

TITLE X

DISPUTE SETTLEMENT

CHAPTER 1

OBJECTIVE AND SCOPE

ARTICLE 308

Objective

The objective of this Title is to avoid and settle any dispute between the Parties concerning the interpretation or application of Part IV of this Agreement, and that the Parties, where possible, arrive at a mutually satisfactory solution.

ARTICLE 309

Scope

1. The provisions of this Title shall apply with respect to any dispute concerning the interpretation or application of Part IV of this Agreement, except as otherwise expressly provided.
2. This Title shall not apply to any dispute between the Republics of the CA Party.

CHAPTER 2

CONSULTATIONS

ARTICLE 310

Consultations

1. The Parties shall endeavour to resolve any dispute regarding the interpretation or application of the provisions referred to in Article 309 by entering into consultations in good faith with the aim of reaching a mutually satisfactory solution.

2. Any Party under this Agreement shall seek consultations by means of a written request to the other Party, with copy to the Association Committee, setting out the reasons for the request, the legal basis for the complaint and identifying any actual or proposed measure at issue.

3. Where the complaining Party is the EU Party, and the alleged violation of any provision identified pursuant to paragraph 2 is similar in all relevant legal and factual aspects concerning more than one Republic of the CA Party, the EU Party may request a single consultation involving those Republics of the CA Party⁴⁷.

4. Where the complaining Party is a Republic of the CA Party and the alleged violation of any provision identified pursuant to paragraph 2 adversely affects the trade⁴⁸ of more than one Republic of the CA Party, the Republics of the CA Party may either request a single consultation or request to join consultations within five days of the date of delivery of the initial request for consultations. The interested Republic of the CA Party shall include an explanation of its substantial trade interest in the matter in its request.

⁴⁷ For instance, where a provision of Part IV of this Agreement establishes an obligation for all Republics of the CA Party to fulfil a specified requirement by a stipulated date, the failure of more than one Republic of the CA Party to have done so would be a matter falling under this paragraph.

⁴⁸ For instance, where an import ban on a product has been implemented, and said import ban applies to exports of that product from more than one Republic of the CA Party, this would be a matter falling under this paragraph.

5. Consultations shall take place within thirty days of the date of the submission of the request and be held, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within thirty days of the date of the submission of the request, unless both Parties agree to continue consultations. Where, in accordance with paragraphs 3 and 4, more than one Republic of the CA Party is involved in the consultations, these shall be deemed concluded within forty days of the date of the submission of the initial request. All information disclosed during the consultations shall remain confidential.

6. In cases of urgency, in particular regarding perishable or seasonal goods, consultations shall take place within fifteen days of the date of the submission of the request, and shall be deemed concluded within fifteen days of the date of the submission of the request. Where, in accordance with paragraphs 3 and 4, more than one Republic of the CA Party is involved in the consultations, these shall be deemed concluded within twenty days of the date of the submission of the initial request.

7. If the Party complained against does not respond to the request for consultations within ten days of receipt of the request, if consultations are not held within the time periods laid down in paragraphs 5 or 6 respectively, or if consultations have been concluded and the dispute has not been resolved, the complaining Party may request the establishment of a Panel in accordance with Article 311.

8. If more than twelve months of inactivity have passed from the date of the last consultations and if the basis for the dispute persists, the complaining Party shall request new consultations. This paragraph shall not apply where the inactivity is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 324.

CHAPTER 3

DISPUTE SETTLEMENT PROCEDURES

SECTION A

PANEL PROCEDURE

ARTICLE 311

Initiation of the Panel Procedure

1. Where the consulting Parties have failed to resolve the dispute in accordance with the provisions referred to in Article 310, any complaining Party may request the establishment of a Panel to consider the matter.

2. The request for the establishment of a Panel shall be made in writing to the Party complained against, with copy to the Association Committee. The complaining Party shall identify in its request the specific measure at issue, it shall state the legal basis for the complaint and explain how such measure constitutes a breach of the provisions referred to in Article 309.
3. Any Party entitled under paragraph 1 to request the establishment of a Panel, may join the Panel proceedings as a complaining Party upon submission of a written notice to the other disputing Parties. The notice shall be submitted no later than five days after the date of receipt of the initial request for the establishment of a Panel.
4. The establishment of a Panel may not be requested to review a proposed measure.

