

Chapter XIII: Institutional Arrangements and Dispute Settlement Procedures

Section I - Institutions

Article XIII.1 The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.
2. The Commission shall:
 - (a) supervise the implementation of this Agreement;
 - (b) oversee its further elaboration; and
 - (c) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
 - (a) adopt binding interpretations of this Agreement;
 - (b) seek the advice of non-governmental persons or groups;
 - (c) take such other action in the exercise of its functions as the Parties may agree; and
 - (d) modify in fulfillment of the objectives of this Agreement:
 - (i) the schedule of a Party contained in Annex III.3.2 (Tariff Elimination), with the purpose of adding one or more goods excluded in the Tariff Elimination Schedule;
 - (ii) the phase-out periods established in Annex III.3.2 (Tariff Elimination), with the purpose of accelerating the tariff reduction;
 - (iii) the rules of origin established in Annex III.1 (Textiles and Apparel Goods) and Annex IV.1 (Specific Rules of Origin);
 - (iv) the Uniform Regulations on Customs Procedures.
4. The modification referred to in paragraph 3(d) will be implemented by the Parties in conformity with Annex XIII.1.4 (Implementation of the Modifications Approved by the Commission).
5. The Commission may establish committees, subcommittees or working groups taking into consideration any recommendation of the Coordinators. Except where specifically provided for in this Agreement, the committees, subcommittees and working groups shall work under a mandate recommended by the Coordinators and approved by the Commission.
6. The Commission will establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.
7. The Commission shall normally convene once a year in regular session. Regular sessions of the Commission shall be chaired alternately by each Party.

Article XIII.2**The Free Trade Coordinators**

1. Each Party shall appoint a Free Trade Coordinator.
2. The Free Trade Coordinators shall:
 - (a) supervise the work of all committee, subcommittees and working groups established under this Agreement;
 - (b) recommend to the Commission the establishment of such committees, subcommittees and working groups as they consider necessary to assist the Commission;
 - (c) follow up with any decisions taken by the Commission, as appropriate;
 - (d) receive notifications pursuant to this Agreement; and
 - (e) consider any other matter that may affect the operation of this Agreement as mandated by the Commission.
3. The Coordinators shall meet as often as required.
4. Each Party may request in writing at any time that a special meeting of the Coordinators be held. Such a meeting shall take place within 30 days of receipt of the request.

Article XIII.3**The Secretariat**

1. The Commission shall establish and oversee a Secretariat comprising national Sections.
2. Each Party shall:
 - (a) establish a permanent office of its Section;
 - (b) be responsible for:
 - (i) the operation and costs of its Section; and
 - (ii) the remuneration and payment of expenses of panelists and members of committees, subcommittees and working groups established under this Agreement, as set out in Annex XIII.3.2 (Remuneration and Payment of Expenses);
 - (c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and
 - (d) notify the Commission of the location of its Section's office.
3. The Secretariat shall:
 - (a) provide administrative assistance to panels established under this Chapter, in accordance with procedures established pursuant to Article XIII.12; and
 - (b) as the Commission may direct:

- (i) support the work of other committees, subcommittees and working groups established under this Agreement; and
- (ii) otherwise facilitate the operation of this Agreement.

Section II - Dispute Settlement

Article XIII.4 Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article XIII.5 Recourse to Dispute Settlement Procedures

Except as otherwise provided in this Agreement, the dispute settlement provisions of 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 or wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex XIII.5 (Nullification and Impairment).

Article XIII.6 WTO Dispute Settlement

1. Subject to paragraph 2, Article VI.4 (Dispute Settlement in Emergency Action Matters), Article VII.1.5 (Antidumping Measures), Article IX.5.1.2 (Sanitary and Phytosanitary Measures) and Article XI.6.3 (Consultations), disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in either forum at the discretion of the complaining Party.
2. In any dispute referred to in paragraph 1 where the Party complained against claims that its action is subject to Article I.4 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.
3. The Party complained against shall deliver a copy of a request made pursuant to paragraph 2 to its Section of the Secretariat and the other Party. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 2, the Party complained against shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article XIII.8.
4. Once dispute settlement procedures have been initiated under Article XIII.8 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other unless a Party makes a request pursuant to paragraph 2.
5. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the DSU.

