

Chapter XX

Dispute Settlement

Article XX 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 or consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

Article XX Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, whenever a Party considers that the other Party has failed to carry out its obligations under this Agreement.

Article XX Choice of Forum

1. Where a dispute arises under this Agreement and under another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum to settle the dispute.
2. Once the complaining Party has requested a Panel under other agreements referred to in the paragraph 1, the forum selected shall be used to the exclusion of the others in respect of that matter.

Article XX Consultations

1. A Party may request in writing consultations with the other Party with respect to any matter referred to in Article X.X (Scope of Application).
2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.
3. The requested Party shall reply to the request in writing within twenty-five (25) days following the date of receipt of the request.
4. The Parties shall enter into consultations in good faith within:
 - (a) thirty-five (35) days following the date of receipt of the request for consultations regarding urgent matters¹,

¹ Urgent matters include goods and services that lose their quality or current condition or trade value in a short period of time.

(b) forty (40) days following the date of receipt of the request for consultations for all other matters;

5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter raised through consultations under this article or other consultative provisions of this Agreement.

6. If the requested Party doesn't respond the consultation request within twenty-five (25) days or doesn't enter into consultations within the timeframe set in subparagraph 4 of this article, the requesting Party may request directly the establishment of a Panel without waiting for the completion of the period established in paragraph 4 or it may act according with article XX Request for a Panel.

7. Consultations may be held in person or by any technological means available to the Parties. Unless otherwise agreed by the consulting Parties, if in person, consultations shall be held in a rotating basis between cities of each country. The city for such meetings will be defined by the hosting country. In person meetings will begin to be held in a city of the requested Party.

8. In a consultation, each Party shall:

- (a) provide sufficient information to enable a full examination of how the measure in force or other matter at issue might affect the operation and application of this Agreement; and,
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

9. The consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

Article XX Request for a Panel

1. Unless the Parties agree on a different period for consultations, a requesting Party may request in writing the establishment of a Panel if the consultation referred to in the Article XX Consultations fails to resolve a matter within sixty (60) days, after the date of receipt of the request for consultations or fifty (50) days in case of urgent matters.

2. The complaining Party shall deliver the request to the other Party, indicating at least, the reason of the request, the identification of the measure, an

indication of the provision of this Agreement that it considers relevant and an indication of the legal basis of the complaint. The Panel will be considered as established on the date of the receipt of the corresponding request to the other Party.

3. Unless otherwise agreed by the disputing Parties, the Panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter.

Article XX Qualifications of Panelists

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 relevant to the subject matter of the dispute;
- (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party;
- (d) not delegate their responsibilities to any other person and
- (e) comply with the Model Rules of Procedure established in Annex XX Model Rule of Procedure of this Chapter.

Article XX Panel Selection²

1. The Parties shall apply the following procedures in selecting a Panel:
 - (a) the Panel shall comprise three (3) members;
 - (b) within fifteen (15) days following the date of the establishment of the Panel, each Party shall nominate a Panelist.
 - (c) the Parties shall endeavor to agree on a third Panelist who shall serve as chair within thirty (30) days following the date of the establishment of the Panel.
 - (d) If any member of the Panel has not been designated or appointed within thirty (30) days following the date of the establishment of the

² The Peruvian and Chinese missions in Geneva, Switzerland, will jointly send a request to the WTO Director-General in order to ask his office to confirm their acceptance of this task and the proposed wording.

Panel, at the request of any Party to the dispute, the Director-General of the WTO³ is expected to designate a member within a further thirty (30) days.

- (e) the chair of the Panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be or have been employed by any of the Parties, nor have dealt in any capacity with the subject raised on the dispute, unless the Parties otherwise agree.

2. If a Panelist appointed under this Article resigns or becomes unable to act, a successor Panelist shall be appointed within thirty (30) days in accordance with the selection procedure as prescribed for the appointment of the original Panelist and the successor shall have all the powers and duties of the original Panelist. The work of the Panel shall be suspended during the appointment of the successor Panelist.

Article XX Role of the Panel

1. The role of the Panel shall be to make an objective assessment of the dispute under its consideration, including an examination of the facts of the case and the applicability of and conformity with this Agreement, incorporating necessary findings for settling the dispute.