ARTICLE 312

Establishment of the Panel

1. The Panel shall be composed of three panelists.
2. Within ten days of the date of the submission of the request for the establishment of a Panel, the disputing Parties shall consult in order to reach an agreement on the composition of the Panel⁴⁹.

⁴⁹ Where a disputing Party is composed of two or more Republics of the CA Party, they shall act jointly in the procedure established in Article 312.

3. In the event that the disputing Parties are unable to agree on the composition of the Panel within the time period laid down in paragraph 2, each disputing Party will have the right to select one panelist, who will not act as Chair, among the individuals of the list established in Article 325, within three days following the expiration of the time period established in paragraph 2. The Chair of the Association Committee, or the Chair's delegate, will select the Chair-person and any remaining panelist by lot from the relevant individuals of the list established under Article 325.
4. The Chair of the Association Committee, or the Chair's delegate, shall carry out the lot within five days of receipt of a request to do so from one or both disputing Parties. The lot shall be carried out at a time and place to be promptly communicated to the disputing Parties. The disputing Parties may, if they so choose, be present during the lot.
5. The disputing Parties may select, by mutual agreement and within the time period set out in paragraph 2, individuals that are not part of the List of Panelists, but that comply with the requirements established in Article 325.
6. The date of establishment of the Panel shall be the date on which all panelists have notified the acceptance of their selection.

ARTICLE 313

Panel Ruling

1. The Panel shall notify its ruling on the subject matter to the disputing Parties, with copy to the Association Committee, within one hundred twenty days from the date of establishment of the Panel.
2. Where the Panel considers that the deadline referred to in paragraph 1 cannot be met, the Chair-person of the Panel must promptly notify the disputing Parties in writing, with copy to the Association Committee, stating the reasons for the delay and the date on which the Panel expects to conclude its work. Unless exceptional circumstances apply, the ruling shall be notified no later than one hundred fifty days from the date of the establishment of the Panel.
3. In cases of urgency, in particular regarding perishable or seasonal goods, the Panel shall make every effort to notify its ruling within sixty days from the date of its establishment. Unless exceptional circumstances apply, the ruling shall be notified no later than seventy five days from the date of the establishment of the Panel. The Panel, at the request of a disputing Party, may give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.

SECTION B

COMPLIANCE

ARTICLE 314

Compliance with the Panel Ruling

1. Where relevant, the Party complained against shall, without undue delay, take any measure necessary to comply in good faith with the Panel ruling on the subject matter, and the disputing Parties will endeavour to agree on the period of time for compliance.
2. For purposes of compliance, the disputing Parties and, in any event the Panel, shall take into consideration the possible effects of the measure determined to be inconsistent with this Agreement on the level of development of the Party complained against.
3. In the event that full and timely compliance with the Panel's ruling does not occur, compensation or suspension of obligations may be applied as temporary measures. In this event, the disputing Parties shall endeavour to agree on compensation rather than apply suspension of obligations. However, neither compensation nor suspension of obligations is preferred to full and timely implementation of the Panel's ruling.

4. Where a Panel ruling applies to more than one Republic of the CA Party as the complaining Party or the Party complained against, any compensation or suspension of obligations pursuant to this Title shall apply individually for each Republic of the CA Party, to which effect the Panel ruling shall individually determine the level of nullification or impairment caused by the violation for each Republic of the CA Party.

ARTICLE 315

The Reasonable Period of Time for Compliance

1. The Party complained against shall promptly notify the complaining Party of the reasonable period of time needed for compliance, as well as the specific measures it intends to adopt, where possible.
2. The disputing Parties shall endeavour to agree on the reasonable period of time necessary to comply with the Panel ruling within thirty days after notification to the disputing Parties of said ruling. Where agreement is reached, the disputing Parties shall notify the Association Committee of the agreed reasonable period of time and, where possible, the specific measures that the Party complained against intends to adopt.

3. Failing agreement between the disputing Parties on the reasonable period of time to comply with the Panel ruling within the time period established in paragraph 2, the complaining Party may request the original Panel to determine the reasonable period of time. Such request shall be made in writing and notified to the other disputing Party with copy to the Association Committee. The Panel shall notify its ruling to the disputing Parties with copy to the Association Committee within twenty days from the date of the submission of the request. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall determine the reasonable period of time for each Republic of the CA Party.

4. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures set out in Article 312 shall apply. The time limit for notifying the ruling shall be thirty five days from the date of the submission of the request referred to in paragraph 3.

