

CHAPTER 15

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 15.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties regarding the interpretation and application of this Agreement with a view to arriving at a mutually agreed solution.

ARTICLE 15.2

Scope

This Chapter applies with respect to the avoidance and settlement of any dispute between the Parties regarding the interpretation or application of the provisions of this Agreement, except as otherwise provided for in this Agreement.

SECTION B

CONSULTATIONS AND MEDIATION

ARTICLE 15.3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 15.2 (Scope) 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 to the other Party, copied to the Trade Committee, identifying the measure at issue and the relevant provisions of this Agreement.

3. Consultations shall be held within 30 days of the date of receipt of the request referred to in paragraph 2 and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 45 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, in particular all information disclosed and positions taken by the Parties, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods, seasonal goods or seasonal services, shall be held within 15 days of the date of receipt of the request referred to in paragraph 2. The consultations shall be deemed concluded within 20 days, unless both Parties agree to continue consultations.

5. The Party that sought consultations may have recourse to Article 15.5 (Initiation of the Arbitration Procedure) if:

- (a) the other Party does not respond to the request for consultations within 15 days of the date of its receipt;
- (b) the consultations are not held within the timeframes provided for in paragraphs 3 or 4;

(c) the Parties agree not to have consultations; or

(d) the consultations have been concluded without a mutually agreed solution.

6. During consultations each Party shall provide sufficient factual information for an examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

ARTICLE 15.4

Mediation Mechanism

The Parties may at any time agree to enter into a mediation procedure pursuant to Annex 15-C (Mediation Mechanism) with respect to any measure adversely affecting trade or investment between the Parties.

SECTION C

DISPUTE SETTLEMENT PROCEDURES

SUB-SECTION 1

ARBITRATION PROCEDURE

ARTICLE 15.5

Initiation of the Arbitration Procedure

1. If the Parties fail to resolve the dispute by recourse to consultations as provided for in Article 15.3 (Consultations), the Party that sought consultations may request the establishment of an arbitration panel.
2. The request for the establishment of an arbitration panel shall be made in writing to the other Party and copied to the Trade Committee. The complaining Party shall identify the measure at issue in its request, and explain how that measure is inconsistent with the provisions of this Agreement in such a manner as to clearly present the legal basis for the complaint.

ARTICLE 15.6

Terms of Reference of the Arbitration Panel

Unless the Parties agree otherwise within 10 days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.5 (Initiation of the Arbitration Procedure), to rule on the conformity of the measure in question with the provisions referred to in Article 15.2 (Scope), and to make findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, in accordance with Articles 15.10 (Interim Report) and 15.11 (Final Report).".

ARTICLE 15.7

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to agree on the composition of the arbitration panel.

3. If the Parties do not agree on the composition of the arbitration panel within the time frame provided for in paragraph 2, each Party may appoint an arbitrator from the sub-list of that Party established under Article 15.23 (List of Arbitrators) within 10 days from the expiry of the time frame provided for in paragraph 2. If a Party fails to appoint an arbitrator from its sub-list the arbitrator shall be selected by lot, upon request of the other Party, by the chair of the Trade Committee, or the chair's delegate, from the sub-list of that Party established under Article 15.23 (List of Arbitrators).

4. If the Parties do not agree on the chairperson of the arbitration panel within the time frame provided for in paragraph 2 the chair of the Trade Committee, or the chair's delegate, shall select by lot, upon request of a Party, the chairperson of the arbitration panel from the sub-list of chairpersons established under Article 15.23 (List of Arbitrators).

5. The chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraphs 3 or 4.

6. The date of establishment of the arbitration panel shall be the date on which the three selected arbitrators have notified the Parties of the acceptance of their appointment in accordance with Annex 15-A (Rules of Procedure).

7. If any of the lists provided for in Article 15.23 (List of Arbitrators) have not been established or do not contain sufficient names at the time a request is made pursuant to paragraphs 3 or 4, the arbitrators shall be drawn by lot from among the individuals who have been formally proposed by both Parties or by a Party in the event that only one Party has made a proposal.

ARTICLE 15.8

Dispute Settlement Proceedings of the Arbitration Panel

1. The rules and procedures set out in this Article, Annexes 15-A (Rules of Procedure) and 15-B (Code of Conduct for Arbitrators and Mediators) shall govern the dispute settlement proceedings of an arbitration panel.
2. Unless the Parties agree otherwise, they shall meet the arbitration panel within 10 days of its establishment in order to determine all matters that the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings and the remuneration and expenses of the arbitrators in accordance with Annex 15-A (Rules of Procedure). Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.
3. The venue of the hearing shall be decided by mutual consent of the Parties. If the Parties do not agree on the venue of the hearing, it shall be held in Brussels if the complaining Party is Viet Nam and in Ha Noi if the complaining Party is the Union.
4. Any hearing shall be open to the public unless otherwise provided for in Annex 15-A (Rules of Procedure).

5. In accordance with Annex 15-A (Rules of Procedure), the Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. Any information or written submission submitted to the arbitration panel by a Party, including any comments on the descriptive part of the interim report, responses to questions by the arbitration panel and comments by a Party on those responses, shall be made available to the other Party.

