

Chapter X
Institutional Provisions
and Dispute Settlement Procedures

Section A - Institutions

Article 10-01: The Free Trade Commission

1. The Commission shall comprise representatives of both Parties. The principal representative of each Party shall be the cabinet level officer or Minister primarily responsible for international trade, or a person designated by the cabinet level officer or Minister.
2. The Commission shall:
 - (a) supervise the implementation of this Agreement;
 - (b) examine its further elaboration;
 - (c) resolve any matter or dispute that may arise regarding its interpretation or application;
 - (d) supervise the work of all committees established under this Agreement; and
 - (e) consider and seek to resolve any other matter that may affect the operation of this Agreement and review the possibility of further removal of obstacles to trade between the Parties.
3. The Commission may:
 - (a) establish and delegate responsibilities to, *ad hoc* or standing committees, working groups or expert groups;
 - (b) seek the advice of non-governmental persons or groups;
 - (c) modify the Model Rules of Procedure and Code of Conduct established under Articles 10-08 and 10-10; and
 - (d) take such other action in the exercise of its functions as the Parties may agree.
4. All decisions of the Commission shall be taken by consensus.
5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired alternatively by the two Parties.

Section B - Dispute Settlement

Article 10-02: Cooperation

The Parties shall at all times endeavor 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 10-03: 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 as set out in Annex 10-03 (Nullification and Impairment).

Article 10-04: Dispute Settlement under the WTO

1. Subject to paragraphs 2 and 3, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any agreement negotiated thereunder to which both Parties are party, may be settled in either forum at the discretion of the complaining Party after the exhaustion of the consultations under Article 10-05.
2. The Parties shall favorably consider resolving their differences by using the mechanisms as established under this Agreement. Before a Party initiates a dispute settlement proceeding under the WTO Agreement against the other Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify the other Party of its intention. If the other Party wishes the dispute to be settled under the dispute settlement procedures provided in this Agreement, it shall inform promptly the notifying Party and the Parties shall consult with a view to agree on a single forum.
3. Once dispute settlement procedures have been initiated under Article 10-06 or dispute settlement procedures have been initiated under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the forum selected shall be used to the exclusion of the other.
4. 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, as specified under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, following consultations under Article 4 thereof.

Consultations

Article 10-05: Consultations

1. If the matter is not settled through cooperation, either Party may request in writing consultations with the other Party regarding any matter referred to under Article 10-03.

2. The requesting Party shall deliver the request to the other Party.
3. Consultations on matters of urgency, including those regarding perishable goods, 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 relevant consultative provisions of this Agreement. To this end, the Parties shall:
 - (a) provide each other with 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 that information.

Initiation of Procedures

Article 10-06: Commission - Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 10-05 within:
 - (a) 30 days of delivery of a request for consultations,
 - (b) 15 days of delivery of a request for consultations in matters covered by Article 10-05(3); or
 - (c) any other period as they may agree,any Party may request in writing a meeting of the Commission.
2. The requesting 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 the other Party.
3. Unless otherwise agreed, the Commission shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.
4. The Commission may:
 - (a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
 - (b) have recourse to good offices, conciliation, mediation or such other dispute resolution mechanisms; or
 - (c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings, regarding other matters before it pursuant to this Article, that it determines are appropriate to be considered jointly.

Panel Proceedings

Article 10-07: Request for an Arbitral Panel

1. If the matter has not been resolved, either Party may request in writing the establishment of an arbitral panel within:
 - (a) 30 days after the Commission has convened pursuant to Article 10-06;
 - (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 10-06(5);
 - (c) 15 days after the Commission has convened under Article 10-05(3); or
 - (d) such other period as the Parties may agree.
2. On delivery of the request, the Commission shall establish an arbitral panel.
3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure set out in Article 10-10.

Article 10-08: Establishment of Panels

1. By the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of up to 20 individuals to serve as panelist in disputes under this Chapter. Each Party shall select up to 10 individuals who may be nationals or residents of that Party. The Parties shall normally appoint panelist from the roster.
2. By the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of up to 10 individuals non-nationals of the Parties, who are willing to serve as chair of a panel established under Article 10-07. The roster members shall be appointed by consensus for a term of four years, and may be reappointed.
3. All panelists 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 selected with a view to ensuring the independence of the panel member, 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 by January 1, 2001.