5. The Party complained against shall report to the Association Committee on measures taken and measures to be taken in order to comply with the Panel ruling. This report shall be in writing and shall be made no later than half way through the reasonable period of time.

6. The reasonable period of time may be extended by mutual agreement of the disputing Parties. All time periods contained in this Article constitute part of the reasonable period of time.

ARTICLE 316

Review of any Measure taken to Comply with the Panel Ruling

1. The Party complained against shall notify the complaining Party, with copy to the Association Committee, prior to the expiry of the reasonable period of time of any measure that it has taken to comply with the Panel ruling and provide the details such as the effective date, the relevant text of the measure and a factual and juridical explanation of how the measure taken to comply brings the Party complained against into compliance.
2. In the event of disagreement between the disputing Parties concerning the existence or compatibility of any measure notified under paragraph 1 with the provisions referred to in Article 309, the complaining Party may request in writing the original Panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is inconsistent with the provisions referred to in Article 309. The Panel shall notify its ruling within forty five days of the date of the submission of the request. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall, where necessary under the circumstances, issue its ruling pursuant to this Article for each Republic of the CA Party.
3. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures set out in Article 312 shall apply. The time limit for notifying the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

ARTICLE 317

Temporary Remedies in case of Non-Compliance

1. If any Party complained against fails to notify any measure taken to comply with the Panel ruling prior to the expiry of the reasonable period of time, as established in Article 316, paragraph 1, or if the Panel rules that the measure notified under said Article 316, paragraph 1 is inconsistent with that Party's obligations under the provisions referred to in Article 309, the Party complained against shall, if so requested by the complaining Party, present an offer for compensation. Where a Panel ruling applies to more than one Republic of the CA Party, each of the Republics of the CA Party shall present or be presented with, as the case may be, an offer for compensation, taking account of the level of nullification or impairment determined pursuant to Article 314, paragraph 4, as well as any measure notified under Article 316, paragraph 1. The EU Party will endeavour to exercise due restraint when requesting compensation pursuant to this paragraph.

2. If no agreement on compensation is reached within thirty days of the end of the reasonable period of time or of the notification of the Panel ruling under Article 316 that a measure taken to comply is inconsistent with the provisions referred to in Article 309, any complaining Party shall be entitled, upon notification to the Party complained against with copy to the Association Committee, to suspend obligations arising from any provision referred to in Article 309 at a level equivalent to the nullification or impairment caused by the violation. The notification shall indicate the obligations that the complaining Party intends to suspend. The complaining Party may implement the suspension ten days after the date of the notification, unless the Party complained against has requested a ruling by a Panel under paragraph 3. Where a Panel ruling applies to more than one Republic of the CA Party, suspension of obligations shall be applied individually to each non compliant Republic of the CA Party or by each Republic of the CA Party as the case may be, taking account of the individual level of nullification or impairment determined pursuant to Article 314, paragraph 4, as well as any measure notified under Article 316, paragraph 1.

3. If any Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original Panel to rule on the matter. Such request shall be notified to the complaining Party with copy to the Association Committee prior to the expiry of the ten day period referred to in paragraph 2. The Panel shall notify its ruling on the level of the suspension of obligations to the disputing Parties with copy to the Association Committee within thirty days of the date of the submission of the request. Obligations shall not be suspended until the Panel has notified its ruling, and any suspension shall be consistent with the Panel ruling.

4. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures laid down in Article 312 shall apply. The time period for notifying the ruling shall be forty five days from the date of the submission of the request referred to in paragraph 3.

5. When suspending benefits pursuant to paragraph 1, the EU Party will endeavour to exercise appropriate moderation, taking into consideration, among other factors, the likely impact on the economy and level of development of the Party complained against, and opt for measures conducive to bringing the Party complained against into compliance, and least likely to adversely affect the attainment of the objectives of this Agreement.

6. The suspension of obligations shall be temporary and shall be applied only until any specific measure or measures found to be inconsistent with the provisions referred to in Article 309, has or have been brought into full conformity with those provisions, as established under Article 318, or until any of the disputing Parties have agreed to settle the dispute.

ARTICLE 318

Review of any Measure taken to Comply After the Suspension of Obligations

1. The Party complained against shall notify the complaining Party, with copy to the Association Committee, of any measure it has taken to comply with the ruling of the Panel and of its request for a termination of the suspension of obligations applied by the complaining Party.

