

CHAPTER 20

CONSULTATIONS AND DISPUTE SETTLEMENT

Section A: Introductory Provisions

Article 20.1: Definitions

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

Complaining Party means the Party that requests consultations under Article 20.5;

dispute arising under this Agreement means a complaint made by the Complaining Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations¹ under this Agreement²; and

Responding Party means the Party to which the request for consultations is made under Article 20.5.

Article 20.2: Scope

1. This Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade) or Chapter 15 (Economic Cooperation).
2. This Chapter shall apply subject to any special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

¹ A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with its obligations under this Agreement.

² Non-violation complaints are not permitted under this Agreement.

Article 20.3: 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 in accordance with 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 time periods provided for in this Chapter may be modified by agreement between the Parties.

Article 20.4: Choice of Forum

1. Except as provided in this Article, this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.
2. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter. However, this paragraph shall not apply if substantially separate and distinct rights or obligations are in dispute.
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 a panel in accordance with Article 20.7 or requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal under another international agreement.
4. Notwithstanding paragraph 2, a Party may initiate an adjudication proceeding in the other forum if the first forum selected fails for procedural or jurisdictional reasons to make findings on the merits of the claim.
5. This Article does not apply where the Parties agree in writing that this Article shall not apply to a particular dispute.

Section B: Consultation Provisions

Article 20.5: Consultations

1. Either Party may request consultations with respect to any dispute arising under this Agreement. The Responding Party shall accord due consideration to a request for consultations made by the Complaining Party and shall accord adequate opportunity for such consultations.
2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.
3. The Responding Party shall, unless the Parties otherwise agree, reply to the request within seven days of the date of its receipt and shall enter into consultations no later than:
 - (a) 10 days after the date of receipt of the request in cases of urgency, including those which concern perishable goods; or
 - (b) 30 days after the date of receipt of the request for all other matters.
4. The Parties shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties shall:
 - (a) provide sufficient information to enable a full examination of the matter including how the measures at issue might affect the implementation or application of this Agreement;
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
 - (c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for, or expertise in, the matter under consultation.
5. The consultations shall be confidential and without prejudice to the rights of the Parties to the dispute in any further or other proceedings.

Article 20.6: Good Offices, Conciliation, Mediation

1. The Parties may agree at any time 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, the 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 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.

Section C: Adjudication Provisions

Article 20.7: Request for Establishment of Panels

1. The Complaining Party may request the establishment of a panel to consider a dispute arising under this Agreement if:

(a) the Responding Party does not reply to a request for, or enter into, consultations in accordance with Article 20.5.3; or

(b) the consultations fail to resolve a dispute within:

(i) 20 days of the date of receipt of the request for consultations in cases of urgency, including those which concern perishable goods;

(ii) 60 days of the date of receipt of the request for consultations for all other matters; or

(iii) such other period as the Parties may agree.

2. A request made in accordance with paragraph 1 shall identify the specific measure at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the panel) sufficient to present the problem clearly.

3. The Responding Party shall immediately acknowledge receipt of the request made in accordance with paragraph 1, indicating the date on which the request was received.

4. If a request is made in accordance with paragraph 1, a panel shall be established in accordance with Article 20.8.

5. Notwithstanding paragraphs 1 and 2, a panel shall not be established to review a proposed measure.

Article 20.8: Establishment and Reconvening of Panels

1. A panel requested in accordance with Article 20.7 shall be established in accordance with this Article.
2. Unless the Parties otherwise agree, the panel shall consist of three panellists. All appointments and nominations of panellists under this Article shall conform fully with the requirements in paragraphs 9 and 10.
3. Within five days of the date of the receipt of a request under Article 20.7, the Parties shall enter into consultations with a view to reaching agreement on the procedures for composing the panel, taking into account the factual, technical and legal circumstances of the dispute. Any procedures for composing the panel which are agreed under this paragraph shall be used for the composition of the panel and shall also be used for the purposes of paragraphs 12 and 13.
4. If the Parties are unable to reach agreement on the procedures for composing the panel within 15 days of the date of the receipt of the request referred to in paragraph 3, either Party may, at any time thereafter, notify the other Party that it wishes to use the procedures set forth in paragraphs 5 through 7. Where such a notification is made, the panel shall be composed in accordance with paragraphs 5 through 7.
5. The Complaining Party shall appoint one panellist within 10 days of the date of the receipt of the notification referred to in paragraph 4. The Responding Party shall appoint one panellist within 20 days of the date of the receipt of the notification referred to in paragraph 4.
6. Following the appointment of the panellists in accordance with paragraph 5, the Parties shall agree on the appointment of the third panellist who shall serve as the chair of the panel. To assist in reaching this agreement, a Party may provide to the other Party a list of up to three nominees for appointment as the chair of the panel.
7. If any of the three panellists have not been appointed within 45 days of the date of the receipt of the notification referred to in paragraph 4, either 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 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.³ In the event that the Director-General of the WTO is a natural person of a Party, the Deputy Director-General or the officer next in seniority who is not a natural person of a Party shall be requested to make the required appointments.
8. The date of establishment of the panel shall be the date on which the last panellist is appointed.

