

CHAPTER 13 DISPUTE SETTLEMENT

Article 13.1: Scope

Except as provided otherwise in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of disputes between the Parties regarding the interpretation, application or implementation of this Agreement, wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 13.2: Choice of Forum

1. Where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute and that forum shall be used to the exclusion of other fora.

2. For the purposes of this Article, the complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of Article 13.5 (Establishment of an Arbitral Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel or tribunal under another international trade or investment agreement.

3. This Article shall not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

Article 13.3: Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter described in Article 13.1 (Scope).
2. The complaining Party shall deliver the request for consultations to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the factual and legal basis for the complaint, as well as providing sufficient information to enable an examination of the matter.
3. The responding Party shall immediately acknowledge its receipt of the request for consultations made pursuant to paragraph 1, by way of notification to the complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the responding Party's receipt of the request.
4. Each Party shall accord adequate opportunity for consultations with the other Party with respect to any matter affecting the interpretation, application or implementation of this Agreement. Any differences shall, as far as possible, be settled through consultations between the Parties.
5. Unless the Parties agree otherwise,
 - (a) consultations shall be held within 30 days after the date of receipt of the request and take place, in the territory of the Party complained against or any other venue mutually agreed on. The consultations shall be deemed concluded within 60 days after the date of receipt of the request;
 - (b) consultations on matters of urgency, including those regarding perishable goods, shall be held within 15 days after the date of receipt of the request, and shall be deemed concluded within 30 days after the date of receipt of the request;
 - (c) if the Party to which the request is made does not respond to the request for consultations within 10 days after the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 5(a) of this Article or in paragraph 5(b) of this Article respectively, or if consultations have been concluded and no solution has been agreed upon by the Parties, the

complaining Party may request the establishment of an Arbitral Panel in accordance with Article 13.5 (Establishment of an Arbitral Panel).

6. The Parties shall make every attempt to reach a mutually agreed solution through consultations of any matter raised in accordance with this Article. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the interpretation, application or implementation of this Agreement; and

(b) treat any secret and confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

7. For the purposes of consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter.

8. The consultations under this Article shall be confidential and without prejudice to the rights of any Party in any further or other proceedings under this Chapter.

Article 13.4: Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an Arbitral Panel established under Article 13.5 (Establishment of an Arbitral Panel).

3. Proceedings involving good offices, conciliation or mediation, and in particular positions taken by the Parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of any Party in any further proceedings under this Chapter.

Article 13.5: Establishment of an Arbitral Panel

1. The complaining Party that requested consultations under Article 13.3 (Consultations) may request in writing the establishment of an Arbitral Panel to

consider the matter, if the consultations under Article 13.3 (Consultations) are not held within the time frames laid down in paragraph 5 of Article 13.3 (Consultations), or if the Parties fail to resolve the matter through consultations under Article 13.3 (Consultations) within:

(a) 30 days after the date of receipt of the request for consultations under Article 13.3 (Consultations) in cases of urgency, including those which concern perishable goods; or

(b) 60 days after the date of receipt of the request for consultations under Article 13.3 (Consultations) for any other matter; or

(c) such other period as the Parties may agree upon.

2. In its request for the establishment of an Arbitral Panel, the complaining Party shall state in writing to the other Party, the measures complained of and indicate the details of factual and legal basis (including the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint, as well as providing sufficient evidence to enable a detailed examination of the matter.

3. The responding Party shall immediately acknowledge its receipt of the request for the establishment of an Arbitral Panel made pursuant to paragraph 1, by way of notification to the complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the responding Party's receipt of the request.

4. An Arbitral Panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. The date of the establishment of an Arbitral Panel shall be the date on which the chair of the Arbitral Panel is appointed pursuant to Article 13.7 (Composition of Arbitral Panels).

Article 13.6: Terms of Reference

The Arbitral Panel shall have the following terms of reference unless the Parties agree otherwise within 20 days from the date of the establishment of an Arbitral Panel:

“To examine, in the 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 13.5 (Establishment of an Arbitral Panel), and to make findings, determinations, and any recommendations for the resolution of the dispute, together with its reasons therefor, in a written report.”

