

TITLE XXX

DISPUTE SETTLEMENT

CHAPTER I

OBJECTIVE AND SCOPE

Article 1

Objective

The objective of this Title is to establish an effective and efficient mechanism to avoid and settle disputes between the Parties regarding Part [X] of the Agreement with a view to arrive at, where possible, a mutually satisfactory resolution of the dispute.

Article 2

Parties

1. For the purposes of this Title, the EU, MERCOSUR or one or more of its signatory Member States, may be parties to a dispute. The parties to the dispute shall be hereinafter referred to as “party” or “parties”.
2. The EU may initiate a dispute settlement proceeding against a measure of MERCOSUR that concerns the EU or one or more of its Member States.
3. The EU may initiate a dispute settlement proceeding against one or more of the signatory Member States of MERCOSUR that concerns the EU or one or more of its Member States whenever the measure at issue is a measure of such individual signatory Member State(s).

4. MERCOSUR may initiate a dispute settlement proceeding against the EU whenever the measure at issue is a measure of the EU¹ that concerns MERCOSUR as a whole or all of its signatory Member States.

5. One or more signatory Member States of MERCOSUR may individually initiate a dispute settlement proceeding against the EU whenever the measure at issue is a measure of the EU² that concerns such individual signatory Member State(s).

6. When MERCOSUR has requested the establishment of a panel under Article X of this Title, a signatory MERCOSUR Member State shall not initiate another proceeding on the same matter under this same forum.

Article 3

Scope

The provisions of this Title shall apply with respect to any dispute concerning the interpretation and application of the provision of Part [X] of this Agreement, except where otherwise expressly provided.

CHAPTER II

DISPUTE AVOIDANCE

CONSULTATIONS AND MEDIATION

Article 4

Consultations

1. The Parties shall endeavour to resolve any dispute regarding the alleged non-compliance with the provisions referred to in Article 3 by entering into good faith consultations with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations through a written request to the other Party, copied to the [Trade Committee], giving the reasons for the request, including the identification of the measure at issue and the relevant provisions referred to in Article 3 that it considers applicable.

¹ For greater certainty, a measure(s) of the EU would also cover measure(s) of one or more of its Member States.

² For greater certainty, a measure(s) of the EU would also cover measure(s) of one or more of its Member States.

3. Consultations shall be held within fifteen (15) days of the request being received, and shall, unless the parties agree otherwise, be held on the territory of the consulted party. The consultations shall be deemed concluded within thirty (30) days from the date of the receipt of the consultation request, unless both parties agree to continue consultations. Consultations, in particular the positions taken by the parties therein, shall be confidential and without prejudice to the rights of any Party in any further proceedings.
4. If consultations are not held within the timeframe laid down in paragraph [3 or 5], as the case may be, or if consultations are concluded and no agreement is reached on a mutually agreed solution, then the party which has requested consultations may proceed directly to request the establishment of an arbitration panel in accordance with Article 6 of this Title.
5. Consultations on matters of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value in a short period of time shall be held within fifteen (15) days of the date of receipt of the request by the consulted Party and shall be deemed concluded within those fifteen (15) days, unless both Parties agree to continue consultations.
6. During consultations, each Party shall provide factual information, so as to allow for the complete examination of the manner in which the measure at issue could affect the operation and application of Part [X] of this Agreement.

Article 5

Mediation

Any Party may request the other Party to enter into a mediation procedure with respect to any measure adversely affecting trade between the Parties pursuant to [Annex X] (Mediation Mechanism) of this Agreement. The mediation procedure may only be initiated by mutual agreement of the Parties.

CHAPTER III

DISPUTE SETTLEMENT PROCEDURES

Article 6

Initiation of arbitration panel proceedings

1. Where the parties have failed to resolve the dispute by recourse to consultations as detailed in Article 4, or if the complaining party considers that the defending party has failed to comply with

a solution mutually agreed during consultations, the complaining party may seek the establishment of an arbitration panel upon written request to the defending party and simultaneously to the [Trade Committee].

2. The complaining party shall give the reasons for the request, identifying the measure it considers to be in breach of this Part which has been the subject of consultations³, and indicating the provisions referred to in Article 3 that it considers applicable, in a manner that the legal basis of the complaint is presented clearly.

Article 7

Appointment of arbitrators

1. Arbitrators shall have specialised knowledge or experience in law and international trade. Additionally, non-national arbitrators shall be jurists.

2. Arbitrators shall be independent, serve in their individual capacities and not take instructions from any organisation or government or be affiliated to a government, including governmental organisation, of a Party to the Agreement, and shall comply with the Code of Conduct set out in [Annex No. X].

