 1. The complaining Party may request the establishment of a panel if:

- (a) the respondent Party does not respond to the request for consultations within 10 days after the date of its delivery;
 - (b) consultations are not held within the time periods set out in Article 20.5(4);
 - (c) the Parties agree not to have consultations; or
 - (d) consultations have been concluded and no mutually agreed solution has been reached.
2. The request for establishment of a panel shall be made in writing to the responding Party. In the request, the complaining Party shall set out the reasons for the request sufficient to present the problem clearly, including by identifying:
- (a) a specific measure or other matter at issue;
 - (b) the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached;
 - (c) any other relevant provisions; and
 - (d) the factual basis for the complaint.

ARTICLE 20.8 **Composition of a Panel**

1. The panel shall be composed of three panellists.
2. Each Party shall appoint a panellist within 20 days of the receipt of the request to establish a panel and shall at the same time nominate up to three candidates to serve as the third panellist who shall be the chair of the panel. The nominated candidates can also be appointed as a panellist who is not the chair pursuant to paragraphs 5 and 6.
3. The Parties shall appoint by common agreement the chair within 40 days of the receipt of the request to establish a panel, taking into account the candidates nominated pursuant to paragraph 2.
4. The chair shall not be a national of, nor have their usual place of residence in, nor be employed by, a Party.
5. If all three members of the panel have not been appointed in accordance with paragraphs 2 and 3 within 40 days of receipt of the request to establish a panel, a Party

may request the Director General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 2 shall also be provided to the Director General of the WTO and may be used in making the required appointments.

6. If the Director General of the WTO:
 - (a) notifies the Parties to the dispute that he or she is unavailable; or
 - (b) does not appoint the unappointed panellist within 20 days after the date of the request made pursuant to paragraph 5;

the remaining panellist shall be appointed by a draw of lot from the list of nominees which were provided under paragraph 2. If a Party fails to submit its list of three nominees pursuant to paragraph 2, the remaining panellist will be drawn from the list submitted by the other Party.

7. The date of establishment of the panel shall be the date on which the last panellist is appointed.

ARTICLE 20.9 Decision on Urgency

If a Party so requests, the panel shall decide, within 15 days of its establishment, whether the dispute concerns matters of urgency.

ARTICLE 20.10 Requirements for Panellists

1. Each panellist 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 independent of, and not be affiliated with or take instructions from, either Party;
 - (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute;
 - (d) comply with the Code of Conduct established in Annex 20-B; and

- (e) be chosen strictly on the basis of objectivity, reliability, and sound judgment.
- 2. The chairperson shall also have experience in dispute settlement procedures.
- 3. Persons who provided good offices, conciliation or mediation to the Parties, pursuant to Article 20.6, in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panellists in that matter.

ARTICLE 20.11
Replacement of Panellists

If any of the panellists of the original panel becomes unable to act, withdraws or needs to be replaced because that panellist does not comply with the requirements of the code of conduct, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist under Article 20.8 and the work of the panel shall be suspended pending the appointment of the successor panellist. The time period for the delivery of the report, or decision of the panel, shall be extended for the time necessary for the appointment of the new panellist.

ARTICLE 20.12
Functions of the Panel

The panel:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;
- (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and
- (c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 20.13
Terms of Reference

- 1. Unless the Parties agree otherwise within 20 days after the date of establishment of a panel, the terms of reference of the panel shall be to:

- (a) examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 20.7(2);
 - (b) make findings and determinations, together with the reasons therefore, as well as any recommendations, and
 - (c) issue a written report in accordance with Articles 20.17 and 20.18.
2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period specified in paragraph 1.

ARTICLE 20.14 **Rules of Interpretation**

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.
2. The panel may take into account relevant interpretations in reports of panels established under this Agreement and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.
3. The findings and determination of the panel cannot add to or diminish the rights and obligations of the Parties provided under this Agreement.

ARTICLE 20.15 **Procedures of the Panel**

1. Unless the Parties otherwise agree, the panel shall follow the model Rules of Procedure set out in Annex 20-A.
2. There shall be no ex parte communications with the panel concerning matters under its consideration.
3. The deliberations of the panel shall be kept confidential.
4. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement, or that the responding Party has otherwise failed to carry out its obligations the Agreement, shall have the burden of establishing such inconsistency. A Party asserting that a measure is justified by an affirmative defence under the Agreement shall have the burden of establishing that the defence applies.
5. The panel shall draft reports and take decisions by consensus. If this is not possible, the panel shall decide by majority vote.