Article 13.7: Composition of Arbitral Panels

1. An Arbitral Panel shall comprise three panelists.
2. Unless the Parties agree otherwise, the following procedures in selecting panelists shall apply:

(a) Within 30 days after the date of receipt of the request for the establishment of an Arbitral Panel, each Party shall appoint one panelist and nominate up to three candidates to serve as the chair of the Arbitral Panel. The Parties shall notify each other of their appointments and the lists of nominations.

(b) If the complaining Party fails to appoint a panelist within the time frame specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.

(c) If the responding Party fails to appoint a panelist within the time frame specified in subparagraph (a), the panelist not yet appointed shall be appointed in accordance with the procedure set out in subparagraph (e).

(d) Within 60 days after the date of receipt of the request for the establishment of an Arbitral Panel, the Parties shall endeavor to agree on the appointment of the chair of the Arbitral Panel, taking into account the candidates nominated pursuant to subparagraph (a).

(e) If the responding Party fails to nominate the panelist as provided in subparagraph (c) or the Parties fail to agree on and appoint the chair of the Arbitral Panel within the time frame specified in subparagraph (d), any Party to the dispute may request the Director-General of the WTO to appoint the remaining panelists within 30 days after the date of such request. In the event that the Director-General is a national of one of the Parties, the Deputy

Director-General or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.

(f) If the Director-General of the WTO or the person who has been requested to make the necessary appointments notifies the Parties that he or she is unavailable, or does not appoint the remaining panelists within 30 days after the date of the request made pursuant to subparagraph (e), any Party may request the Secretary-General of the Permanent Court of Arbitration to appoint the remaining panelists promptly.

3. All panelists shall:

(a) have expertise or experience in law, international trade or other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party;

(d) comply with the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Dispute in Annex II to the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes, which is incorporated into and made part of this Agreement, *mutatis mutandis*.

4. The chair of the Arbitral Panel shall:

(a) not be a national of either Party;

(b) not have his or her usual place of residence in the territory of either Party;

(c) not have dealt with the matter in any capacity.

5. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 20 days in accordance with the appointment procedure provided for in paragraph 2 which shall be applied respectively, *mutatis mutandis*.

6. The work of the Arbitral Panel shall be suspended for a period beginning on the date the original panelist dies, becomes unable to act or resigns. The work of the Arbitral Panel shall resume on the date the successor is appointed.

7. An Arbitral Panel that is reconvened for the purposes of Article 13.14 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations) or Article 13.15 (Compliance Review) shall have, wherever possible, the panelists of the original Arbitral Panel. If this is not possible, then the panelists shall be appointed in accordance with the appointment procedure provided for in paragraph 2 which shall be applied, *mutatis mutandis*.

Article 13.8: Functions of Arbitral Panels

1. The function of an Arbitral Panel is to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement, and make such findings and determinations as are called for in its terms of reference.

2. In addition to its findings and determinations, the Arbitral Panel may recommend ways in which the responding Party could implement the report, if the Parties so request.

3. The findings, determinations and, if applicable, recommendations cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

4. The Arbitral Panel shall endeavor to take its decision by consensus. If the Arbitral Panel is unable to reach consensus, it may take its decisions by majority vote.

5. The Arbitral Panel shall consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution to the dispute.

Article 13.9: Rules of Procedures

1. The Arbitral Panel shall meet in closed session. The Parties shall be present at the meetings only when invited by the Arbitral Panel to appear before

it. The venue for the meetings, unless otherwise agreed by the Parties, shall be Thailand, where the complaining Party is Sri Lanka, and Sri Lanka, where the complaining Party is Thailand.

2. The Arbitral Panel shall have no *ex parte* communications concerning a dispute it is considering.

3. The deliberations of the Arbitral Panel and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall treat as confidential and not disclose, information or written submissions submitted by the other Party to the Arbitral Panel which the latter Party has designated as confidential.

4. The Parties shall transmit to the Arbitral Panel written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:

(a) for the complaining Party, within 30 days after the establishment of the Arbitral Panel; and

(b) for the responding Party, within 30 days after the transmission of the written submission of the complaining Party.