³ For greater certainty, where both Parties have provided a list of nominees under paragraph 6, both lists shall be provided to the Director-General of the WTO.

9. All panellists 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 judgement;
 - (c) be independent of, and not be affiliated with or take instructions from, either Party;
 - (d) not have dealt with the matter before the panel in any capacity;
 - (e) disclose, to the Parties, information which may give rise to justifiable doubts as to their independence or impartiality; and
 - (f) comply with the code of conduct as set out in Annex 20-B (Code of Conduct).
10. Unless the Parties otherwise agree, a panellist shall not be a natural person of a Party. In addition, the chair of the panel shall not have his or her usual place of residence in the territory of a Party.
11. 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 a panel.
12. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner used to appoint the original panellist and shall have all the powers and duties of the original panellist. The work of the panel, including any applicable time periods, shall be suspended until the successor panellist has been appointed.
13. If a panel is reconvened under Article 20.13, Article 20.14 or Article 20.15 the reconvened panel shall, if possible, have the same panellists as the original panel. If this is not possible, the successor panellist(s) shall be appointed in the same manner as prescribed for the appointment of the original panellist(s), and shall have all the powers and duties of the original panellist(s).

Article 20.9: Functions of Panels

1. A panel 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 the provisions of this Agreement cited by the Parties; and
 - (c) whether the Responding Party has failed to carry out its obligations under this Agreement.
2. A panel shall have the following terms of reference unless the Parties otherwise agree within 20 days of the date of the establishment of a panel:
- "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of a panel made in accordance with Article 20.7, and to make such findings provided for in this Agreement."
3. A panel shall only make the findings, rulings and recommendations provided for in this Agreement.
4. The panel shall set out in its report:
- (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) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and
 - (d) its reasons for its findings in subparagraphs (b) and (c).
5. In addition to paragraph 4, a panel shall include in its report any other findings jointly requested by the Parties. The panel may recommend ways in which the Responding Party could implement the panel's findings if the Parties so agree.
6. Unless the Parties otherwise agree, a panel shall base its report solely on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or advice put before it under Article 20.10.15.
7. The findings of the panel shall not add to or diminish the rights and obligations provided in this Agreement.
8. The panel shall consult the Parties regularly and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.
9. A panel reconvened under this Chapter shall also carry out functions with regard to compliance review under Article 20.13, review of level of suspension of concessions

or other obligations under Article 20.14 and post-suspension review under Article 20.15. Paragraphs 1 through 3 shall not apply to a panel reconvened under Article 20.13 and Article 20.14.

10. A panel shall make its findings by consensus. If a panel is unable to reach consensus, it may make its findings by majority vote.

Article 20.10: Panel Procedures

1. A panel established in accordance with Article 20.8 shall adhere to this Chapter. The panel shall also apply the rules of procedure set out in Annex 20-A (Rules of Procedure) unless the Parties otherwise agree. On request of a Party, or on its own initiative, the panel may, after consulting the Parties, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with Annex 20-A (Rules of Procedure).

2. A panel reconvened under Article 20.13, Article 20.14 or Article 20.15 may establish its own procedures which do not conflict with this Chapter or Annex 20-A (Rules of Procedure), in consultation with the Parties, drawing as it deems appropriate from this Chapter or Annex 20-A (Rules of Procedure).

Timetable

3. After consulting the Parties, a panel shall, as soon as practicable and if possible within 15 days of the establishment of the panel, fix the timetable for the panel process. The panel process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of 270 days.

4. Similarly, a Compliance Review Panel reconvened in accordance with Article 20.13 or Article 20.15 shall, as soon as practicable and if possible within 15 days of reconvening, fix the timetable for the compliance review process taking into account any time periods specified in Article 20.13 or Article 20.15.

