

CHAPTER 14 DISPUTE SETTLEMENT

ARTICLE 14.1: OBJECTIVE

1. The objective of this Chapter is to provide an effective and efficient dispute settlement process between the Parties regarding their rights and obligations under this Agreement.
2. The Parties shall endeavor to agree regarding the interpretation and application of this Agreement and shall make all efforts through cooperation, consultation, or other means, to reach a mutually agreed solution concerning any matter that might affect its operation.
3. A solution mutually acceptable to the Parties to a dispute and consistent with this Agreement is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of this Chapter will be in general to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of this Agreement.

ARTICLE 14.2: SCOPE

1. Unless otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to any dispute arising between the Parties from the interpretation, application, fulfillment or non-fulfillment of the provisions contained in this Agreement.
2. If any Party considers that any benefit it could reasonably have expected to accrue to it under Chapters 2 (National Treatment and Market Access for Goods); 3 (Rules of Origin); 4 (Customs Procedures and Trade Facilitation) and; 5 (Sanitary and Phytosanitary Measures); 6 (Technical Barriers to Trade), and 9 (Trade in Services), is being nullified or impaired as a result of the application of any measure by the other Party that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.
3. When an Arbitral Tribunal has ruled that a provision of this Agreement has not been observed, the Party complained against shall take such measures as necessary to ensure the observance of such provision within its territory.

ARTICLE 14.3: MUTUALLY AGREED SOLUTION

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. The Parties shall jointly notify the Joint Committee of any such solution. Upon notification of the mutually agreed solution, any dispute settlement procedure under this Chapter shall be terminated.

ARTICLE 14.4: CONSULTATIONS

1. Any dispute with respect to any matter referred to in Article 14.2 shall, as far as possible, be settled by consultations between the Parties.
2. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue, and an indication of the legal basis of the request, including the provisions of the Agreement considered to be applicable.
3. If a request for consultation is made pursuant to paragraph 2, the Party to which the request is made shall reply to the request within fifteen (15) days after the date of its receipt and shall enter into consultations within a period of no more than thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. In cases of urgency, including a case involving a good that rapidly loses its trade value such as perishable goods, consultations shall be held within fifteen (15) days after the date of the receipt of the request of the other Party.
5. Consultations shall be held in person or by any technological means available. If done in person consultations shall be held on the territory of the Party complained against, unless the Parties agreed otherwise.
6. The Parties shall make every effort to reach a mutually satisfactory solution to any matter through consultations. To this end, the Parties shall:
 - (a) provide sufficient information as may be reasonably available at the stage of consultations to enable a full examination of the measure alleged to affect the implementation of the Agreement; and
 - (b) treat as confidential any information exchanged during the consultations.

ARTICLE 14.5: CONCILIATION

1. The Parties may at any stage of any dispute settlement procedure under this Chapter agree to undertake conciliation. Conciliation may begin at any time and be suspended or terminated by either Party at any time.
2. All proceedings under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter.

ARTICLE 14.6: MEDIATION

1. If consultations fail to produce a mutually acceptable solution, the Parties may, by mutual agreement, seek the services of a mediator appointed by the Joint Committee. Any request for mediation shall be made in writing and identify the measure that has been subject of consultations, in addition to the mutually agreed terms of reference for the mediation.
2. During the mediation process the Parties shall not initiate arbitral proceedings conducted in accordance with this Chapter unless the Parties agree otherwise.
3. The Joint Committee shall appoint within ten (10) days of receipt of the request a mediator selected by lot from the persons included in the roster referred to in Article 14.8.2 who is not a national of either of the Parties.

The mediator shall:

- (a) convene a meeting with the Parties no later than thirty (30) days after being appointed.
- (b) receive the submissions of both Parties no later than fifteen (15) days before the meeting and issue an opinion no later than forty-five (45) days after having been appointed.

The mediator's opinion shall be non-binding and may include a recommendation on steps to resolve the dispute that is consistent with this Agreement.

4. Deliberations and all information including documents submitted to the mediator shall be kept confidential and shall not be brought before the Arbitral Tribunal in its proceedings conducted in accordance with this Chapter, unless the Parties agree otherwise.
5. The time limits referred to in paragraph 3 (a) and (b) may be amended, should circumstances so demand, upon mutual agreement of the Parties. Any amendment shall be notified in writing to the mediator.
6. In the event that mediation produces a mutually acceptable solution to the dispute, both Parties shall submit a notification in writing to the mediator and to the Joint Committee.