5. Each Party's written submissions, including any comments on the initial report made in accordance with Article 13.11 (Initial Report), written versions of oral statements and responses to questions put by the Arbitral Panel shall be made available to the other Party.

6. At the request of a Party or on its own initiative, the Arbitral Panel may seek information and technical advice from any person or body that it deems appropriate, and subject to such terms and conditions as the Parties may set. The Arbitral Panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments thereon.

7. The Arbitral Panel shall, in consultation with the Parties, regulate its own procedures governing the rights of the Parties to be heard and its own deliberations where such procedures are not set out otherwise in this Chapter.

8. The rules of procedure or time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 13.10: Suspension or Termination of Proceedings

1. Where the Parties agree, the Arbitral Panel may suspend its work at any time for a period not exceeding 12 months. In the event of such a suspension, all relevant time frames set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the Arbitral Panel has been suspended for more than 12 months, the Arbitral Panel's authority for considering the dispute shall lapse, unless the Parties agree otherwise.
2. The Parties may agree at any time to terminate the proceedings of an Arbitral Panel established under this Chapter by jointly notifying the chair of the Arbitral Panel.

Article 13.11: Initial Report

1. The Arbitral Panel shall base its report on the relevant provisions of this Agreement, the submissions, and arguments of the Parties and any information before it. The report shall be drafted without the presence of the Parties.
2. Unless the Parties agree otherwise, the Arbitral Panel shall present to the Parties an initial report:
 - (a) within 90 days after the date of its establishment, in cases of urgency, including those relating to perishable goods; or
 - (b) within 150 days after the date of its establishment.
3. The initial report shall contain:
 - (a) findings of fact, the applicability of the relevant provisions, and the basic rationale behind any findings;
 - (b) conclusions as to whether the measure at issue has not conformed with the obligations under this Agreement or any other determination if requested in the terms of reference; and
 - (c) recommendations, if any, for the resolution of the dispute.
4. In exceptional cases, if the Arbitral Panel considers it cannot release its initial report within the time frames laid down in paragraph 2, it shall inform the Parties in writing of the 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 30 days unless the Parties agree otherwise.

5. A Party may submit written comments to the Arbitral Panel on its initial report within 15 days after the date of presentation of the initial report, or within such other period as the Parties may agree.

6. After considering any written comments by the Parties on the initial report, the Arbitral Panel may modify its initial report and make any further examination it considers appropriate.

Article 13.12: Final Report

1. Unless the Parties agree otherwise, the Arbitral Panel shall present a final report to the Parties, including any separate opinions on matters not agreed to by consensus, within 30 days after the date of the presentation of the initial report.

2. Neither initial report nor final report shall disclose which panelists are associated with majority or minority opinions.

3. Final reports are final and binding on the Parties.

4. Unless the Parties agree otherwise, the final report of the Arbitral Panel shall be made available to the public within 15 days after its presentation to the Parties subject to the requirement of non-disclosure of secret and confidential information.

Article 13.13: Implementation of the Report

1. The responding Party shall promptly comply with the final report of an Arbitral Panel, or, if this is not practicable, within a reasonable period of time.

2. Unless the Parties agree otherwise, within 30 days after the date of receipt of the final report, the responding Party shall notify the complaining Party in writing of actions it proposes to take to implement the final report of the Arbitral Panel.

3. If the responding Party considers that prompt compliance with the final report of the Arbitral Panel is impracticable, the Parties shall immediately enter

into consultations with a view to mutually determining a reasonable period of time to implement the final report.

4. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the final report of the Arbitral Panel, either Party may request in writing the original Arbitral Panel to determine such matter. Such request shall be notified to the other Party.

5. Unless the Parties agree otherwise, the Arbitral Panel shall issue its determination on the extent of the reasonable period of time for compliance to the Parties within 40 days after the date of the submission of the request.

6. In the event that any member of the original Arbitral Panel is no longer available, the procedures set out in Articles 13.5 (Establishment of an Arbitral Panel) and 13.7 (Composition of Arbitral Panels) shall apply.