Article XIII.7 Consultations

1. A Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to its Section of the Secretariat and the other Party.
3. In cases of urgency, including those which concern perishable goods, consultations shall commence within 15 days of the date of delivery of the request.
4. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:
 - (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article XIII.8 Establishment of an Arbitral Panel

1. Unless the Parties agree to have recourse to alternative methods of dispute resolution, such as, for example, good offices, conciliation or mediation, the Parties agree to establish an arbitral panel to examine any matter they fail to resolve through consultations pursuant to Article XIII.7.
2. The complaining Party may request in writing the establishment of an arbitral panel if the Parties fail to resolve a matter pursuant to Article XIII.7 within:
 - (a) 30 days after the delivery date of the request for consultations; or
 - (b) 15 days after the delivery date of the request for consultations for matters referred to in paragraph 3 of Article XIII.7.
3. The complaining Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to its Section of the Secretariat and to the other Party.
4. The Parties may consolidate two or more proceedings regarding other matters that they determine are appropriate to be considered jointly.
5. The arbitral panel shall be deemed established, by consent of both Parties, on the date the request for the establishment of the arbitral panel is delivered to the Party complained against.
6. Unless otherwise agreed by the Parties, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article XIII.9**Roster**

1. No later than 3 months after the entry into force of the Agreement, the Parties shall establish and maintain a roster of up to 20 individuals, at least 5 of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by agreement of the Parties for terms of 3 years. Unless either of the Parties disagrees, a roster member shall be considered reappointed for a further period of three years.
2. Roster members 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 and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
 - (b) be independent of, and not be affiliated with or take instructions from, any Party; and
 - (c) comply with a code of conduct to be established by the Commission.

Article XIII.10**Qualifications of Panelists**

1. All panelists shall meet the qualifications set out in Article XIII.9.2.
2. Individuals who might have been involved in any of the possible alternative dispute settlement proceedings referred to in Article XIII.8.1 may not serve as members of an arbitral panel on the same dispute.

Article XIII.11**Panel Selection**

1. The following procedures shall apply to panel selection:
 - (a) the panel shall comprise 3 members;
 - (b) the Parties shall endeavour to agree on the chair and on the other 2 panelists within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, within 5 days the Party chosen by lot shall select an individual as chair who must not be citizen of the Parties;
 - (c) within 15 days of selection of the chair, each Party shall select a panelist who must not be a citizen of that Party; and
 - (d) if a Party fails to select its panelist within such period, the Parties shall choose by lot the panelist from among the roster members who are not citizens of that Party.
2. Panelists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 15 days after the individual has been proposed.
3. If a Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article XIII.12 Rules of Procedure

1. The Commission shall establish, by the date of entry into force of this Agreement, Model Rules of Procedure, in accordance with the following principles:
 - (a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and
 - (b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.
2. The Commission may amend from time to time the Model Rules of Procedure referred to in paragraph 1.
3. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.
4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement the matter referred by the complaining Party (in terms of the request for establishment of the panel) and to make findings, determinations and recommendations as provided in Article XIII.14.2."
5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.
6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex XIII.5, the terms of reference shall so indicate.

Article XIII.13 Role of Experts

On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article XIII.14 Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article XIII.13.
2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article XIII.12.1 may provide, present to the Parties an initial report containing:
 - (a) findings of fact, including any findings pursuant to a request under Article XIII.12.6;
 - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex XIII.5, or any other determination requested in the terms of reference; and

- (c) its recommendations, if any, for resolution of the dispute.
- 3. Panelists may furnish separate opinions on matters not unanimously agreed.
- 4. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.
- 5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of a Party, may:
 - (a) request the views of a Party;
 - (b) reconsider its report; and
 - (c) make any further examination that it considers appropriate.

Article XIII.15 Final Report

- 1. Unless the Parties otherwise agree, the panel shall present to the Parties a final report within 30 days of presentation of the initial report, including any separate opinions on matters not unanimously agreed.
- 2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.
- 3. Unless the Parties decide otherwise the final report of the panel shall be published 15 days after it is transmitted to the Parties.

Article XIII.16 Implementation of Recommendations and Rulings

- 1. Prompt compliance with recommendations or rulings of the panel is essential in order to ensure effective resolution of disputes to the benefit of both Parties.
- 2. Within 30 days after the date on which a panel has issued its final report, the Party complained against shall notify the other Party of its intentions in respect of implementation of the recommendations and rulings of the panel. If it is impracticable to comply immediately with the recommendations and rulings, the Party complained against shall have a reasonable period of time in which to do so. The reasonable period of time shall be:
 - (a) a period of time mutually agreed by the Parties within 45 days after the date the final report is issued by the panel; or
 - (b) a period of time determined through binding arbitration within 90 days after the final report is issued.¹ In such arbitration a guideline for the arbitrator should be that the reasonable period of time to implement a panel report should not exceed 15 months from the date of the issuance of a final report. However, that time may be shorter or longer depending upon the particular circumstances.