2. The report of the Panel shall be binding on the disputing Parties.

3. The Panel shall take its decisions by consensus. However if the Panel is unable to reach consensus it may take its decisions by majority vote.

4. Where a Panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement. In addition to these recommendations, the Panel will be entitled to suggest ways in which the requested Party could implement the recommendations.

5. The Panel, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

Article XX Model Rules of Procedure

1. The procedure before the Panel shall be conducted in accordance with the Model Rules of Procedure set out in Annex XX Model Rules of Procedure.

³ The Parties agree on that if the Director-General is a national of any Party or does not fulfill the qualifications set forth the subparagraph e) or becomes otherwise unable to perform this task, the most senior deputy Director-General who is not a national of any Party and fulfills the qualifications set forth in subparagraph e), will perform such task.

Exceptionally, the disputing Parties may agree different rules to be applied by the Panel.

2. The Model Rules of Procedure are necessary for the good development of all the steps in this Chapter. In addition, these rules shall regulate the development of the procedure, pursuant to the following principles:

- (a) The procedures shall ensure the right to at least one hearing before the Panel, as well as the opportunity for each disputing Party to provide initial and rebuttal written submissions; and allow the use of any technological mean to ensure its authenticity.
- (b) The hearings before the Panel, the deliberations, as well as all the submissions and communications submitted during the hearings, shall be confidential.

3. If needed, the Panel shall, apart from the matters set out in this Article and in Annex XX (Model Rules of Procedure), regulate its own procedures in relation to the settlement of the dispute in consultation with the Parties.

4. Unless otherwise agreed by the disputing Parties, within twenty (20) days following the establishment of the Panel, the terms of reference shall be:

“To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral Panel pursuant to Article XX (Request for a Panel) and to make findings of law and fact together with the reasons therefore for the resolution of the dispute, as well as a recommendation for its implementation, if needed.”

5. Unless otherwise agreed by the disputing Parties, the hearings shall be held in a rotating basis between cities of each country. The city for such meetings will be defined by the hosting country. In person meetings will begin to be held in a city of the Party complained against.

6. The working language of the dispute settlement proceedings shall be English. Whenever a document is presented in either Spanish or Chinese, the Party presenting the document shall file a translation to English.

Article XX Role of Experts

1. On request of a disputing Party, or on its own initiative, the Panel may seek information and technical advice from any person or body that it deems appropriate. The requirements set out in paragraph b) and c) of Article XX (Qualifications of Panelists) shall apply to the selection of experts or groups, as appropriate.

2. Before the Panel seeks information or technical advice, appropriate procedures shall be established in consultation with the disputing Parties. The Panel shall:

- (a) notify the Parties, in advance, of its intention to seek information or technical advice pursuant to paragraph 1, establishing an adequate time period for the Parties to make the comments and observations that they deem convenient; and
- (b) provide the disputing Parties with a copy of any information or technical advice received pursuant to paragraph 1, and with a period of time for the Parties to submit its comments.

3. When the Panel takes into consideration the information or technical advice sought pursuant to paragraph 1 for the preparation of its report, it shall also take into account any comments or observations submitted by the disputing Parties with respect to such information or technical advice.

Article XX Report of the Panel

1. Unless the Parties otherwise agree, the Panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information received by it pursuant to Article XX Model Rules of Procedure.

2. Unless the Parties otherwise agree, the Panel shall present the report to the disputing Parties, within one hundred and twenty (120) days, or ninety (90) days in the event of urgent matters, after the last Panelist is selected.

3. Only in exceptional cases, if the Panel considers it cannot release its report within a hundred and twenty (120) days or ninety (90) days in the event of urgent matters, it shall inform the Parties in writing of the justifying reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of thirty (30) days unless the Parties otherwise agree.

4. The report shall contain:

- (a) the finding along with its factual and legal basis;
- (b) the determination as to whether a Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference;
- (c) its recommendations for the implementation of the decision pursuant to paragraph 4 of the Article XX Role of the Panel; and,

5. The Panelists may furnish separate opinions on matters not unanimously agreed.
6. No Panel may disclose which Panelists are associated with majority or minority opinions.
7. Unless the Parties agree otherwise, the report shall be available to the public within thirty (30) days thereafter, subject to the protection of confidential information.