3. The [Trade Committee] shall, no later than six months after the entry into force of this Agreement, establish a list of thirty-two (32) individuals who are willing and able to serve as arbitrators. This list shall be composed of three sub-lists: one composed by twelve (12) individuals proposed by the EU, another composed by twelve (12) individuals proposed by MERCOSUR and a third one composed by eight (8) individuals agreed by both Parties that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The [Trade Committee] will ensure that the list contains this number of individuals. The [Trade Committee] may amend the list of arbitrators, in accordance with [Rule X (between 27 and 28)] of the Rules of Procedure.

4. In the event that, at the moment of the composition of a particular arbitration panel in accordance with Article [8], the list provided for in paragraph [4] is not established or, once established, not all individuals included in a particular sub-list could serve as arbitrator in a dispute, the co-Chair of the [Trade Committee] of the complaining Party shall draw by lot the arbitrators in accordance with [Rule 13a bis] of the Rules of Procedure established in Annex [XX].

Article 8

Composition of arbitration panel

[1.] An arbitration panel shall be composed of three arbitrators

³ In cases where recourse to arbitration is made following a failure to comply with a mutually agreed solution reached during consultations, the request for arbitration shall refer to the subject matter on which consultations were requested.

1. Within ten (10) days from the request for a panel being submitted to the defending party and simultaneously to the [Trade Committee] the parties shall consult in order to agree on the composition of the arbitration panel. Expertise relevant to the subject matter of the dispute may be taken into consideration by the parties for the selection of arbitrators according to this paragraph. The arbitration panel shall always be composed of at least a non-national of either Party, who will act as the chairperson.
2. If there is no agreement on the composition within this timeframe, each party shall appoint one member of the panel from the sub-list of that party established in [paragraph 4 of Article 7] within ten (10) days from the expiry of the timeframe established in paragraph 1 of this Article. If a party fails to appoint an arbitrator within such period, and upon request of either party to the dispute, the Chairperson of the [Trade Committee] or the Chairperson's designee shall, within five days from the date of that request, select the arbitrator by lot from the sub-list of that party established in [paragraph 4 of Article 7].
3. During the timeframe established in paragraph [1], the parties shall endeavour to agree on the chairperson of the panel. If they are unable to agree, either party shall ask the chairperson of the [Trade Committee] to select the chairperson of the panel by lot from the sub-list established in [paragraph 4 of Article 7] within five days from that request.
4. The parties shall notify the Chairperson of the [Trade Committee] of the arbitrators appointed by them under this Article that have accepted their appointment in accordance with paragraph[6] of this Article.
5. Notwithstanding the preceding provisions, the parties may, by mutual agreement, select as arbitrators persons who are not included in the list of arbitrators, as well as establish different criteria and/or procedures for the appointment of the members of the arbitration panel, provided that the latter comply the provisions of [paragraph 3 of Article 7].
6. The date of the establishment of the arbitration panel shall be the date on which all three arbitrators are selected and have accepted the appointment according to the Rules of Procedure established in Annex [XX].
7. Where a party considers that an arbitrator does not comply with the requirements of the Code of Conduct, the procedures provided for in the Rules of Procedure shall apply.
8. If an arbitrator is unable to participate in the proceeding, withdraws or needs to be replaced, a replacement shall be selected within ten (10) days in accordance with the selection procedures set out in this Article. The panel proceedings will be suspended for the period this procedure is undertaken up to a maximum of 25 days.
9. The parties shall accept as binding, ipso facto and with no need for a special agreement, the authority of any arbitration panel established in accordance with this Title.

Hearings

The hearings of the arbitration panel shall be open to the public, unless the parties to the dispute decide otherwise. The hearings of the arbitration panel shall be partially or completely closed to the public when the submission and arguments of a party contains information which that party has designated as confidential.

Article 10

Information and technical advice

1. The arbitration panel may request the opinion of experts or obtain information from any source deemed relevant in accordance with the Rules of Procedures.
2. The opinions of experts as well as information obtained from any relevant source shall be non-binding.
3. Experts shall be persons of professional standing and experience in the relevant field. The arbitration panel shall consult the parties before choosing such experts.
4. The arbitration panel shall set a reasonable time limit for the submission of information or the report of the experts.
5. Persons of the Parties shall be authorised to submit amicus curiae briefs to the arbitration panels under conditions to be defined in the Rules of Procedures. These conditions shall ensure that the amicus curiae briefs do not create undue burden to the parties to the dispute nor unduly delay or complicate the panel proceedings.
6. Any information obtained under this Article shall be disclosed to each of the parties and submitted for their comments.

