

CHAPTER 31
DISPUTE SETTLEMENT

Article 31.1
Definitions

For the purposes of this Chapter, including Annex 31A (Rules of Procedure) and Annex 31B (Code of Conduct):

“ADR provider” means a provider of alternative dispute resolution (ADR) services, namely a provider of good offices, a conciliator, or a mediator who provides their services pursuant to Article 31.20 (Good Offices, Conciliation, and Mediation);

“approved person” means an individual who is:

- (a) an authorised representative of a Party designated in accordance with Rule 18 of the Rules of Procedure;
- (b) an arbitrator;
- (c) an assistant; or
- (d) an expert;

“arbitrator” means a member of a panel appointed in accordance with Article 31.7 (Composition of a Panel);

“assistant” means a person who, under the terms of appointment and under the direction of an arbitrator or ADR provider, conducts research or provides assistance to that arbitrator or ADR provider;

“candidate” means an individual who is requested to serve as an arbitrator under Article 31.7 (Composition of a Panel);

“Code of Conduct” means the code of conduct referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31B (Code of Conduct);

“complaining Party” means the Party that requests consultations under Article 31.5 (Consultations);

“confidential information” means information designated as such by a Party;

“designated office” means the office designated in accordance with Article 31.17 (Administration of the Dispute Settlement Procedure);

“document” includes any written matter submitted, delivered, or issued in the course of the panel proceeding, whether in paper or electronic form;

“expert” means an individual or body providing technical information or advice in accordance with Rule 37 of the Rules of Procedure;

“family member” means the partner of an arbitrator or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of the arbitrator or candidate or partner of the arbitrator or candidate including whole and half blood relatives and step relatives; or the partner of such an individual. A family member also includes any resident of an arbitrator’s or candidate’s household whom the arbitrator or candidate treats as a member of their family;

“information” means information, however recorded or stored, including information contained in a paper document, electronic file, or oral information;

“non-business day” means, with regard to a Party, Saturday, Sunday, and any other day officially designated by that Party as a public holiday and notified to the other Party’s designated office;

“panel” means a panel established under Article 31.6 (Establishment of a Panel);

“proceeding” means the proceeding of the panel, unless otherwise specified;

“responding Party” means the Party to which the request for consultations is made under Article 31.5 (Consultations);

“Rules of Procedure” means the rules of procedure referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31A (Rules of Procedure); and

“staff” means, in respect of an arbitrator or ADR provider, natural persons under the direction and control of the arbitrator or ADR provider, other than assistants.

Article 31.2 Objective

The objective of this Chapter is to provide an effective, efficient, and transparent process for the settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

Article 31.3 Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations, or

other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 31.4

Scope

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement wherever a Party considers that:
 - (a) an actual or proposed measure of the other Party is inconsistent with its obligations under this Agreement;
 - (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
 - (c) any benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 9 (Cross-Border Trade in Services), or Chapter 16 (Government Procurement) is being nullified or impaired as a result of the application of any actual or proposed measure, whether or not that measure is consistent with this Agreement.
2. This Chapter shall apply subject to those special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

Article 31.5

Consultations

1. Each Party shall accord adequate opportunity for consultations with respect to any matter referred to in Article 31.4 (Scope). Any differences shall, as far as possible, be settled by consultation between the Parties in good faith, with a view to reaching a mutually agreed solution.
2. A Party may request consultations pursuant to paragraph 1 by delivering a written request to the other Party, setting out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and the legal basis for the complaint.
3. The responding Party shall reply to the request in writing within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

- (a) 15 days after the date of receipt of the request for urgent matters; or
 - (b) 30 days after the date of receipt of the request for all other matters.
- 4. Unless the Parties agree otherwise, consultations shall be deemed concluded within:
 - (a) 30 days of the date of receipt of the request for consultations regarding urgent matters; or
 - (b) 60 days of the date of receipt of the request for consultations regarding all other matters.
- 5. The Parties shall make every effort to reach a mutually agreed solution of any matter through consultations. To this end, each Party shall:
 - (a) provide sufficient factual information to enable a full examination of how the actual or proposed measure or other matter subject to consultations might affect the operation or application of this Agreement;
 - (b) treat any information exchanged in the course of consultations which is designated by a Party as confidential or proprietary in nature, on the same basis as the Party providing the information; and
 - (c) endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations.
- 6. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the responding Party, unless the Parties agree otherwise.
- 7. Consultations, and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.
- 8. A Party may request the other Party to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 31.6
Establishment of a Panel

