

CHAPTER 12 DISPUTE SETTLEMENT

ARTICLE 12.1: 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 12.2: SCOPE AND COVERAGE

1. Unless otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to any dispute arising 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 any provision of this Agreement 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 12.3: 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 12.4: CONSULTATIONS

1. Any dispute with respect to any matter referred to in Article 12.2 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 15 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days after the date of submission of the request, and shall be deemed concluded within 25 days after the date of submission of the request.
5. Consultations shall take place, unless the Parties agree otherwise, on the territory of the Party complained against.
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 12.5: 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 12.6: 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 arbitration proceedings conducted in accordance with this Chapter unless the Parties agree otherwise.
3. The Joint Committee shall appoint within 10 days of receipt of the request a mediator selected by lot from the persons included in the list referred to in Article 12.8 who is not a national of either of the Parties. The mediator shall convene a meeting with the Parties no later than 30 days after being appointed. The mediator shall receive the submissions of both Parties no later than 15 days before the meeting and issue an opinion no later than 45 days after having been appointed. The mediator's opinion may include a recommendation on steps to resolve the dispute that is consistent with this Agreement. The mediator's opinion shall be non-binding.
4. Deliberations and all information including documents submitted to the mediator shall be kept confidential and shall not be brought for the Arbitral Tribunal proceedings conducted in accordance with this Chapter, unless the Parties agree otherwise.
5. The time limits referred to in paragraph 3 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.

ARTICLE 12.7: CHOICE OF FORUM

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. Once dispute settlement procedures are initiated under Article 12.10 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 12.8: ROSTERS OF ARBITRATORS

1. Each Party shall establish within six 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 members.

2. For the position of chair of the Arbitral Tribunal, the Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of six 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 list shall be appointed 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 appoint a replacement where a roster member is no longer available to serve.

ARTICLE 12.9: QUALIFICATION OF ARBITRATORS

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 12-B to this Agreement.

ARTICLE 12.10: 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 within the period of 60 days after the date of receipt of the request for consultations;
 - (c) the Parties have failed to settle the dispute through consultations within 60 days after the date of receipt of the request for consultations; or
 - (d) the Parties have had recourse to mediation and no mutually acceptable solution has been reached within 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 complaint¹, 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. The request to establish the Arbitral Tribunal referred to in this Article shall form the terms of reference of the Arbitral Tribunal unless otherwise agreed by the Parties.

ARTICLE 12.11: 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 members;
- (b) within 15 days after the notification of the request for the establishment of the Arbitral Tribunal, the complaining Party shall appoint one arbitrator and the Party complained against shall appoint one arbitrator. If the complaining Party or the Party complained against fail to appoint an arbitrator within such period, an arbitrator shall be selected by lot from the indicative roster of that Party established under Article 12.8 within 3 days after expiration of said period;
- (c) the Parties shall endeavor to agree on a third arbitrator who shall serve as chair, within 15 days from the date the second arbitrator has been appointed or selected. If the Parties are unable to agree on the chair, the chair shall be selected by lot from the roster established under Article 12.8 within 3 days after expiration of said period;
- (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 12-B, the Parties shall follow the procedures provided for in rules 15 and 16 of Annex 12-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 12-A.

¹ This includes an indication whether the measure constitutes a *de jure* or *de facto* violation.

ARTICLE 12.12: 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 law². Arbitral Tribunals cannot increase or diminish the rights and obligations contained in this Agreement.