7. The reasonable period of time may only be extended by mutual agreement of the Parties.

Article 13.14: Non-Implementation – Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations shall be temporary measures. None of these measures is preferred to full elimination of the non-conformity as determined in the final report of the Arbitral Panel. Compensation and suspension of concessions or other obligations shall only be applied until such time as the non-conformity is fully eliminated or a mutually agreed solution is reached.

2. The responding Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party with a view to reaching mutually acceptable resolution, such as compensation or any alternative arrangement if:

(a) the complaining Party has not received any notice from the responding Party under paragraph 2 of Article 13.13 (Implementation of the Report); or

(b) the responding Party notifies the complaining Party that it is impracticable to implement the final report; or

(c) the responding Party failed to comply with the final report within the reasonable period of time as determined by the Arbitral Panel under paragraph 5 of Article 13.13 (Implementation of the Report).

3. If:

(a) the circumstances under paragraph 2(a), 2(b) or 2(c) exist and the complaining Party does not request for negotiations pursuant to paragraph 2; or

(b) the Parties are unable to agree on a mutually acceptable resolution under paragraph 2 within 30 days after the commencement of negotiations under such paragraph; or

(c) the Parties agreed on a mutually acceptable resolution under paragraph 2 and the complaining Party considers that the responding Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide a written notice to the other Party that it intends to suspend the application of concessions of equivalent effect to the non-conformity found by the Arbitral Panel. Such notification shall specify the level of benefits that the complaining Party intends to suspend.

4. The complaining Party may begin suspending concessions or other obligations under this Agreement within 30 days after the receipt of a written notice by the responding Party specifying concessions or other obligations and the level thereof that the complaining Party proposes to suspend. The responding Party shall immediately acknowledge its receipt of the notice specifying concessions or other obligations and the level thereof that the complaining Party proposes to suspend, indicating the date on which the notice was received, otherwise the date when the notice was made shall be deemed to be the date of the responding Party's receipt of the notice.

5. In considering what concessions or other obligations to suspend, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the Arbitral Panel has found the non-conformity; and

(b) if it considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek

to suspend concessions or other obligations in other sectors. The notice of such suspension pursuant to paragraph 3 shall indicate the reasons on which it is based.

6. The level of suspension referred to in paragraph 4 shall be equivalent to the level of the nullification or impairment.

7. If the responding Party objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed, it may request the Arbitral Panel to reconvene under this Article and consider the matter.

8. The Arbitral Panel that is reconvened for the purposes of this Article shall determine:

(a) the level of suspension it considers to be of equivalent effect, if it finds that the level of suspension is not equivalent to the level of nullification or impairment; and

(b) in which sector(s) the complaining Party may suspend concessions or other obligations in accordance with the principles and procedures set forth in paragraph 5, if it finds that the complaining Party has not followed such principles and procedures.

9. The Arbitral Panel shall present its determination to the Parties within 45 days after the date when the matter is referred to it. Concessions or other obligations shall not be suspended during the course of the determination.

10. The Parties shall accept the determination as final. The complaining Party shall suspend concessions or other obligations in a manner consistent with the Arbitral Panel's determination, unless the Parties agree otherwise.

Article 13.15: Compliance Review

1. If the responding Party considers that it has eliminated the non-conformity that the Arbitral Panel has found, it shall provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original Arbitral Panel within 60 days after its receipt of such written notice.

2. The Arbitral Panel shall release its report within 90 days after the referral of the matter.
3. If the Arbitral Panel decides that the responding Party has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits it has suspended under Article 13.14 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations).
4. If the Arbitral Panel rules that measures taken to comply are in conformity with the rulings and recommendations of the Arbitral Panel, the suspension of obligations shall be terminated immediately. If the Panel rules otherwise, the measures shall remain in place until such further request to the Arbitral Panel.

Article 13.16: Expenses

1. Unless the Parties agree otherwise, each Party shall bear the costs of its appointed panelist and its own expenses and legal costs.
2. Unless the Parties agree otherwise, the costs of the chair of the Arbitral Panel and other expenses associated with the conduct of the Arbitral shall be borne in equal parts by the Parties.