Article XX Request for Clarification of the Report

1. Within ten (10) days of the release of the report, either of the disputing Parties may submit a written request to the Panel, a copy of which shall be sent to the other Party, for clarification of any items the Party considers requires further explanation or definition.
2. The Panel shall respond the request within ten (10) days following the submission of such request. The clarification of the Panel shall only be a more precise explanation or definition of the original contents of the report, and not an amendment of such report.
3. The filing of this request for clarification will not postpone the effect of the Panel report nor the deadline for compliance of the adopted decision, unless the Panel decides otherwise.

Article XX Suspension and Termination of Procedure

1. The disputing Parties may agree to suspend the work of the Panel at any time for a period not exceeding twelve (12) months following the date of such agreement. In any event, if the work of the Panel has been suspended for more than twelve (12) months, the authority of the Panel shall lapse, unless the disputing Parties agree otherwise. If the authority of the Panel lapses and the disputing Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting a new proceeding regarding the same matter.
2. At any time prior to the release of the Panel Report, the Parties may agree to terminate the procedures before a Panel by jointly notifying the chairperson of the Panel on this respect.

Article XX Implementation of the Report

1. The Panel report shall be final and binding on the disputing Parties.

2. If the report issued by the Panel determines that a Party has not conformed with its obligations under this Agreement, the Party complained against shall eliminate the non-conformity.

3. The Party complained against shall comply with the recommendation of the Panel promptly or, if not practicable, within a reasonable period of time. The Parties shall agree on reasonable period of time within thirty (30) days of the notification of the Report of the Panel. In any case, such reasonable period of time shall not exceed three hundred (300) calendar days after the release of the Report.

Article XX Examination of Implementation

1. Without prejudice to the procedures set out in Article XX Non-Implementation - Compensation, once the reasonable period set out in paragraph 3 of Article XX (Implementation of the Report) has expired, and there is disagreement between the disputing Parties as to the existence or consistency of the measures taken to comply with the Panel Report, such dispute shall be referred to the original Panel wherever possible. If not possible, the procedure pursuant to Article XX Panel Selection shall be followed to appoint a new Panel, in which event the periods set out thereof shall be reduced by half⁴.

2. This Panel shall issue its report on the matter within sixty (60) days after the date of the referral of the matter to it. When the Panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of thirty (30) days unless the Parties otherwise agree.

Article XX Compensation

1. If the Party complained against does not comply with the Panel report within the reasonable period of time set forth in paragraph 3 of the Article XX (Implementation of the Report), any of the disputing Parties may request in writing negotiations with the other Party with a view to establish a mutually acceptable compensation. The disputing Parties shall initiate negotiations within a period no longer than ten (10) days following the receipt of the written request.

2. This compensation shall be effective as of the moment the Parties agree to it and until the Party complained against complies with the Panel report.

⁴ Where the periods reduced by half result in fractions, the resulting period will be the exact number immediately higher.

Article XX Suspension of Benefits

1. If:

- (a) The disputing Parties are unable to agree on a compensation within thirty (30) days after the period for establishing such compensation has begun, or the Party complained against has failed to observe the terms of the agreed compensation within thirty (30) days following such agreement;
- (b) the Panel under the Article XX (Examination of the Implementation) finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the Panel within the reasonable period of time established
- (c) the party complained against express in writing that it will not implement the recommendations,

the complaining Party may, at any time thereafter, communicate in writing to the Party complained against its intention to suspend the application of benefits in thirty (30) days upon reception of such communication.

2. The complaining Party may initiate the suspension of benefits within thirty (30) days following the latest date between the date of the communication pursuant to paragraph 1 of this Article and the date when the Panel issued its report pursuant to Article XX Examination of Benefit Suspension Level.

3. The level of benefits to be suspended shall have an equivalent effect to the benefits not being received.

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

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors affected by the measure; and,
- (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

Article XX Examination of the Benefit Suspension Level

1. If the Party complained against considers that the level of benefits suspended is excessive; it may request in writing the original Panel - to examine the level of suspension of benefits. If this is not possible, the procedure established in Article XX Panel Selection shall be followed, in which event the periods set out thereof shall be reduced by half⁵.