ARTICLE 20.16
Receipt of Information

1. Upon the request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.
2. Upon the request of a Party, or on its own initiative, the panel may seek from any source any information it considers appropriate.
3. On request of a Party, or on its own initiative, the panel may, subject to any terms and conditions the Parties agree, seek technical advice or expert opinion from any individual or body that it deems appropriate.
4. Any information, advice or opinion obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information. Where a panel take the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

ARTICLE 20.17
Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. Under no circumstances shall the delay exceed 30 days after the deadline. The interim report shall not be made public.
2. The interim report shall contain:
 - (a) a section summarizing the submissions of the Parties;
 - (b) findings of fact;
 - (c) the determination of the panel as to whether:
 - (i) the measure at issue is inconsistent with obligations in this Agreement; or
 - (ii) a Party has otherwise failed to carry out its obligations in this Agreement;
 - (d) any other determination requested in the terms of reference; and

(e) the reasons for the findings and determinations.

3. Each Party may submit to the panel written comments on, or a written request to review precise aspects of, the interim report within 15 days after the date of issuance of the interim report or within another period as the disputing Parties may agree. A Party may comment on the others Party's request within six days of the delivery of the request.

4. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

ARTICLE 20.18 Final Report

1. The panel shall deliver its final report to the Parties, including any separate opinions on matters not unanimously agree, within 120 days after the date of composition of the panel unless the Parties agree otherwise. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline unless the Parties agree otherwise.

2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

3. The final report shall be made public within 15 days of its delivery to the Parties.

4. No panel shall, either in its interim report or its final report, disclose which panellists are associated with majority or minority opinions.

5. The final report of the panel shall be binding on the Parties.

ARTICLE 20.19 Implementation of the Final Report

1. If in its final report the panel determines that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement; or

(b) a Party has otherwise failed to carry out its obligations in this Agreement;

the responding Party shall eliminate the non-conformity.

2. If it is not practicable to comply immediately, the respondent Party shall, no later than 30 days after the delivery of the final report, notify the complaining Party of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

ARTICLE 20.20 **Reasonable Period of Time for Compliance**

1. If the Parties have not agreed on the length of the reasonable period of time within 20 days after the date of receipt of the notification made by the respondent Party in accordance with Article 20.19(2), the complaining Party may request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent Party. The 20-day period referred to in this paragraph may be extended by mutual agreement of the Parties.

2. The original panel shall deliver its decision to the Parties within 30 days from the relevant request.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

ARTICLE 20.21 **Compliance Review**

1. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report along with a description on how the measure ensures compliance.

2. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing, no later than 20 days after the responding Party's notification under paragraph 1, the original panel to decide on the matter. Such request shall be notified simultaneously to the respondent Party

3. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the respondent Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.

4. The panel shall deliver its decision to the Parties within 60 days after the date of the submission of the request.

5. If the panel considers that it cannot provide its compliance report within the time period specified in paragraph 4, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. The panel shall not exceed an additional period of 30 days.

ARTICLE 20.22

Temporary Remedies in Case of Non-Compliance

1. If:

(a) the respondent Party fails to notify any measure taken to comply with the final report no later than the date of expiry of the reasonable period of time;
or

(b) the respondent Party notifies the complaining Party in writing that it does not intend to comply with the final report, or that it is impracticable to do so within the reasonable period of time determined pursuant to Article 20.20; or

(c) the panel finds, pursuant to Article 20.21, that compliance with the final report has not been achieved or that the measure taken to comply is inconsistent with this Agreement;

the respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on mutually satisfactory compensation.

2. If, in any of the circumstances set out in paragraphs 1 (a) to (c), the complaining Party chooses not to request consultations or the Parties do not agree on compensation within 20 days of entering into consultation on compensation, the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application of concessions or other obligations under this Agreement.

3. The complaining Party may begin the suspension of concessions or other obligations referred to in the preceding paragraph 20 days after the date when it notified on the respondent Party, unless the respondent Party made a request under paragraph 7.

4. The suspension of concessions or other obligations:

- (a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the respondent Party to comply with the final report; and
- (b) shall be restricted to benefits accruing to the respondent Party under this Agreement.