¹ If the Parties cannot agree on an arbitrator within 10 days after referring the matter to arbitration, the arbitrator shall be chosen by lot from among the panelists.

3. During the reasonable period of time, each Party shall accord sympathetic consideration to any request from the other Party for consultations with a view to reaching a mutually satisfactory solution regarding the implementation of the recommendations or rulings of the panel.
4.
 - (a) The issue of implementation of the recommendations or rulings may be raised by the complaining Party at any time following the issuance of the final report.
 - (b) The Party complained against shall report on the status of its implementation of the recommendations or the rulings at the request of the other Party², beginning 6 months after the date the final report is issued, until the Parties have mutually agreed that the issue is resolved or until a panel finds pursuant to Article XIII.17 that the Party complained against has complied.
 - (c)
 - (i) Upon compliance with the recommendations or rulings of the panel, the Party complained against shall provide the other Party a written notification on compliance.
 - (ii) If the Party complained against has not provided a notification under paragraph (c)(i) by the date that is 20 days before the date of expiry of the reasonable period of time, then not later than that date the Party complained against shall provide to the other Party a written notification on compliance, including the measures that it has taken, or the measures that it expects to have taken by the expiry of the reasonable period of time. Where the notification refers to measures that the Party complained against expects to have taken, the Party complained against shall provide to the other Party a supplementary written notification no later than the expiry of the reasonable period of time, stating that it has, or has not, taken such measures, and indicating any changes to them.
 - (iii) Each notification under this subparagraph shall include a detailed description as well as the text of the relevant measures the Party complained against has taken. The notification requirement of this subparagraph shall not be construed to reduce the reasonable period of time established pursuant to paragraph 2 of this Article.

Article XIII.17 Determination of Compliance

1. Where there is disagreement between the complaining Party and the Party complained against as to the existence or consistency with this Agreement of measures taken to comply with the recommendations or rulings of a panel, such disagreement shall be resolved through recourse to the dispute settlement procedures provided for in this Article.
2. The complaining Party may request the establishment of a compliance panel referred to in paragraph 6 of this Article at any time after:³
 - (i) the Party complained against states that it does not need a reasonable period of time for compliance pursuant to paragraph 2 of Article XIII.16;

² The Party complained against shall provide a detailed written status report concerning its progress in the implementation of the recommendations or rulings.

³ A compliance panel may also be established pursuant to paragraph 9 of Article XIII.18.

- (ii) the Party complained against has submitted a notification pursuant to paragraph 4(c) of Article XIII.16 that it has complied with the recommendations or rulings of the panel; or
- (iii) 10 days before the date of expiry of the reasonable period of time;

whichever is the earlier. Such request shall be made in writing.

3. While consultations between the Party complained against and the complaining Party are desirable, they are not required prior to a request for a compliance panel under paragraph 2.

4. When requesting the establishment of a compliance panel, the complaining Party shall identify the specific measures at issue and provide a brief summary of the legal basis of the complaint, sufficient to present the problem clearly. Unless the Parties agree on special terms of reference within 5 days from the establishment of the compliance panel, standard terms of reference in accordance with Article XIII.12 shall apply to the compliance panel.

5. The compliance panel shall be established on the date of the delivery of the request to establish such a panel.

6. The compliance panel shall consist of the members of the original panel. If any member of the original panel is not available, a new member shall be appointed in accordance with the procedure established under Article XIII.11.1(b).

7. The compliance panel shall provide its report to the Parties within 90 days of the date of its establishment.

8. The complaining Party shall not suspend concessions or other obligations under paragraph 9 of this Article until the compliance panel has provided its report to the Parties and the complaining Party has notified the Party complained against which particular concessions or obligations the Party intends to suspend.

9. If the compliance panel report finds that the Party complained against has failed to bring the measure found to be inconsistent with this Agreement into compliance therewith or otherwise comply with the recommendations or rulings of the panel in the dispute within the reasonable period of time, then:

- (a) the Party complained against shall not be entitled to any further period of time for implementation; and
- (b) after the compliance panel report has been provided to the Parties, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement pursuant to Article XIII.18.