ARTICLE 14.7: CHOICE OF FORUM

1. Disputes regarding any matter covered both by this Agreement and the *WTO Agreement* or any other free trade agreement to which both Parties are party may be settled in either forum selected by the complaining Party.
2. Once dispute settlement procedures are initiated under Article 14.10 to this Agreement or under Article 6 (Establishment of Panels) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* contained in Annex 2

to the *WTO Agreement* or any other free trade agreement to which both Parties are party, the forum thus selected shall be used to the exclusion of the other.

ARTICLE 14.8: ROSTERS OF ARBITRATORS

1. Each Party shall establish within six (6) months after the date of entry into force of this Agreement and maintain an indicative roster of individuals who are willing and able to serve as arbitrators. Each roster shall be composed of five (5) members.
2. For the position of the arbitrator who will serve as chair of the Arbitral Tribunal, the Parties shall establish within six (6) months after the date of entry into force of this Agreement and maintain an indicative roster of six (6) individuals, who are not nationals of either Party, who shall not have their usual place of residence in either Party, and who are willing and able to serve as chair of the Arbitral Tribunal. This roster shall be established by consensus.
3. The Parties may have recourse to the rosters even if the rosters are not complete.
4. Once established, the rosters shall remain in effect until the Parties constitute a new roster. The Parties may select a replacement where a roster member is no longer available to serve.

ARTICLE 14.9: QUALIFICATION OF ARBITRATORS

1. All arbitrators shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in solution of disputes arising under international trade agreements;
 - (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;
 - (c) be independent of, and not be affiliated with or take instructions from any Party;
 - (d) be nationals of states having diplomatic relations with both Parties;
and
 - (e) comply with the Code of Conduct attached as Annex 14-B to this Agreement.
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Articles 14.5, 14.6 and 14.13.1(d).

ARTICLE 14.10: REQUEST FOR THE ESTABLISHMENT OF AN ARBITRAL TRIBUNAL

1. The complaining Party may request the establishment of an Arbitral Tribunal if:

- (a) the Party complained against does not reply to the request for consultations in accordance to the time frames provided in this Chapter;
- (b) consultations are not held or the Parties have failed to settle the dispute through consultations within the period of sixty (60) days after the date of receipt of the request for consultations under Article 14.4 (3);
- (c) consultations are not held or the Parties have failed to settle the dispute through consultations within twenty-five (25) days after the date of receipt of the request for consultations under Article 14.4 (4) in matters regarding urgency; or
- (d) the Parties have had recourse to mediation and no mutually acceptable solution has been reached within fifteen (15) days after the issuance of the mediator's opinion.

2. Requests for the establishment of an Arbitral Tribunal shall be made in writing to the Party complained against and to the Joint Committee. The complaining Party shall identify in its request the specific measure at issue, and shall explain how that measure constitutes a violation of the provisions of this Agreement in a manner that clearly presents the legal basis for the complaint, including indicating the relevant provisions of this Agreement.

3. A Party shall not request the establishment of an Arbitral Tribunal to review a proposed measure.

4. An Arbitral Tribunal shall be deemed established upon the selection of the last arbitrator.

5. The request to establish the Arbitral Tribunal referred to in this Article shall constitute the terms of reference of the Arbitral Tribunal unless otherwise agreed by the Parties.

ARTICLE 14.11: COMPOSITION OF THE ARBITRAL TRIBUNAL

1. The Parties shall apply the following procedures in establishing an Arbitral Tribunal:

- (a) the Arbitral Tribunal shall comprise three (3) members;
- (b) within fifteen (15) days after the notification of the request for the establishment of the Arbitral Tribunal, the complaining Party shall

select one arbitrator and the Party complained against shall select one arbitrator.

If the complaining Party or the Party complained against fails to select an arbitrator within such period, an arbitrator shall be selected by lot from the indicative roster of that Party established under Article 14.8 within three (3) days after expiration of the said period, in the presence of representatives of both Parties. If no indicative roster of that Party exists, the arbitrator shall be selected from the indicative roster for chair and if no such roster exists, the arbitrator shall be selected from the indicative roster of the other Party, within the same said period;

- (c) the Parties shall endeavor to agree on a third arbitrator who shall serve as chair, within fifteen (15) days from the date the second arbitrator has been selected. If the Parties are unable to agree on the chair, the chair shall be selected by lot from the roster established under Article 14.8 within three (3) days after expiration of the said period, in the presence of representatives of both Parties;
- (d) each disputing Party shall endeavor to select arbitrators who have expertise or experience relevant to the subject matter of the dispute.