Article 10-09: Panel Selection

1. The panel shall comprise three members.
2. Within 20 days of the delivery of the request for the establishment of the panel, each Party shall select and notify the other Party of a panelist pursuant with paragraph 10-08(1).
3. Within 20 days of the delivery of the request for the establishment of the panel, each Party shall propose a candidate from the agreed roster established under paragraph 10-08(2) to serve as chair of the panel.
4. The Parties shall endeavor to agree on the chair within 20 days of the appointment of the last panelist.
5. If a Party fails to appoint its panelist pursuant to paragraph 2, it shall be selected by lot from the roster established under paragraph 10-08(1) from that Party's individuals on the roster.
6. If the Parties are unable to agree on the chair, it shall be selected by lot among the candidates of the roster established under paragraph 10-08(2).
7. Should a panelist be unable to continue to serve as panelist, a new panelist shall be selected in accordance with this Article.
8. 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 10-10: Rules of Procedure

1. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure establish by the Commission by January 1, 2001. The Model Rules of Procedure shall:
 - (a) assure a right to at least one hearing before the panel and the opportunity to provide written submissions and rebuttal arguments;
 - (b) permit counsel chosen by a Party to advise that Party during panel proceedings, including hearings;
 - (c) require that a Party's position be presented by officials spokespersons of that Party; and
 - (d) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. The Parties shall agree on the terms of reference. If the Parties fail to 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 to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 10-13(2)."

3. If the complaining Party, having raised it during the Commission meeting, wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

4. If a Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment as set out in Annex 10-03 (Nullification and Impairment), the terms of reference shall so indicate.

Article 10-11: Role of Experts

1. On request of a Party or on its own initiative, the panel may seek technical advice from any person or body, including highly qualified independent experts, on any scientific or technical matter raised by a Party in a proceeding, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

2. The Parties shall be provided a copy of the expert's report and an opportunity to provide comments on the report to the panel. Such comments shall be provided to the other Party.

3. The panel shall consider the expert's report and any comments submitted by the Parties on the report in the preparation of its report.

Article 10-12: 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 10-11.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected present to the Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 10-10(4);
- (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 as set out in Annex 10-03 (Nullification and Impairment), 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. Any Party may submit written comments to the panel on its initial report within 30 days of presentation of the report, or any other period as the Parties may otherwise agree. Such comments shall be provided to the other Party.

5. In such an event, and after considering such written comments, the panel may, on its own initiative or on the request of either Party:

- (a) request any further views of either Party;
- (b) reconsider its report; and
- (c) make any further examination that it considers appropriate.

Article 10-13: Final Report

1. The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the Parties otherwise agree.

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 Commission decides otherwise, the final report of the panel shall be made available to the public 15 days after it is presented to the Parties.

Article 10-14: Implementation of Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the report.

2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment as set out in Annex 10-03 (Nullification and Impairment) or, failing such a resolution, compensation.

Article 10-15: Non-Implementation - Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment as set out in Annex 10-03 (Nullification and Impairment) and the Party complained against has not reached agreement with the complaining Party on a mutually satisfactory resolution pursuant to Article 10-14(1) within 30 days of receiving the final report, the complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

- (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be

inconsistent with the obligations of this Agreement or to have caused nullification or impairment as set out in Annex 10-03 (Nullification and Impairment); and

- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. On the written request of any Party delivered to the other Party, the Commission shall to the extent possible, reconvene the panel which issued the report to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive. Where it is not possible to reconvene this panel, the new panelists shall be selected in accordance with Article 10-09.

4. The panel proceedings pursuant to paragraph 3 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the date the complaining party made the request pursuant to paragraph 3 or such other period as the Parties may agree.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure, found to be inconsistent with the obligations of this Agreement or causes nullification or impairment as set out in Annex 10-03 (Nullification and Impairment), has been removed, or a mutually satisfactory solution is reached.

Article 10-16: Private Rights

No 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.

Section C - Private Commercial Dispute Settlement

Article 10-17: Resolution of Private Commercial Disputes

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 legal framework to enable observance of agreements to arbitrate and for the recognition and enforcement by courts 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.