10. The compliance panel shall establish its own working procedures. The provisions of Articles XIII.4, XIII.13, XIII.14, XIII.15.2, XIII.15.3, and XIII.16.1 shall apply to compliance panel proceedings except to the extent that:

- (a) such provisions are incompatible with the time frame provided in this Article; or
- (b) this Article provides more specific provisions.

Article XIII.18

Compensation and Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the Agreement. Compensation is voluntary and, if granted, shall be consistent with a Party's obligations under this Agreement.

2. If:

- (a) the Party complained against does not provide notice pursuant to paragraph 2 of Article XIII.16 that it intends to implement the recommendations or rulings of the panel;
- (b) the Party complained against does not submit within the required time period a notification pursuant to paragraph 4(c) of Article XIII.16 stating that the Party complained against has complied; or
- (c) the compliance panel report pursuant Article XIII.17 finds that the Party complained against has failed to bring the measures found to be inconsistent with this Agreement into compliance therewith or otherwise comply with the recommendations or rulings of the panel;

then a complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement. The Parties are encouraged to consult before concessions or other obligations are suspended to discuss a mutually satisfactory solution.

3. The complaining Party shall not implement any suspension of concessions or other obligations until 10 days after it has notified the Party complained against which particular concessions or obligations the Party intends to suspend.

4. The level of the suspension of concessions or other obligations shall be equivalent to the level of nullification or impairment.

5. (a) When the complaining Party has provided notice that it intends to suspend concessions or other obligations pursuant to paragraph 8 of Article XIII.17 or paragraph 3 of this Article and the Party complained against objects to the level of suspension proposed within 10 days after the receipt of such notice, the matter shall be referred to arbitration.
- (b) Such arbitration shall be carried out by the original panel if its members are available. In such case, the Panel will be deemed to be established by consent of both Parties on the date the Party complained against files the document with the objections referred to in subparagraph (a) above. If any member of the original panel is not available, a new member shall be appointed in accordance with the procedure established under Article XIII.11 and the date the new Panel is complete shall be deemed to be the date the matter was referred.
- (c) the arbitration shall be completed and the decision of the arbitral panel shall be provided to the Parties within 45 days after the referral of the matter. The complaining Party shall not suspend concessions or other obligations during the course of the arbitration.

6. The arbitral panel acting pursuant to paragraph 5 shall not examine the nature of the concessions or other obligations to be suspended, but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The Parties shall accept the arbitral panel's decision as final and shall not seek a second arbitration. The decision shall constitute authorization to suspend concessions or other obligations consistent with the decision of the arbitral panel.

7. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with the Agreement has been removed, or the Party that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. The Commission shall, unless the Parties otherwise agree, include on its agenda the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended, but the recommendations to bring a measure into conformity with the Agreement have not been implemented.

8. (a) After a Party has suspended concessions or other obligations pursuant with this Agreement, the Party complained against may request a termination of such suspension on the grounds that it has eliminated the inconsistency or the nullification or impairment of benefits under this Agreement identified in the recommendations or rulings of the panel. The Party complained against shall include with any such request a written notice describing in detail the measures it has taken, providing the text of the relevant measures. If the Parties agree that the Party complained against has eliminated the inconsistency or the nullification or impairment of benefits, the authorization to suspend concessions or other obligations shall terminate.

(b) Where there is disagreement between the Parties as to the existence or consistency with the Agreement of measures taken to comply with the recommendations or rulings of the panel in the dispute, such disagreement shall be resolved through recourse to the dispute settlement procedures provided for in Article XIII.17. If the compliance panel finds that the measures taken to comply are not inconsistent with the Agreement and comply with the recommendations or rulings of the panel in the dispute, it shall withdraw the authorization to suspend concessions or other obligations.

(c) The complaining Party shall not maintain the suspension of concessions and other obligations after the panel withdraws the authorization.

9. The dispute settlement provisions of this Agreement may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Party. When a compliance panel has ruled that a provision of the Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of this Chapter relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

Section III - Domestic Proceedings and Private Commercial Dispute Settlement

Article XIII.19 Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises, in any domestic judicial or administrative proceeding of a Party, that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify its Section of the Secretariat and the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article XIII.20 Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article XIII.21 Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration*.
4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.