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 within the time period specified under paragraph 3 of Article 31.5 (Consultations);
 - (b) the Parties agree not to enter into consultations; or
 - (c) the Parties fail to resolve the dispute through consultations within the time period specified in paragraph 4 of Article 31.5 (Consultations).
2. The request for establishment of a panel shall be made in writing to the responding Party. In the request, the complaining Party shall set out the reasons for the request sufficient to present the problem clearly, including by identifying:
 - (a) the specific measure at issue;
 - (b) the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached;
 - (c) any other relevant provisions;
 - (d) whether there is a claim for nullification and impairment; and
 - (e) the factual basis for the complaint.
3. Notwithstanding paragraphs 1 and 2, a panel cannot be established to review a proposed measure.

Article 31.7
Composition of a Panel

1. The panel shall be composed of three arbitrators.
2. Each Party shall appoint an arbitrator within 15 days of the receipt of the request to establish a panel, and shall at the same time nominate up to three candidates to serve as the third arbitrator who shall be the chair of the panel.
3. The Parties shall appoint by common agreement the chair within 30 days of the receipt of the request to establish a panel, taking into account the candidates nominated pursuant to paragraph 2.

4. The chair shall not be a national of, nor have his or her usual place of residence in, nor be employed by, a Party.
5. If all three members of the panel have not been appointed in accordance with paragraphs 2 and 3 within 30 days of receipt of the request to establish a panel, a Party may request the Secretary-General of the Permanent Court of Arbitration to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 2 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments.
6. The date of establishment of the panel shall be the date on which the last arbitrator is appointed.
7. Where the original panel is reconvened for the purposes of Article 31.13 (Compliance with the Final Report), Article 31.14 (Compliance Review), Article 31.15 (Temporary Remedies in Case of Non-Compliance), or Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), the panel may comprise only the chair of the original panel if the Parties so agree.

Article 31.8 Qualifications of Arbitrators

All arbitrators shall:

- (a) have demonstrated expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, a Party;
- (c) serve in their individual capacities and not take instructions from any organisation or government with regards to matters related to the dispute; and
- (d) comply with the Code of Conduct.

Article 31.9 Functions of a Panel

1. The function of a panel established pursuant to Article 31.6 (Establishment of a Panel) and Article 31.7 (Composition of a Panel) is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and to

make the findings and determinations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. A panel shall be established, perform its functions, and conduct its proceedings in a manner consistent with this Agreement and the Rules of Procedure.
3. A panel shall take its decisions by consensus. If a panel is unable to reach consensus it may take its decisions by majority vote. A panel shall not disclose which arbitrators are associated with majority or minority opinions.

Article 31.10 Terms of Reference of a Panel

1. Unless the Parties agree otherwise within 20 days of the date of establishment of a panel, the terms of reference of the panel shall be to:
 - (a) examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel);
 - (b) make findings and determinations, together with the reasons therefor; and
 - (c) issue a written report in accordance with Article 31.12 (Reports of a Panel).
2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period specified in paragraph 1.

Article 31.11 Rules of Interpretation of a Panel

1. The panel shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties* done at Vienna on 23 May 1969. The panel shall also consider relevant interpretations in panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.
2. The findings and determinations of the panel cannot add to or diminish the rights and obligations provided in this Agreement.

Article 31.12
Reports of a Panel

1. The reports of the panel shall be drafted without the presence of the Parties.
2. The panel shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice it has obtained in accordance with Rule 37 of the Rules of Procedure.
3. The panel shall present to the Parties its initial report within 130 days of the date of establishment of the panel, or in cases of urgency, within 70 days of the date of establishment of the panel.
4. The initial report shall contain:
 - (a) findings of fact;
 - (b) the determination of the panel as to whether:
 - (i) the measure at issue is inconsistent with obligations under this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (iii) a Party's measure is causing nullification or impairment;
 - (c) any other determination requested in the terms of reference; and
 - (d) the reasons for the findings and determinations.
5. In exceptional cases, if the panel considers that it cannot present its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The panel shall not exceed an additional period of 30 days.
6. A Party may submit written comments on the initial report to the panel within 16 days of receiving the initial report.
7. After considering any written comments from the Parties, the panel may modify its report and make any further examination it considers appropriate.
8. The panel shall present its final report to the Parties, which shall include any dissenting opinion, within 30 days of the date of presentation of the interim report.