ARTICLE 12.13: PROCEEDINGS OF ARBITRAL TRIBUNALS

1. Unless the Parties otherwise agree, the Arbitral Tribunal shall apply the Rules of Procedure attached as Annex 12-A, that shall ensure:
 - (a) confidentiality of the proceedings and all written submissions to, and communications with, the Arbitral Tribunal;
 - (b) that the deliberations, hearings, sessions and meetings of the Arbitral Tribunal shall be held in closed sessions;
 - (c) a right to at least one hearing before the Arbitral Tribunal;
 - (d) an opportunity for each Party to provide initial and rebuttal submissions;
 - (e) the ability of the Arbitral Tribunal to seek information, technical advice and expert opinions; and
 - (f) 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 decided by mutual agreement between the Parties. If the Parties are unable to reach an agreement,

² For greater certainty interpretations of the Joint Committee pursuant to Article 13.3(d) (Functions of the Joint Committee) shall be taken into consideration by the Arbitral Tribunal.

the venue shall be Bogotá D.C. if the complaining Party is Israel and Jerusalem if the complaining Party is Colombia.

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, recommendations and/or rulings, as the case may be, and shall exclude payment of monetary compensation.

6. The Arbitral Tribunal shall allow the Parties 14 days to review the draft of the original award prior to its finalization and shall include a discussion of any comments by the Parties in its original award.

7. The Arbitral Tribunal shall issue to the Parties its original award on the dispute referred to it within 90 days after its establishment. When the Arbitral Tribunal considers that it cannot issue its original award within 90 days, it shall inform the Parties in writing of the reasons for the 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 120 days after the date of establishment of the Arbitral Tribunal.

8. In cases of urgency, including those involving perishable or seasonal goods, the Arbitral Tribunal shall make every effort to issue its original award within 45 days from the date of its establishment. Under no circumstances shall the award be issued later than 75 days after the establishment of the Arbitral Tribunal. The Arbitral Tribunal shall give a preliminary ruling within 10 days of its establishment, on whether it deems the case to be urgent.

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 10 days after it is issued to the Parties, subject to the protection of confidential information.

ARTICLE 12.14: 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 12 months from the date of such agreement. If the work of the Arbitral Tribunal has been suspended for more than 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 12.15: IMPLEMENTATION OF THE AWARD AND COMPENSATION

1. The Party complained against shall take all necessary measures to comply with the award of the Arbitral Tribunal without undue delay.

2. Within 30 days from the issuance of the award, the Party complained against shall notify the complaining Party of the following:

(a) the measures it intends to implement in order to comply with the award; and

(b) the period of time required to comply with the award.

3. In case of disagreements between the Parties on the proposed period of time for compliance pursuant to paragraph 2(b), the complaining Party may request the original Arbitral Tribunal, which issued the original award (hereinafter referred to as “original Arbitral Tribunal”), to establish the reasonable time period to comply with the award. The Arbitral Tribunal shall issue its award within 40 days from the submission of the request.

4. In case the original Arbitral Tribunal, or any of its members, is not available, the procedures established in Article 12.10 shall apply. The award shall be issued within 45 days from the date of establishment of the new Arbitral Tribunal.

5. In arbitral proceedings pursuant to paragraphs 3 or 4 of this Article, a guideline for the Arbitral Tribunal should be that the reasonable period of time to implement the award should not exceed 15 months from the date on which the award was issued.

6. Before the end of the period of time for compliance with the award, the Party complained against shall notify the other Party of the implementing measures that it has adopted in order to comply with the award.

7. If the Party complained against considers it impracticable to comply with the award, it may notify the complaining Party thereof, within 30 days from the issuance of the award, and offer compensation. Such compensation agreed upon by the Parties, shall be temporary and shall be provided until the Party complained against complies with the award.

8. If no agreement on compensation is reached within 15 days after such an offer is notified, the Party complained against shall comply with the award.

ARTICLE 12.16: NON-IMPLEMENTATION AND SUSPENSION OF BENEFITS

1. If the Party complained against:
 - (a) fails to comply with an award within the period of time for compliance pursuant to Article 12.15; or
 - (b) fails to comply with an agreement on compensation pursuant to Article 12.15.7; or
 - (c) fails to comply with a decision pursuant to Article 12.17.1(a) and Article 12.17.2;

the complaining Party shall be entitled to suspend benefits under this Agreement equivalent to those affected by the measure the Arbitral Tribunal has found to violate this Agreement, subject to the following paragraphs.