2. This Panel shall issue its ruling within sixty (60) days following the date of the referral of the matter to it. When the Panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of thirty (30) days unless the Parties otherwise agree. The ruling of the Panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

3. If the Panel finds that the level of benefits which the complaining Party has suspended is excessive, it shall determine the appropriate level of benefits it considers to be of equivalent effect.

Article XX Post Suspension

1. Without prejudice to the procedures in Article XX Examination of the Benefit Suspension Level , if the Party complained against considers that it has eliminated the non-conformity that the Panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party has disagreement, it may refer the matter to the original Panel within sixty (60) days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of benefits.

2. The Panel shall release its report within sixty (60) days after the referral of the matter. If the Panel concludes that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of benefits.

Article XX 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.

⁵ Where the periods reduced by half result in fractions, the resulting period will be the exact number immediately higher.

ANNEX XX

Model Rules of Procedure

Application

1. The following rules of procedure apply to dispute settlement proceedings under Chapter XX (Dispute Settlement) unless the Parties otherwise agree.

Definitions

2. For the purposes of this Annex:

Adviser means a person retained by a Party to advise or assist the Party in connection with the panel proceeding;

complaining Party means a Party that requests the establishment of a panel under Article XX Establishment of a Panel;

court reporter means a designated note-taker.

legal holiday means every Saturday and Sunday and any other day designated by a Party as a holiday for the purposes of these rules;

Panel means a panel established under Article XX Establishment of a Panel; and

representative means an employee of a government department or agency or of any other government entity of a Party;

3. Any reference made in these rules of procedure to an Article is a reference to the appropriate Article in Chapter XX Dispute Settlement.

Written Submissions and Other Documents

4. Each Party shall deliver the original and no less than four copies of any written submission to the Panel and one copy to the Embassy of the other Party at the same time. Delivery of submissions and any other document related to the Panel proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. Where a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall deliver at the same time an electronic version of such submissions or other document.

5. The complaining Party shall deliver an initial written submission no later than twenty (20) days after the date on which the last panelist is appointed. The Party complained against shall, in turn, deliver a written counter-submission no

later than forty (40) days after the date on which the initial written submission of the complaining Party is due.

6. The Panel shall establish, in consultation with the Parties, dates for the delivery of the subsequent written rebuttal submissions of the Parties and any other written submissions that the panel and the Parties agree are appropriate.

7. A Party may at any time correct minor errors of a clerical nature in any written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

8. If the last day for delivery of a document falls on a legal holiday observed by a Party or on any other day on which the government offices of that Party are closed by order of the government or by force majeure, the document may be delivered on the next business day.

Burden of Proof

9. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.

10. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Operation of Panels

11. The chair of the Panel shall preside at all of its meetings.

12. The Panel may conduct its business by any appropriate means, including by telephone, facsimile transmission and video or computer links.

13. Only panelists may take part in the deliberations of the Panel. The Panel may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations. The members of the Panel and the persons employed by the Panel shall maintain the confidentiality of the Panel's deliberations and any information that is protected pursuant to this Agreement.

14. A Panel may, in consultation with the Parties, modify any time-period applicable in the Panel proceedings and make other procedural or administrative adjustments as may be required in the proceeding.

Hearings

15. The chair of the Panel shall fix the date and time of the initial hearing and any subsequent hearings in consultation with the Parties and the panelists, and then notify the Parties in writing of those dates and times.

16. The location of hearings shall alternate between the territories of the Parties with the first hearing to take place in the territory of the Party complained against.

17. No later than five (5) days before the date of a hearing, each Party shall deliver to the other Party and the Panel a list of the names of those persons who will be present at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

18. Each hearing shall be conducted by the Panel in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

19. The Panel shall arrange the preparation of hearing transcripts, if any, and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Ex Parte Contacts

20. No Party may communicate with the Panel without notifying the other Party. The Panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

21. No panelist may discuss any aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panelists.

Remuneration and Payment of Expenses

22. Unless the Parties agree otherwise, the expenses of the Panel, the remuneration of the panelists and their assistants, their travel and lodging expenses, and all general expenses shall be born in equal shares between the Parties.

23. Each Panelist shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and shall keep a record and render a final account of all general expenses.