2. In case that a Party raises a reasoned objection against an arbitrator regarding his or her compliance with the Code of Conduct attached as Annex 14-B, the Parties shall follow the procedures provided for in rules 15 and 16 of Annex 14-A.

3. If an arbitrator is unable to participate in the proceedings, is removed or resigns, a new arbitrator shall be selected as provided for in Annex 14-A.

ARTICLE 14.12: FUNCTION OF ARBITRAL TRIBUNALS

1. The function of an Arbitral Tribunal shall be to make an objective assessment of the matter before it, in accordance with the request for the establishment of an Arbitral Tribunal, including an examination of the facts of the case and their applicability and consistency with this Agreement. If the Arbitral Tribunal determines that a measure is inconsistent with a provision of this Agreement, it shall recommend that the Party complained against bring the measure into conformity with that provision.

2. The Arbitral Tribunal shall base its award on the relevant provisions of this Agreement and on the information provided during the proceedings including submissions, evidence and arguments made at the hearings.

3. The Arbitral Tribunals established under this Chapter shall interpret the provisions of this Agreement in accordance with customary rules of interpretation

of public international law¹. Arbitral Tribunals cannot increase or diminish the rights and obligations contained in this Agreement.

ARTICLE 14.13: PROCEEDINGS OF ARBITRAL TRIBUNALS

1. Unless the Parties otherwise agree, the Arbitral Tribunal shall apply the Rules of Procedure attached as Annex 14-A, that shall ensure:

- (a) confidentiality of the proceedings and all written submissions to, and communications with, the Arbitral Tribunal;
- (b) a right to at least one (1) hearing before the Arbitral Tribunal;
- (c) an opportunity for each Party to provide initial and rebuttal submissions;
- (d) the ability of the Arbitral Tribunal to seek information, technical advice and expert opinions; and
- (e) the protection of confidential information.

2. An Arbitral Tribunal shall adopt its decisions by consensus. In the event that, an Arbitral Tribunal is unable to reach consensus, it shall adopt its decisions by majority vote.

3. The venue for the proceedings of the Arbitral Tribunal shall be, unless agreed otherwise by the Parties, Panama City if the complaining Party is Israel and Jerusalem if the complaining Party is Panama.

4. There shall be no ex-parte communications with the Arbitral Tribunal concerning matters under its consideration.

5. The award of the Arbitral Tribunal shall be set out in a written report issued to the Parties. The award shall include the findings and reasoning thereof, and its determination as to whether the Party complained against has complied with its obligations under this Agreement and any other finding or determination requested in the terms of reference, recommendations and/or rulings, as the case may be, and shall exclude payment of monetary compensation.

6. The Arbitral Tribunal shall allow the Parties fourteen (14) days to review the draft of the award prior to its finalization and shall address any comments by the Parties in its award.

7. The Arbitral Tribunal shall issue to the Parties its award on the dispute referred to it within ninety (90) days after the establishment of the Arbitral Tribunal. When the Arbitral Tribunal considers that it cannot issue its award within ninety (90) days, it shall inform the Parties in writing of the reasons for the

¹ For greater certainty interpretations of the Joint Committee pursuant to Article 12.1.4(d) (Establishment and Functions of the Joint Committee) shall be taken into consideration by the Arbitral Tribunal.

delay and shall indicate the estimated period of time within which it will issue its award. Under no circumstances shall the award be issued later than one hundred and twenty (120) days after the date of establishment of the Arbitral Tribunal.

8. If a Party considers a matter to be a case of urgency, including a case involving a good that rapidly loses its trade value such as perishable goods, that Party may submit a reasoned request to the Arbitral Tribunal for an accelerated time period for the Arbitral Tribunal proceedings.

In cases of urgency, the Arbitral Tribunal shall make every effort to issue its award within forty-five (45) days from the date of its establishment. Under no circumstances shall the award be issued later than seventy-five (75) days after the date of the establishment of the Arbitral Tribunal.

9. The award shall be final and binding on the Parties.

10. Unless otherwise agreed by the Parties, the award of the Arbitral Tribunal may be made publically available within ten (10) days after it is issued to the Parties, subject to the protection of confidential information.