9. If in its final report the panel finds that a Party's measure is inconsistent with this Agreement, or is causing nullification or impairment without being inconsistent with this Agreement, it shall include in its findings and determinations a requirement to remove the inconsistency or, in the latter case, to make a mutually satisfactory adjustment in respect of the nullification or impairment.¹
10. The final report of the panel shall be final and binding on the Parties.

Article 31.13 Compliance with the Final Report

1. The responding Party shall take any measure necessary to comply promptly and in good faith with the final report pursuant to Article 31.12 (Reports of a Panel).
2. Where it is not practicable to comply immediately, the responding Party shall, within 30 days of the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time it requires to comply with the final report. The Parties shall endeavour to agree on the length of the reasonable period of time.
3. If the Parties are unable to agree on the reasonable period of time within 30 days of the date of issuance of the final report, the complaining Party may request the original panel² to determine the length of the reasonable period of time.
4. The panel shall notify its decision, together with the reasons therefor, to the Parties within 40 days of the date of the request.
5. The reasonable period of time, where determined by the panel, shall not exceed 15 months from the date of issuance of the final report to the Parties. However, that time may be shorter, depending upon the particular circumstances of the dispute. The length of the reasonable period of time may be extended by mutual agreement of the Parties.

Article 31.14 Compliance Review

1. The responding Party shall, no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the

¹ A Party shall not be obliged to withdraw the measure that the panel finds is causing the nullification or impairment.

² For greater certainty, references in this Chapter to the original panel shall include any replacement arbitrators that have been designated pursuant to Part XIV of the Rules of Procedure.

Final Report), notify the complaining Party of any measures taken to comply with the final report.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the final report, the complaining Party may request, no later than 20 days after the responding Party's notification under paragraph 1, the original panel to examine the matter.
3. The request referred to in paragraph 2 shall identify the issues with any measures taken to comply and the legal basis for the complaint, including, where relevant, the provisions of this Agreement alleged to have been breached and to be addressed by the panel, sufficient to present the problem clearly.
4. The panel shall provide its compliance report to the Parties no later than 90 days after the date of referral of the matter.
5. In exceptional cases, if the panel considers that it cannot provide its compliance report within the time period specified in paragraph 4, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. The panel shall not exceed an additional period of 30 days.

Article 31.15

Temporary Remedies in Case of Non-Compliance

1. If:
 - (a) the responding Party fails to notify any measure taken to comply with the final report no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report);
 - (b) the responding Party notifies the complaining Party in writing that it does not intend to comply with the final report, or that it is impracticable to do so within the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report); or
 - (c) the panel finds, pursuant to Article 31.14 (Compliance Review), that compliance with the final report has not been achieved or that the measure taken to comply is inconsistent with this Agreement,

the responding Party shall, if requested by the complaining Party, enter into consultations with the complaining Party with a view to agreeing on mutually acceptable compensation.

2. If, in any of the circumstances set out in subparagraphs 1(a) to 1(c), the complaining Party chooses not to request consultations or the Parties do not agree on compensation within 20 days of entering into consultations on compensation, the complaining Party may notify the responding Party in writing that it intends to suspend the application of concessions or other obligations under this Agreement.
3. A notification made pursuant to paragraph 2 shall specify the level of intended suspension of concessions or other obligations, which shall be equivalent to the level of nullification or impairment that is caused by the failure of the responding Party to comply with the final report.
4. In considering what concessions or other obligations to suspend under paragraph 2, the complaining Party shall apply the following principles and procedures:
 - (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement or to have caused nullification or impairment;
 - (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors. In the written notice referred to in paragraph 2, the complaining Party shall indicate the reasons on which its decision to suspend concessions or other obligations in a different sector is based; and
 - (c) it shall only suspend concessions or other obligations that are subject to dispute settlement in accordance with Article 31.4 (Scope).
5. The complaining Party shall have the right to implement the suspension of concessions or other obligations 20 days after the date on which it provides notice under paragraph 2, unless the responding Party has requested the original panel to examine the matter pursuant to paragraphs 6 and 7.
6. If the responding Party considers that the intended level of suspension of concessions or other obligations is not equivalent to the nullification or impairment or that the complaining Party has failed to follow the principles and procedures set out in paragraph 4, it may request in writing, no later than 10 days after the date of receipt of the notification referred to in paragraph 2, the original panel to examine the matter. The panel shall notify its decision to the Parties no later than 90 days after the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed an additional period of 30 days. Concessions or other obligations shall not be

suspended until the panel has notified its decision. Any suspension of concessions or other obligations shall be consistent with the panel's decision.