5. In considering what concessions or other obligations to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

- (a) the complaining Party should first seek to suspend the concessions or other obligations in the same sector or sectors as that affected by the matter that the panel has found to be inconsistent with this Agreement;
- (b) the complaining Party may suspend concessions or other obligations in other sectors, if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors. The communication in which it notifies such a decision shall indicate the reasons on which it is based; and
- (c) it shall only suspend concessions or other obligations that are subject to dispute settlement in accordance with Article 20.3.

6. The suspension of concessions or other obligations, or the mutually satisfactory compensation foreseen in paragraph 1, shall be temporary and shall only apply until such time as the responding Party is found to have complied with the final report or until the Parties have reached a mutually agreed solution pursuant to Article 20.27.

7. If the respondent Party considers that the suspension of concessions or other obligations does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify to the Parties its decision on the matter no later than 60 days of the receipt of the request from the respondent Party. Concessions or other obligations shall not be suspended until the panel has delivered its decision pursuant to this paragraph. The suspension of concessions or other obligations shall be consistent with this decision.

ARTICLE 20.23

Review of any Measure Taken to Comply After the Adoption of Temporary Remedies

1. Upon the notification by the respondent Party to the complaining Party of the measures taken to comply with the final report panel ruling:
 - (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 20.22, the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or
 - (b) in a situation where necessary compensation has been agreed, the respondent Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.
2. If the Parties do not reach an agreement on whether the measures notified in accordance with paragraph 1 bring the respondent Party into compliance with the covered provisions, within 30 days after the date of receipt of the notification, either Party may request in writing the panel to examine the matter. That request shall be notified simultaneously to the respondent Party.
3. The decision of the panel shall be notified to the Parties no later than 60 days after the date of submission of the request. If the panel decides that the measures notified in accordance with paragraph 1 bring the respondent Party into compliance with the covered provisions the suspension of concessions or other obligations, or the application of the compensation, as the case may be, shall be terminated no later than 15 days after the date of the decision. If the panel decides that the measures notified in accordance with paragraph 1 do not achieve compliance with the final report or are inconsistent with the Agreement, the suspension of concessions or other obligations, or the application of compensation, may continue. If the panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

ARTICLE 20.24

Suspension and Termination of Proceedings

1. At the request of both Parties, the panel shall suspend the proceedings for a period agreed by the Parties not exceeding 12 consecutive months from the date of such request.

2. In the event of a suspension of the panel proceedings, the relevant time periods under this Chapter shall be extended by the same period of time for which the proceedings are suspended.
3. The panel shall resume the proceedings before the end of the suspension period at the written request of both Parties or at the end of the suspension period on the written request of a Party.
4. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the panel proceedings shall be terminated.
5. The Parties may agree at any time to terminate the panel proceedings. The Parties shall jointly notify that agreement to the panel.

ARTICLE 20.25 **Choice of Forum**

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.
2. If a dispute with regard to a particular matter arises under this Agreement and under another international trade agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular matter referred to in paragraph 2, the selected forum shall be used to the exclusion of other fora unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
4. For the purposes of paragraph 3:
 - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 20.7;
 - (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and
 - (c) dispute settlement proceedings under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

ARTICLE 20.26
Remuneration and Expenses

1. Unless the Parties otherwise agree, the remuneration and expenses of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.
2. Each Party shall bear its own expenses and legal costs in the panel proceedings.
3. The Joint Committee shall, at its first meeting, establish the procedure for determining appropriate remuneration for panellists and assistants.

ARTICLE 20.27
Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 20.3.
2. If a mutually agreed solution is reached during the panel proceedings, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.
3. Each Party shall take any measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measures that it has taken to implement the mutually agreed solution.
5. Any mutually agreed solution reached between the Parties shall be made available to the public. Where a Party has designated information as confidential in the course of determining a mutually agreed solution, that information shall be treated as confidential for the purposes of Article 1.5.

ARTICLE 20.28
Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified in this Chapter.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

3. Except as otherwise provided for in this chapter, all time periods laid down in this Chapter shall be cut by half for disputes concerning matters of urgency pursuant to Article 20.9.

ARTICLE 20.29
Annexes

The Joint Committee may modify Annexes 20-A and 20-B.