Preliminary Rulings

5. Any request by a Party for a preliminary ruling from the panel, including on jurisdictional issues, shall be submitted as early as possible, and in any event no later than the required date of delivery of a Party's first written submission. Exceptions to this paragraph may be granted upon showing good cause.

Panel Proceedings

6. Panel proceedings shall provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the panel process.

7. Panel deliberations shall be confidential. The Parties shall be present only when invited by the panel to appear before it. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

Submissions

8. Each Party shall have an opportunity to set out in writing the facts of its case, its arguments and counterarguments. The timetable fixed by the panel shall include precise deadlines for submissions by the Parties.

Hearings

9. The timetable fixed by the panel shall provide for at least one hearing for the Parties to present their cases to the panel. As a general rule, the timetable shall not provide more than two hearings unless the panel determines in consultation with the Parties that there are special circumstances to justify additional hearings. All presentations and statements made at hearings shall be made in the presence of the Parties.

10. The venue for hearings shall be decided by agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

11. A panel shall hold its hearings in closed session unless the Parties otherwise agree.

Confidentiality

12. A Party shall treat as confidential any information submitted to the panel by the other Party. Neither Party shall be precluded from disclosing its own information submitted to the Panel or from making statements of its own position available to the public, subject to protection of confidential information of the other Party. A Party shall, on request of the other Party, provide a non-confidential summary of its own information that may be disclosed to the public.

13. The panel shall treat as confidential all information submitted by the Parties.

Additional Information and Technical Advice

14. The Parties shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.

15. A panel may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so, the panel shall seek the views of the Parties. If the Parties agree that the panel should not seek the additional information or technical advice, the panel shall not proceed. The panel shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

Report

16. The panel shall provide to the Parties an interim report which complies with the requirements specified in Article 20.9.4.

17. The interim report shall be provided at least 28 days before the deadline for completion of the final report. The panel shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

18. The interim and final reports of the panel shall be drafted without the presence of the Parties. Opinions expressed in any report of the panel by its individual members shall be anonymous.

19. The panel shall present its final report to the Parties within 180 days of the date of its establishment. In cases of urgency, including those relating to perishable goods, the panel shall aim to present its report to the Parties within 90 days of the date of its establishment. If the panel considers that it cannot present its final report within 180 days or, in cases of urgency, within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

20. A Party may, seven days after the final report of the panel is presented to the Parties or at any time thereafter, make the report publicly available, subject to the protection of any information contained in the report which the Parties have designated as confidential in accordance with paragraph 12.

Article 20.11: Suspension and Termination of Proceedings

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 365 days after the date of such agreement. Within this period, the suspended panel proceeding shall be resumed on the request of either Party. If the work of the panel has been continuously suspended for more than 365 days, the authority for establishment of the panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the panel presents its final report to the Parties, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

Section D: Implementation Provisions

Article 20.12: Implementation

1. If a panel finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall bring itself into conformity with its obligations under this Agreement.
2. Within 30 days of the date of the presentation of the panel's final report to the Parties, the Responding Party shall notify the Complaining Party:
 - (a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in paragraph 1;
 - (b) whether such implementation can take place immediately; and
 - (c) if it is impracticable for such implementation to take place immediately, the reasonable period of time the Responding Party considers it would need to implement the findings and, if it deems appropriate, any recommendations contained in the final report.
3. If the Responding Party makes a notification under paragraph 2(c) that it is impracticable to immediately comply with the obligation in paragraph 1, it shall have a reasonable period of time to do so.
4. If a reasonable period of time is required, it shall, if 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 the presentation of the panel's final report to the Parties, either Party may request that the chair of the panel determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made no later than 120 days after the date of the presentation of the panel's final report to the Parties.
5. If a request is made in accordance with paragraph 4, the chair of the panel shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.
6. As a guideline, the reasonable period of time determined by the chair of the panel should not exceed 455 days from the date of the presentation of the panel's final report to the Parties. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.
7. If the Responding Party considers that it has fully complied with the obligation in paragraph 1, it shall so notify the Complaining Party. The Responding Party shall include a description of any measures it has taken to comply and the text of the measure, if any.