7. The panel, acting pursuant to paragraph 6, shall not examine the nature of the concessions or other obligations to be suspended, but shall determine whether the level of that suspension is equivalent to the level of nullification or impairment. The panel may also determine if the proposed suspension of concessions or other obligations is allowed under this Agreement. However, if the matter referred pursuant to paragraph 6 includes a claim that the principles and procedures set forth in paragraph 4 have not been followed, the panel shall examine that claim.
8. Any compensation or suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party is found, pursuant to Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), to have complied with the final report, or until the Parties have reached a mutually agreed solution. None of these measures is preferred to full compliance with the final report.

Article 31.16

Compliance Review After the Adoption of Temporary Remedies

1. On notification by the responding Party to the complaining Party of the measures taken to comply with the final report and the complaining Party confirming, within 30 days of the notification, that the measures taken achieve compliance:
 - (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 31.15 (Temporary Remedies in Case of Non-Compliance), the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with; or
 - (b) in a situation where mutually acceptable compensation has been agreed, the responding Party shall terminate the application of that compensation no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with.
2. If the Parties do not reach an agreement on whether the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement within 30 days of the date of notification by the responding Party of the measures taken to comply with the report, a Party may request in writing the original panel to examine the matter.

3. The panel shall notify its decision to the Parties within 90 days of the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed a further period of 30 days.
4. If the panel decides that the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, shall be terminated no later than 30 days after the date of the decision. If the panel decides that the measures notified in accordance with paragraph 1 do not achieve compliance with the final report or are inconsistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, may continue. Where relevant, the level of suspension of concessions or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

Article 31.17
Administration of the Dispute Settlement Procedure

1. Each Party shall:
 - (a) designate an office that shall be the Party's point of contact, and which shall be responsible for providing administrative assistance to panels established under Article 31.6 (Establishment of a Panel); and
 - (b) notify the other Party of the location of its designated office by the date of entry into force of this Agreement.
2. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

Article 31.18
Choice of Forum

1. Subject to paragraph 3, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement.
2. If a dispute regarding the same matter arises under this Agreement and under another international agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular matter referred to in paragraph 2, that Party shall not initiate dispute settlement proceedings in another forum with respect to that matter unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
4. For the purposes of paragraph 3, the complaining Party shall be deemed to have selected the forum when it has requested the establishment of a panel under this Agreement, or the other international agreement or, where panel procedures are not provided for, when a Party commences a dispute under the dispute settlement procedures in the relevant international agreement.

Article 31.19
Cases of Urgency

1. Cases of urgency means those cases which concern goods that rapidly lose their quality or commercial value in a short period of time.
2. If the Parties disagree on whether a dispute concerns a case of urgency, on the request of a Party, the panel shall decide, within 15 days of the request, whether a dispute concerns a case of urgency.

Article 31.20
Good Offices, Conciliation, and Mediation

1. The Parties may at any time agree to voluntarily undertake good offices, conciliation, or mediation. These procedures may begin at any time³ and may be terminated at any time by a Party.
2. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel.
3. Procedures that involve good offices, conciliation, or mediation and in particular positions taken by the Parties during these procedures shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

Article 31.21
Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 31.4 (Scope).

³ For greater certainty, this includes both before, during, and after a request for consultations is made pursuant to Article 31.5 (Consultations).

2. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures taken to implement the mutually agreed solution.

Article 31.22
Suspension and Termination of Proceedings

1. On the joint request of the Parties, the panel shall suspend the proceedings at any time for a period agreed by the Parties not exceeding 18 consecutive months from the date of that agreement. In the event of that suspension, the relevant time periods shall be extended by the time period for which the panel proceedings were suspended.
2. The panel shall resume the proceedings at any time on the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the panel, as well as to the other Party, where applicable.
3. If the panel proceedings have been suspended for more than 18 consecutive months, the authority of the panel shall lapse and the panel proceedings shall be terminated, unless the Parties agree otherwise.
4. The Parties may agree at any time to terminate the panel proceedings. The Parties shall jointly notify that agreement to the panel.

Article 31.23
Rules of Procedure and Code of Conduct

The proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure and the Code of Conduct, unless the Parties agree otherwise.

Article 31.24
Time Periods

Any time period referred to in this Chapter, the Rules of Procedure, or the Code of Conduct may be modified for a dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

Article 31.25
Expenses

Each Party shall bear the cost of its own participation in the proceeding. Remuneration and payment of expenses will be in accordance with the Rules of Procedure.