Article 11

Applicable Law

1. The arbitration panel shall resolve the dispute according to the provisions referred to in [Article 3].
2. The arbitration panel shall interpret the provisions referred to Article 3 in accordance with the customary rules of interpretation of public international law. When interpreting an obligation under this Agreement which is identical to an obligation under the WTO Agreement, the arbitration panel shall take into consideration any relevant interpretation established in the rulings of the WTO Dispute Settlement Body (hereinafter referred to as "DSB").

Article 12

Arbitral award

1. The arbitration panel shall deliver an interim arbitral report to the Parties not later than ninety (90) days of the date of establishment of the arbitration panel. The interim report shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that the panel makes.

2. When the panel considers that the 90-day deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the [Trade Committee] in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim arbitral report. Under no circumstances should the interim arbitral report be delivered later than one hundred twenty (120) days after the date of establishment of the arbitration panel.

In cases of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value in a short period of time, the arbitration panel shall make every effort to deliver its interim arbitral report within forty-five (45) days and, in any case, no later than sixty (60) days after the date of establishment of the arbitration panel.

3. Any party may deliver a written request to the arbitration panel to review precise aspects of the interim arbitral report within fourteen (14) days of its receipt or, in cases of urgency, including those involving perishable goods or seasonal goods or services, within seven (7) days of its receipt. After considering any written comments by the Parties on the interim arbitral report, the arbitration panel may modify its arbitral report and make any further examination it considers appropriate.

4. The arbitration panel shall issue its final report constituting the arbitral award to the parties and the [Trade Committee] within one hundred twenty (120) days following the establishment of the panel. Where it considers that this deadline cannot be met, the chairperson of the panel shall notify the [Trade Committee] and the parties in writing, stating the reasons for the delay. Under no circumstances should the arbitral award be issued later than one hundred fifty (150) days following the establishment of the panel.

[X] In cases of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value in a short period of time, the arbitration panel shall make every effort to transmit its arbitral award within sixty (60) days from the date of its establishment. Under no circumstances should it take longer than seventy-five (75) days from such date. If a party so requests, the arbitration panel shall give a preliminary ruling within ten (10) days of its establishment on whether it deems the case to be urgent.

5. The arbitral award shall set out the findings of fact, the applicable law and the basic rationale behind the findings and conclusions. The arbitral award shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the questions and observations of both parties.

[X] The arbitration panel shall make an objective assessment of the matter before it including an objective assessment of the facts of the case and of the arguments and evidence presented by both parties and the applicability of and conformity with the provisions referred to in [Article 3].

6. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. The arbitrators shall not issue dissenting or separate opinions and must maintain confidentiality as regards the voting.

7. The [Trade Committee] shall make the arbitral award of the arbitration panel publicly available in its entirety, unless the parties decide, by mutual agreement, not to make public parts thereof which contain confidential information.

8. The arbitral award is binding on the parties from the date it is issued and is not subject to appeal.

9. The arbitral award cannot add to or diminish the rights and obligations provided in the provisions referred to in [Article 3]. The arbitral award shall not be construed as conferring rights or imposing obligations for natural or legal persons, other than those provided under MERCOSUR countries' domestic law.

10. [Paragraphs 2, 3, 4, 5 and 6] shall be applicable to the rulings of the arbitration panel referred to in [Articles 16, 17, 18 and 19].

Article 13

Withdrawal, Settlement or Suspension of a Dispute

1. The complaining party may, with the consent of the defending party, withdraw its complaint before the award has been issued.

2. In the event that the parties reach a settlement at any time either before or following the issuance of the arbitral award, the [Trade Committee] will be so notified in writing by both parties.

3. The arbitration panel shall, at the request of both parties, suspend its work at any time, before the award has been issued, for a period agreed by the Parties and not exceeding twelve (12) consecutive months. Within this period, the arbitration panel shall resume its work only at the written request of both parties. The request shall be notified to the chairperson of the [Trade Committee]. The procedures shall be resumed from the stage they have been suspended twenty (20) days after the date of receipt of the request. If the work of the panel has been suspended for more than twelve (12) months, the authority for establishment of the panel shall lapse, without prejudice to the right of the complaining party to request at a later point in time the establishment of a panel on the same subject matter.