6. Unless the Parties agree otherwise within three days of the date of establishment of the arbitration panel, the arbitration panel may receive, in accordance with Annex 15-A (Rules of Procedure), unsolicited written submissions (*amicus curiae* submissions) from natural or legal person established in the territory of a Party.

7. For its internal deliberations, the arbitration panel shall meet in closed session where only arbitrators take part. The arbitration panel may also permit its assistants to be present at its deliberations. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

ARTICLE 15.9

Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

ARTICLE 15.10

Interim Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, no later than 90 days from the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. The arbitration panel shall, under no circumstances, issue the interim report later than 120 days after the date of establishment of the arbitration panel.

2. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report within 14 days of its notification.

3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report, within seven days of the notification of the interim report.

4. After considering any written requests, including comments, by the Parties on the interim report, the arbitration panel may modify its report and make any further examination that it considers appropriate.

ARTICLE 15.11

Final Report

1. The arbitration panel shall issue its final report to the Parties and to the Trade Committee within 120 days of the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. The arbitration panel shall, under no circumstances, issue the final report later than 150 days from the date of establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to notify its final report within 60 days of the date of its establishment. The arbitration panel shall, under no circumstances issue the final report later than 75 days from the date of establishment of the arbitration panel.

3. The final report shall include a sufficient discussion of the arguments made at the interim review stage, and shall clearly address the comments of the Parties.

SUB-SECTION 2

COMPLIANCE

ARTICLE 15.12

Compliance with the Final Report

The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report.

ARTICLE 15.13

Reasonable Period of Time for Compliance

1. If immediate compliance is not possible, the Parties shall endeavour to mutually agree on the period of time to comply with the final report. In such a case, the Party complained against shall, no later than 30 days after the receipt of the final report, notify the complaining Party and the Trade Committee of the time it will require for compliance hereinafter referred to as the "reasonable period of time").

2. If there is disagreement between the Parties on the reasonable period of time to comply with the final report, the complaining Party shall, within 20 days of the receipt of the notification made in accordance with paragraph 1 by the Party complained against, request, in writing, the arbitration panel established pursuant to Article 15.7 (Establishment of the Arbitration Panel) (hereinafter referred to as the "original arbitration panel") to determine the length of the reasonable period of time. That request shall be notified to the Party complained against and copied to the Trade Committee.

3. The arbitration panel shall notify its ruling on the reasonable period of time to the Parties and to the Trade Committee within 20 days of the date of the submission of the request referred to in paragraph 2.

4. The Party complained against shall inform, in writing, the complaining Party of its progress to comply with the final report at least 30 days before the expiry of the reasonable period of time.

5. The Parties may agree to extend the reasonable period of time.

ARTICLE 15.14

Review of Measure Taken to Comply with the Final Report

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency of any measure taken to comply with the provisions referred to in Article 15.2 (Scope) and notified under paragraph 1, the complaining Party may request, in writing, the original arbitration panel to rule on the matter. The request shall be notified to the Party complained against and copied to the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and explain how such measure is inconsistent with the provisions referred to in Article 15.2 (Scope) in a manner sufficient to clearly present the legal basis for the complaint.

3. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 45 days of the date of the submission of the request referred to in paragraph 2.

ARTICLE 15.15

Temporary Remedies in Case of Non-Compliance

1. If the Party complained against fails to notify the complaining Party and the Trade Committee of any measure taken to comply with the final report before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure to comply with has been taken or that the measure notified under paragraph 1 of Article 15.14 (Review of Measure Taken to Comply with the Final Report) is inconsistent with that Party's obligations under the provisions referred to in Article 15.2 (Scope), the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for compensation.

2. If the complaining Party decides not to request an offer for compensation or, in case such request is made, if no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 15.14 (Review of Measure Taken to Comply with the Final Report) that no measure to comply with has been taken or that a measure taken is inconsistent with the provisions referred to in Article 15.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 15.2 (Scope) at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of suspension of obligations. The complaining Party may implement the suspension at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.

3. If the Party complained against considers that the level of suspension of obligations is not equivalent to the nullification or impairment caused by the violation, it may request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the complaining Party and copied to the Trade Committee before the expiry of the period of 10 days referred to in paragraph 2. The original arbitration panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling, and any suspension shall be consistent with that ruling.

4. The suspension of obligations and the compensation shall be temporary and shall not be applied after:

- (a) the Parties have reached a mutually agreed solution pursuant to Article 15.19 (Mutually Agreed Solution);
- (b) the Parties have agreed that the measure notified under paragraph 1 of Article 15.14 (Review of Measure Taken to Comply with the Final Report) brings the Party complained against into conformity with the provisions referred to in Article 15.2 (Scope); or
- (c) any measure found to be inconsistent with the provisions referred to in Article 15.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 3 of Article 15.14 (Review of Measure Taken to Comply with the Final Report).