2. If the disputing Parties fail to reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 309, within thirty days of the date of the submission of the notification referred to in paragraph 1, the complaining Party shall request in writing the original Panel to rule on the matter. Such request shall be notified to the Party complained against with copy to the Association Committee. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall issue a ruling pursuant to this Article for each Republic of the CA Party. The Panel ruling shall be notified to the disputing Parties with copy to the Association Committee within forty five days of the date of the submission of the request. If the Panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 309, the suspension of obligations shall be terminated.

3. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures laid down in Article 312 shall apply. The time period for notifying the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

SECTION C

COMMON PROVISIONS

ARTICLE 319

Rules of Procedure

1. Unless the disputing Parties agree otherwise, dispute settlement procedures under this Title shall be governed by the Rules of Procedure adopted by the Association Council.
2. Subject to the protection of confidential information, any hearing of the Panel shall be open to the public in accordance with the Rules of Procedure.
3. Unless the disputing Parties agree otherwise, within five days from the date of establishment of the Panel, the terms of reference of the Panel shall be:

"to examine, in the light of the relevant provisions of Part IV of this Agreement, the matter referred to in the request for establishment of the Panel, in order to rule in regard to the compatibility of the measure at issue with the provisions referred to in Article 309 of Title X (Dispute Settlement) and to issue a ruling on the subject matter in accordance with Article 313 of Title X (Dispute Settlement)."

4. Where the disputing Parties have agreed on different terms of reference, they must notify these to the Panel within two days of their agreement.
5. If a disputing Party considers that a panelist is in violation of the Code of Conduct or does not fulfil the requirements set out in Article 325, his removal may be requested in accordance with the Rules of Procedure.

ARTICLE 320

Information and Technical Advice

1. At the request of a disputing Party, or upon its own initiative, the Panel may obtain information from any Party it deems appropriate for the Panel proceeding.
2. The Panel may also seek information and opinions from experts, bodies or other sources where relevant. Prior to seeking such information and opinions, the Panel shall inform the disputing Parties, who shall also be granted the opportunity to comment. Any information obtained in accordance with this paragraph must be disclosed to each of the disputing Parties in a timely manner and submitted for their comments. Such comments shall be transmitted to the Panel as well as to the other Party.

ARTICLE 321

Amicus Curiae

Natural or legal persons with an interest in the subject matter residing or established in the disputing Parties' territories are authorised to submit amicus curiae briefs for the Panel's possible consideration in accordance with the Rules of Procedure.

ARTICLE 322

Rules and Principles of Interpretation

1. Any Panel shall interpret the provisions referred to in Article 309 in accordance with customary rules of interpretation of public international law, due account being taken of the fact that the Parties must perform this Agreement in good faith and avoid circumvention of their obligations.
2. Where a provision of Part IV of this Agreement is identical to a provision in a WTO Agreement, the Panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the WTO Dispute Settlement Body.
3. The rulings of the Panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 309.

ARTICLE 323

Common Provisions regarding the Panel Rulings

1. The Panel shall make every effort to take any decision by consensus. Nonetheless, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case shall dissenting opinions of panelists be published.
2. Any ruling of the Panel shall be final and binding on the disputing Parties and shall not create any rights or obligations for natural or legal persons.
3. The ruling shall set out the Panel's findings of fact and law, the applicability of the relevant provisions of this Agreement, and the basic rationale behind the Panel's findings and conclusions. The ruling shall also include a reference to any request for determination made by either or both disputing Parties, including as contained in the terms of reference of the Panel. The disputing Parties shall make the Panel ruling publicly available. The provisions of this paragraph do not apply to organisational rulings.
4. The Panel shall not disclose any confidential information in its ruling, but may state conclusions derived from such information.

CHAPTER 4

GENERAL PROVISIONS

ARTICLE 324

Mutually Satisfactory Solution

The disputing Parties may reach a mutually satisfactory solution to a dispute under this Title at any time. They shall notify the Association Committee of any such solution. Upon notification of the mutually satisfactory solution, the procedure shall be terminated.

ARTICLE 325

List of Panelists

1. The Association Council shall, no later than six months⁵⁰ after the entry into force of this Agreement, establish a list of thirty six individuals who are willing and able to serve as panelists. The EU Party shall propose twelve individuals to serve as panelists, and each Republic of the CA Party shall propose two individuals. The EU Party and the Republics of the CA Party shall also select twelve individuals that are not nationals of either Party and who shall act as Chair-person to the Panel. The Association Council may review and amend the list at any time and shall ensure that the list is always maintained at this level in accordance with the provisions of this paragraph.
2. Panelists shall have specialised knowledge or experience in law, international trade or other matters relating to Part IV of this Agreement or in the resolution of disputes arising from international trade agreements, be independent, serve in their individual capacity and not be affiliated with, nor take instructions from, any Party or organisation, and shall comply with the Code of Conduct adopted by the Association Council.