2. The suspension of benefits shall not be applied during the course of the proceedings initiated pursuant to Article 12.17.1(a).

3. The complaining Party shall notify the Party complained against and the Joint Committee of the benefits which it intends to suspend, the grounds for such suspension and the date on which the suspension will take effect, no later than 45 days before such date.

4. In considering which benefits to suspend under paragraph 1, the complaining Party should first seek to suspend the application of benefits in the same sector or sectors as those affected by the measure or other matter that the Arbitral Tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment. In case the complaining Party considers that it is impracticable or ineffective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

5. The suspension of benefits shall be temporary and be applied by the complaining Party, only:

- (a) until the measure found to violate this Agreement has been withdrawn or amended so as to comply with the original award and with the provisions of this Agreement; or
- (b) until an Arbitral Tribunal decides that the compliance measure is compatible with the award and with the provisions of this Agreement; or
- (c) until the Parties have otherwise settled the dispute.

In these cases the suspension of benefits shall be terminated in accordance with the procedures set forth in paragraph 6.

6. To terminate a suspension of benefits, the Party complained against shall notify the complaining Party of any measure adopted to comply with the original award and the provisions of this Agreement or of its compliance with the agreement on compensation. Such notification shall be accompanied by a request to terminate the suspension of benefits.

- (a) In the event of disagreement between the Parties with respect to the existence or conformity of the notified measure with this Agreement and the original award or in the event of a disagreement as to the compliance with the agreement on compensation, within 60 days from the date of the notification, either Party may refer the matter under Article 12.17.1(a) to the original Arbitral Tribunal to determine consistency of such measure with this Agreement and the original award or to determine compliance with the agreement on compensation. If pursuant to Article 12.17.1(a), the Arbitral Tribunal determines that the notified measure is consistent with the Agreement and the original award or determines there has been compliance with the agreement on compensation, the suspension of benefits shall be terminated.
- (b) In the event there is no disagreement between the Parties as to the conformity of the notified measure with this Agreement and the original award or as to the compliance with the agreement on compensation, the suspension of benefits shall be terminated within 30 days from the date of such notification.
- (c) In the case that the Parties have settled a dispute, the suspension of benefits shall be terminated on the date agreed to by the Parties.

ARTICLE 12.17: REVIEW OF COMPLIANCE AND REVIEW OF SUSPENSION OF BENEFITS

1. In case of disagreement between the Parties with respect to:

- (a) the existence or conformity with the provisions of this Agreement and the original award of measures taken by the Party complained against to comply with this Agreement and the original award or with respect to compliance with the agreement on compensation; and/or
- (b) whether the level of benefits that the complaining Party has proposed to suspend or has suspended pursuant to Article 12.16 is manifestly excessive,

either Party may refer the matter to the original Arbitral Tribunal.

2. An Arbitral Tribunal under paragraph 1 shall issue its award within 30 days after the matter has been referred to it where the request concerns either paragraph 1(a) or 1(b) only, and within 50 days, where the request concerns both paragraphs.

3. In case the original Arbitration Tribunal, or any of its members, is not available, the procedures established in Article 12.10 shall apply. The award shall be issued within the period provided for in paragraph 2, from the date of establishment of the new Arbitral Tribunal.

ARTICLE 12.18: TIME FRAMES

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

ARTICLE 12.19: REMUNERATION AND EXPENSES

The remuneration and expenses of the Arbitral Tribunal shall be borne in equal parts by the Parties in accordance with Annex 12-A. All other expenses not specified in Annex 12-A shall be borne by the Party incurring those expenses.

ARTICLE 12.20: REQUEST FOR CLARIFICATION OF AN AWARD

1. Within 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 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 12.15 and Article 12.16 unless the Arbitral Tribunal decides otherwise.