ARTICLE 14.14: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. Where the Parties agree, the Arbitral Tribunal may suspend its work at any time for a period not exceeding twelve (12) months from the date of such agreement. If the work of the Arbitral Tribunal has been suspended for more than twelve (12) months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an Arbitral Tribunal established under this Chapter, in the event that a mutually satisfactory solution to the dispute has been found.

3. Suspension or termination of the proceedings shall not prejudice the right of the Parties to request the establishment of an Arbitral Tribunal on the same measure at a later time.

4. Before the Arbitral Tribunal issues its award, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

Article 14.15: COMPLIANCE WITH AN AWARD

1. The Party concerned shall promptly comply with the ruling of the Arbitral Tribunal. If it is impracticable to do so, the Parties shall endeavor to agree on a reasonable period of time to comply. In the absence of such agreement within thirty (30) days from the date of the issuance of the final award, either Party may request the original Arbitral Tribunal to determine the length of the reasonable period of time, in light of the particular circumstances of the case. A guideline for the Arbitral Tribunal shall be that the reasonable time to comply with the award

should not exceed fifteen (15) months from the date the award was issued. The ruling of the Arbitral Tribunal should be given within thirty (30) days from the submission of the request. In the event the original Arbitral Tribunal, or any of its members, is not available, the procedures established in Article 14.11 shall apply.

2. In case of disagreement as to the existence of a measure complying with the ruling of the Arbitral Tribunal or to the consistency of that measure with the ruling of the Arbitral Tribunal, such dispute shall be decided by the same arbitral tribunal before compensation can be sought or suspension of benefits can be applied in accordance with Article 14.16. In the event the original Arbitral Tribunal, or any of its members, is not available, the procedures established in Article 14.11 shall apply.

The ruling of the Arbitral Tribunal shall be rendered within ninety (90) days from the submission of the request.

ARTICLE 14.16: COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Party concerned fails to properly comply with the ruling in the final award within a reasonable period of time as provided for in of Article 14.15.1 or fails to comply with a ruling under Article 14.15.2, 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 twenty (20) days from the request, or an agreement has been reached but not complied with, 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 matter that the Arbitral Tribunal has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or matter that the Arbitral Tribunal 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 other Party to the dispute and the Joint Committee of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than thirty (30) days before the date on which the suspension is due to take effect. Within fifteen (15) days from that notification, the Party complained against may request the original Arbitral Tribunal to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. In the event the original Arbitral Tribunal, or any of its members, is not available, the procedures established in Article 14.11 shall apply.

The ruling of the Arbitral Tribunal shall be given within forty-five (45) days from that request. Benefits shall not be suspended until the Arbitral Tribunal has issued 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 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 have resolved the dispute otherwise.

5. The Party complained against shall notify the complaining Party of any measure adopted to comply with the award and the provisions of this Agreement.

6. With respect to paragraphs 4 and 5, any dispute between the Parties on whether a particular measure found by the Arbitral Tribunal to be inconsistent with this Agreement has been removed or brought into conformity with the Arbitral Tribunal's Award or whether the level of suspension is not in conformity with the Arbitral Tribunal's decision under paragraph 1, shall be referred to the same tribunal for a decision. In the event the original Arbitral Tribunal, or any of its members, is not available, the procedures established in Article 14.11 shall apply. The requesting Party shall refer the matter to the Arbitral Tribunal together with its submissions and the other Party shall respond within fifteen (15) days. The ruling of the Arbitral Tribunal shall be given within thirty (30) days from the date of the submission of the request.

ARTICLE 14.17: TIME FRAMES

All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the Parties.

ARTICLE 14.18: REMUNERATION AND EXPENSES

The remuneration and expenses of the Arbitral Tribunal shall be borne in equal parts by the Parties in accordance with Annex 14-A. All other expenses not specified in Annex 14-A shall be borne by the Party incurring those expenses.

ARTICLE 14.19: REQUEST FOR CLARIFICATION OF AN AWARD

1. Within ten (10) days after the issuance of an award, a Party may submit a written request to the Arbitral Tribunal for clarification of any determinations or recommendations in the award that the Party considers ambiguous. The Arbitral Tribunal shall respond to the request within ten (10) days after the presentation of such request.

2. The submission of a request pursuant to paragraph 1 shall not affect the time periods referred to in Article 14.15 and Article 14.16 unless the Arbitral Tribunal decides otherwise.

ARTICLE 14.20: LANGUAGE OF ARBITRAL PROCEEDINGS

1. All proceedings relating to the dispute settlement proceedings shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language the Party submitting such document shall provide an English translation of that document.