⁵⁰ As of the entry into force of this Agreement:

- (a) the Parties shall send the Association Council their lists of candidates within seventy five days;
- (b) the Association Council shall approve or reject the candidates in the lists within one hundred twenty days;
- (c) the Parties shall send a list of additional candidates to replace the rejected candidates within one hundred fifty days;
- (d) the list of candidates shall be finalised within one hundred eighty days.

3. The Association Council may establish additional lists of up to fifteen individuals having sectoral expertise in specific matters covered by Part IV of this Agreement. When recourse is made to the selection procedure of Article 312, the Chair-person of the Association Committee may use a sectoral list upon agreement of the Parties.

ARTICLE 326

Relation with WTO Obligations

1. If a disputing Party seeks redress of a violation of an obligation under the WTO Understanding on the Rules and Procedures Governing Dispute Settlement (hereinafter referred to as "WTO DSU"), it shall have recourse to the relevant rules and procedures of the WTO Agreement.
2. If a disputing Party seeks redress of a violation of an obligation under Part IV of this Agreement, it shall have recourse to the relevant rules and procedures of this Title.
3. If a disputing Party seeks redress of a violation of an obligation under Part IV of this Agreement which at the same time implies a violation to the WTO Agreements, the Party shall have recourse to the forum of its selection.

4. The disputing Parties shall avoid bringing identical disputes in different *fora* when based on the same legal claims and measures.
5. In the case of non-identical disputes related to the same measure, the Parties shall refrain from initiating concurrent dispute settlement procedures.
6. Where a disputing Party has initiated dispute settlement procedures under the WTO DSU or under this Title and subsequently seeks redress of a violation of an obligation under a second forum, based on a dispute which is identical to a dispute previously brought in the other forum, that Party shall be barred from bringing the second dispute. For the purpose of this Title, the term identical shall mean a dispute based on the same legal claims and measures challenged. A dispute shall not be considered to be identical where the forum initially selected has failed for procedural or jurisdictional reasons to make findings regarding the legal claim brought before it.
7. For the purpose of the previous paragraph, a dispute settlement procedure will be deemed initiated under the WTO DSU, when the Panel is established in accordance to Article 6 of the WTO DSU, and under this Title, when a Party has requested the establishment of a Panel in accordance with Article 311, paragraph 1. Dispute settlement procedures under the WTO DSU are concluded when the Dispute Settlement Body adopts the Panel's report, or the Appellate Body's report, pursuant to Articles 16 and 17(14) of the WTO DSU. Dispute settlement procedures under this Title are concluded when the Panel notifies its ruling on the subject matter to the Parties and to the Association Committee pursuant to Article 313, paragraph 1.

8. Any question about the jurisdiction of the panels established according to this Title, shall be raised within a period of time of ten days of the establishment of the Panel and shall be resolved through a preliminary ruling within thirty days from the Panel's establishment. Once a challenge to the jurisdiction of a Panel has been made under this Article, all time limits established in this Title and in the Rules of Procedure shall be suspended pending the notification of the Panel's preliminary ruling.

9. Nothing in this Title shall preclude a disputing Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to preclude a disputing Party from suspending obligations under this Title.

ARTICLE 327

Time Periods

1. All time periods laid down in this Title and in the Rules of Procedure, including the time periods for the panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time period referred to in this Title and in the Rules of Procedure may be modified by mutual agreement of the disputing Parties.

3. The Panel may suspend its work at any time for a period not exceeding twelve months, at the request of the complaining Party and with the agreement of the Party complained against. In this case, the time periods shall be extended during the time that the procedure has been suspended. If the Panel procedure has been suspended for more than twelve months, the terms of reference of the Panel shall elapse, without prejudice of the complaining Party's right to request consultations and subsequently request the establishment of a Panel on the same matter at a later stage. This paragraph shall not apply where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 324.

ARTICLE 328

Adoption and Modification of the Rules of Procedure and the Code of Conduct

1. The Association Council shall adopt the Rules of Procedure and the Code of Conduct during its first meeting.
2. The Association Council may modify the Rules of Procedure and the Code of Conduct.