Article 20.13: Compliance Review

1. If the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 20.12.1, such dispute shall be decided through recourse to a panel reconvened for this purpose (Compliance Review Panel).⁴ Unless otherwise specified in this Chapter, a Compliance Review Panel may be convened at the request of either Party.
2. Such request may only be made after the earlier of either:
 - (a) the expiry of the reasonable period of time; or
 - (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 20.12.1.
3. A Compliance Review Panel shall make an objective assessment of the matter before it, including an objective assessment of:
 - (a) the factual aspects of any implementation action taken by the Responding Party; and
 - (b) whether the Responding Party has complied with the obligation in Article 20.12.1.
4. The Compliance Review Panel shall set out in its report:
 - (a) a descriptive section summarising the arguments of the Parties;
 - (b) its findings on the factual aspects of the case;
 - (c) its findings on whether the Responding Party has complied with the obligation in Article 20.12.1; and
 - (d) its reasons for its findings in subparagraphs (b) and (c).
5. The Compliance Review Panel shall, if possible, provide its interim report to the Parties within 75 days of the date it reconvenes and its final report 15 days thereafter. If the Compliance Review Panel considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.
6. If a panel is requested to reconvene in accordance with paragraph 1, it shall reconvene within 15 days of the date of the request. The period from the date of the

⁴ Consultations under Article 20.5 are not required for these procedures.

request for the panel to reconvene to the submission of the panel's final report shall not exceed 120 days, unless Article 20.8.12 applies or the Parties otherwise agree.

Article 20.14: Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with the obligation in Article 20.12.1. However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation in Article 20.12.1. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. If any of the following circumstances exist:

(a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in Article 20.12.1;

(b) the Responding Party fails to provide a notification in accordance with Article 20.12.2; or

(c) a failure to comply with the obligation in Article 20.12.1 has been established in accordance with Article 20.13,

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If the Parties have:

(a) been unable to agree on compensation within 30 days of the date of receipt of the request made under paragraph 2; or

(b) agreed on compensation but the Complaining Party considers that the Responding Party has failed to observe the terms of the agreement,

the Complaining Party may at any time thereafter notify the Responding Party that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification or impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of such notification. Without prejudice to its right to begin suspending concessions or other obligations, if the Complaining Party makes a notification in the circumstances referred to in paragraph (b), it shall afford the Responding Party an opportunity to demonstrate that it has complied with the terms of the agreement.

4. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised if:

- (a) a review is being undertaken in accordance with paragraph 8; or
 - (b) a mutually agreed solution has been reached.
5. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) to which the concessions or other obligations are related.
6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:
- (a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure; and
 - (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(s).
7. The level of the suspension of concessions or other obligations shall be equivalent to the level of nullification and impairment.
8. Within 30 days of the date of receipt of a notification made under paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in paragraph 6 have not been followed, the Responding Party may request the panel to reconvene to make findings on the matter. The panel shall provide its findings to the Parties within 30 days of the date it reconvenes. If a panel is requested to reconvene in accordance with this paragraph, it shall reconvene within 15 days of the date of the request, unless Article 20.8.12 applies.

Article 20.15: Post-Suspension Review

1. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 20.12.1 has been complied with or a mutually satisfactory solution is reached.
2. If the right to suspend concessions or other obligations has been exercised under Article 20.14, and if the Responding Party considers that:
- (a) the level of concessions or other obligations actually suspended by the Complaining Party exceeds the level authorised under Article 20.14.8; or
 - (b) it has complied with the obligation in Article 20.12.1,

it may request the Compliance Review Panel to reconvene to examine the matter.⁵

3. Paragraphs 3 through 5 of Article 20.13 shall apply if the Compliance Review Panel reconvenes in accordance with paragraph 2.

4. If the Compliance Review Panel reconvened in accordance with paragraph 2 finds that the Responding Party has complied with the obligation in Article 20.12.1, the Complaining Party shall stop the suspension of concessions or other obligations.

Section E: Final Provisions

Article 20.16: Expenses

1. Unless the Parties otherwise agree, each Party to a dispute shall bear the costs of its appointed panellist and its own expenses and legal costs.

2. Unless the Parties otherwise agree, the costs of the chair of the panel and other expenses associated with the conduct of the proceedings shall be borne in equal parts by the Parties to the dispute.

Article 20.17: Transmission of Documents

Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party through its designated contact point, in accordance with Article 18.6 (Contact Points) of Chapter 18 (Institutional Provisions), who shall provide confirmation of receipt of such documents in writing.

Article 20.18: Language

1. All proceedings pursuant to this Chapter 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, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

⁵ If a Compliance Review Panel is reconvened to consider the Responding Party's compliance, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.