Article XX

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute settlement procedure.
2. If a mutually agreed solution is reached during the panel procedure, the parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel procedure shall be terminated.
3. Each party shall take measures necessary to implement the mutually agreed solution mentioned in the present Article with respect to disputes referred within the agreed time period.
4. No later than at the expiry of the agreed time period the implementing party shall inform the other party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article 14

Request for Clarification

Within ten (10) days following the notification of the arbitral award, either party may request in writing to the arbitration panel, with copy to the other party and the [Trade Committee], to clarify certain specific aspects of any determination or recommendation in the arbitral award that the requesting party considers ambiguous. The other party to the dispute may submit comments on such request to the arbitration panel within five days following its receipt. The arbitration panel shall answer a request for clarification of the arbitral award within fifteen (15) days following its receipt. Requests for clarification shall not be used as a means to review the arbitral award.

Article 15

Compliance with the Arbitral Award

1. The defending party shall take any measure necessary to comply promptly and in good faith with the arbitral award.
2. If it is impracticable to comply immediately with the arbitral award, the defending party shall have a reasonable period of time in which to do so.

Article 16

Reasonable period time for compliance

1. In cases under [paragraph 2 of Article 15], the defending party shall, notify the complaining party and the [Trade Committee] of the time it will require for compliance, no later than thirty (30) days after the issuance of the arbitral award.
2. If there is disagreement between the parties on the reasonable period of time to comply with the arbitral award, the complaining party shall, within twenty (20) days of the notification made under [paragraph 1] by the defending party, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified to the other party and to the [Trade Committee]. The arbitration panel shall issue its ruling to the parties and to the [Trade Committee] within twenty (20) days of the date of the submission of the request.
3. The defending party shall inform the complaining party in writing of its progress to comply with the arbitral award at least one month before the expiry of the reasonable period of time.
4. The reasonable period of time may be extended by mutual agreement of the parties.

Article 17

Review of any measure taken to comply with the arbitral award

1. Before the expiry of the period for implementation as determined according to [Article 16], the defending party will notify the other party and the [Trade Committee] of the action it has taken to comply.
2. Where there is disagreement between the parties as to the existence or the conformity of the measure notified by the defending party under [paragraph 1] with the arbitral award and/or with the provisions referred to in [Article 3], the complaining party shall refer the matter to the original arbitration panel. Such request shall identify the specific measure at issue and explain how such measure does not comply with the arbitral award and/or is inconsistent with the provisions referred to in [Article 3] in a manner to present the legal basis for the complaint clearly. The panel shall issue its ruling forty-five (45) days after the date of referral of the matter to it.

Article 18

Temporary remedies in case of non-compliance

1. If the defending party has not notified the action it has taken to comply within the period determined according to [Article 16], or if the panel makes a ruling under [Article 17 paragraph 2] to the effect that no measure taken to comply exists or that the measure notified under [Article 17] paragraph 1 is inconsistent with the arbitral award and/or with the defending party's obligations under the provisions referred to in [Article 3], the defending party shall, if so requested by the complaining party, present an offer for temporary compensation.

2. If the complaining Party decides not to request an offer for temporary compensation under paragraph 1, or if such request is made and no agreement on compensation is reached within thirty (30) days after the end of the period determined according to [Article 16] or after the issuance of the arbitral award pursuant to [Article 17 paragraph 2] that no measure taken to comply exists or that the measure notified under [Article 17 paragraph 1] is inconsistent with the arbitral award and/or with the provisions referred to in [Article 3], the complaining party may, upon notification to the defending party and the [Trade Committee], suspend concessions or other obligations arising from the provisions referred to in [Article 3] equivalent to the nullification or impairment of benefits accruing to the Party under this Agreement suffered as a result of the violation. The complaining party shall notify the other Party the concessions or other obligations it intends to suspend thirty (30) days before the date on which the suspension is due to enter into force.

3. The suspension of concessions or other obligations shall be at a level equivalent to the nullification or impairment that is caused by the failure of the Party complained against to comply with the final award. In considering the concessions or other obligations to suspend, a complaining party should first seek to suspend concessions or other obligations within the same sector or sectors as the measure found to be in violation with the covered legal instruments. The suspension of concessions may be applied to other sectors covered by the scope of this Title pursuant to [Article 3 (Scope)] than the sector or sectors in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension is effective in inducing compliance.

4. If the defending party considers that the suspension of concessions or other obligations does comply with [paragraph 3], it may request the arbitration panel to rule on the matter. Such request shall be notified to the complaining party and to the [Trade Committee] within thirty (30) days as from the date of the receipt of the notification referred to in [paragraph 2]. Within ten (10) days from the date of the request for the arbitration panel, the complaining party shall present a document indicating the methodology it has used to calculate the level of the suspension of concessions or other obligations. The arbitration panel will issue its ruling within thirty (30) days from the request. During this period the complaining party shall not suspend any concessions or other obligations.