ARTICLE 15.16

Review of Measure Taken to Comply

After the Adoption of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the report of the arbitration panel following the suspension of obligations or following the application of compensation, as the case may be. With the exception of cases referred to in paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days of the date of the receipt of the notification. In the event that compensation has been applied, and with the exception of cases referred to in paragraph 2, the Party complained against may terminate the application of such compensation within 30 days from its notification that it has complied with the report of the arbitration panel.

2. If the Parties do not agree on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 15.2 (Scope), within 30 days of the date of receipt of the notification, the complaining Party shall request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the Party complained against, and copied to the Trade Committee.

3. The ruling of the arbitration panel shall be notified to the Parties and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that the notified measure is in conformity with the provisions referred to in Article 15.2 (Scope), the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the ruling of the arbitration panel.

SUB-SECTION 3

COMMON PROVISIONS

ARTICLE 15.17

Replacement of Arbitrators

If during arbitration proceedings the original arbitration panel, or some of its members, are unable to participate, withdraw or need to be replaced because the member does not comply with the requirements of the Code of Conduct in Annex 15-B (Code of Conduct for Arbitrators and Mediators), the procedure set out in Article 15.7 (Establishment of the Arbitration Panel) applies. The time limit for the notification of the reports and rulings, as the case may be, shall be extended by 20 days.

ARTICLE 15.18

Suspension and Termination of Arbitration Proceedings

1. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months. It shall resume its work before the end of that suspension period at the written request of both Parties. The Parties shall inform the Trade Committee, accordingly. The arbitration panel may also resume its work at the end of the suspension period at the written request of either Party. The requesting Party shall inform the Trade Committee and the other Party, accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the suspension period, the authority of the arbitration panel shall lapse and the proceedings shall be terminated. In the event of a suspension of the work of the arbitration panel, the time-frames set out in the relevant provisions of this Chapter shall be extended by the same period of time for which the work was suspended. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings subject to Article 15.24 (Choice of Forum).

2. The Parties may agree to terminate the proceedings of the arbitration panel by jointly notifying such agreement to the chairperson of the arbitration panel and the Trade Committee at any time before the issuance of the final report of the arbitration panel.

ARTICLE 15.19

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

ARTICLE 15.20

Information and Technical Advice

At the request of a Party, or upon its own initiative, the arbitration panel may request any information it deems appropriate for the proceedings of the arbitration panel from any source, including the Parties involved in the dispute. The arbitration panel has also the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained under this Article must be disclosed and submitted to the Parties for their comments within the time-frame set by the arbitration panel.

ARTICLE 15.21

Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 15.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties*, concluded at Vienna on 23 May 1969. The arbitration panel shall also take into account relevant interpretations in reports of panels and of the Appellate Body adopted by the WTO Dispute Settlement Body. The reports and rulings of the arbitration panel shall not add to or diminish the rights and obligations of the Parties provided for in this Agreement.

ARTICLE 15.22

Decisions and Rulings of the Arbitration Panel

1. The arbitration panel shall make every effort to take any decision by consensus. In the event that a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. Dissenting opinions of arbitrators shall in no case be disclosed.

2. The reports and rulings of the arbitration panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons. The reports and rulings shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 15.2 (Scope) and the basic rationale behind any findings and conclusions. The Trade Committee shall make the reports and rulings of the arbitration panel publicly available in their entirety within 10 days of their issuance, unless it decides not to do so in order to protect confidential information.

SECTION D

GENERAL PROVISIONS

ARTICLE 15.23

List of Arbitrators

1. The Trade Committee shall, no later than six months after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists:

(a) one sub-list for the Union;

- (b) one sub-list for Viet Nam; and
- (c) one sub-list of individuals who are not nationals of either Party and do not have permanent residence in either Party and who shall act as chairperson of the arbitration panel.

2. Each sub-list shall include at least five individuals. The Trade Committee shall ensure that the list is always maintained at this minimum number of individuals.

3. Arbitrators shall have demonstrated expertise and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct in Annex 15-B (Code of Conduct for Arbitrators and Mediators).

4. The Trade Committee may establish an additional list of 10 individuals with demonstrated expertise and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such an additional list shall be used to compose the arbitration panel in accordance with the procedure set out in Article 15.7 (Establishment of the Arbitration Panel).

ARTICLE 15.24

Choice of Forum

1. Recourse to the dispute settlement procedure under this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action, or under any other international agreement to which both Parties are party.

2. By way of derogation from paragraph 1, a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under this Agreement and under the WTO Agreement or under any other international agreement to which both Parties are party in the relevant fora. Once dispute settlement proceedings have been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim seeking redress to that obligation.

3. For the purposes of this Article:
 - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes;

- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 15.5 (Initiation of the Arbitration Procedure);
- (c) dispute settlement proceedings under any other international agreement are deemed to be initiated in accordance with that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations in accordance with this Chapter.

ARTICLE 15.25

Time Limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their reports and rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.
2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time limit referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 15.26

Review and Modification

The Trade Committee may decide to review and modify Annexes 15-A (Rules of Procedure), 15-B (Code of Conduct for Arbitrators and Mediators) and 15-C (Mediation Mechanism).