5. The suspension of concessions or other obligations against the Party complained against shall be a temporary measure, and is not intended to replace the agreed objective of full compliance with the arbitral award. Concessions or other obligations shall only be suspended until:

(a) the measure that the arbitration panel under [paragraph 2 of Article 17] has found to violate the provisions referred to in [Article 3] has been withdrawn or amended so as to bring it into conformity with those provisions;

(b) the parties have agreed that the measure notified under [paragraph 1 of Article 17] brings the complaining party into conformity with the provisions referred to in Article 3; or

(c) the parties have reached agreement on the resolution of the dispute pursuant to [Article XX (mutually agreed solutions)].

Article 19

Review of any measure taken to comply after the adoption of temporary remedies for non-compliance

1. The defending party shall notify the complaining party and the [Trade Committee] of any measure it has taken to comply with the arbitration award following the suspension of concessions or other obligations or following the application of temporary compensation, as the case may be. With the exception of cases under [paragraph 2], the complaining party shall terminate the suspension of concessions or other obligations within thirty (30) days from the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under [paragraph 2], the defending party may terminate the application of such compensation within thirty (30) days from its notification that it has complied with the arbitration award.

2. If the parties disagree on whether the notified measure brings the defending party into conformity with the arbitral award and/or the provisions referred to in Article any of the parties may, within thirty (30) days from the receipt of the notification of the measure(s), request in writing the arbitration panel to rule on the matter, failing which the suspension of concessions or the compensation, as the case may be, shall be terminated. Such request shall be notified to the other party and to the [Trade Committee]. The arbitration panel shall notify its ruling to the parties and to the [Trade Committee] within forty-five (45) days from the request. If the arbitration panel rules that any measure(s) taken to comply is in conformity with the arbitral award and with the provisions referred to in [Article 3], the suspension of concessions or other obligations or compensation, as the case may be, shall be terminated. Where relevant, the complaining party shall adapt the level of suspension of concessions or other obligations to the level determined by the arbitration panel.

Article 20

Rules of Procedure

1. Disputes under this Title shall be conducted in accordance with the Rules of Procedures established in [Annex XX] and by Code of Conduct established in [Annex XX] to this Agreement.

2. The [Trade Committee] may amend the Rules of Procedures and the Code of Conduct when it deems necessary.

CHAPTER IV

GENERAL PROVISIONS

Article 21

Choice of Forum

1. The disputes related to the same matter arising under the scope of [Article 3] and under the WTO agreement or under any other agreement to which the relevant Parties are party, may be settled under this Title or under the WTO Dispute Settlement Understanding or the dispute settlement of that other agreement at the discretion of the complaining Party.

For the purposes of this Article:

- dispute settlement procedures under the WTO Agreement are deemed to be initiated by a party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (DSU);
- dispute settlement procedures under any other agreement are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement; and
- dispute settlement procedures under this Title are deemed to be initiated by a party's request for the establishment of an arbitration panel under Article 6.

2. Nevertheless, when a Party has requested the establishment of a panel under Article 6 of the WTO Dispute Settlement Understanding or under the relevant provisions of another agreement to which the relevant Parties are party, or an arbitration panel pursuant to Article [X] (Establishment of the Arbitration Panel), that Party may not initiate another proceeding on the same matter in the other forum, except when the competent body in the forum chosen has not taken a decision on the substance of the matter due to jurisdictional or procedural reasons other than termination of the proceedings following a request for withdrawal or suspension of the proceedings.

3. The Parties understand that two or more disputes concern the same matter when they involve the same parties to the dispute, refer to the same measure and deal with the alleged violation of the same substantive obligation.

4. Without prejudice to [paragraph 2], nothing in this Agreement shall preclude a Party from suspending obligations authorized by the Dispute Settlement Body of the WTO or authorized under the dispute settlement procedure of another international agreement to which the disputing parties are party. The WTO Agreement or the other international agreement between the parties shall not be invoked to preclude a Party from suspending obligations under this Title.

Article 22

Time Periods

1. All time periods established under this Title shall be counted in calendar days from the day following the act or fact to which they refer.
2. The arbitration panel or the mediator may at any time propose to the Parties to modify any time period referred to in this Title, stating the reasons for the proposal.
3. Any time period mentioned in this Title may be extended by mutual agreement of the parties.

Article 23

Confidentiality

The deliberations of the panel shall be confidential. The panel and the Parties shall treat as confidential any information submitted by a party to the panel which that party has designated as confidential. Where that Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

Article 24

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.
2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the arbitrators and of the mediator in accordance with Annex [X] (Rules of Procedure).