

ANNEX 7A
ARBITRAL TRIBUNALS

Article 1
Appointment and Composition of Arbitral Tribunals

1. Unless otherwise agreed by the Parties, the arbitral tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall choose a third who shall serve as the chairperson. If a Party fails to appoint an arbitrator within 30 days after a matter has been referred to an arbitral tribunal, an arbitrator shall be appointed, at the request of the other Party, by the Director-General of the World Trade Organisation within 30 days from the date of the request. If the two appointed arbitrators of an arbitral tribunal are unable to agree on the chairperson of the arbitral tribunal within 30 days after the date on which the second arbitrator has been appointed, the chairperson shall be appointed, at the request of either Party, by the Director-General of the World Trade Organisation within 30 days from the date of the latter request.
2. Any person appointed to serve as an arbitrator or chairperson in an arbitral tribunal shall have expertise in law, international trade or the resolution of disputes arising under international trade agreements and shall be chosen strictly on the basis of objectivity, sound judgment and independence. The chairperson shall not be a national of either Party and shall not have his usual place of residence in the territory of, nor be employed by, either Party.
3. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.
4. Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the chairperson of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.
5. Where for any reason, the arbitral tribunal is unable to carry out its duties under this Agreement, a new arbitral tribunal shall be appointed in accordance with this Article.

Article 2
Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that a Party bring the measure into conformity with that provision.
2. An arbitral tribunal shall take its decisions by consensus, provided that where it is unable to reach a consensus, it shall take its decision by majority vote. An arbitral tribunal may take its findings and recommendations upon the default of a Party.
3. An arbitral tribunal shall settle the dispute in accordance with the provisions of this Agreement, interpreted in accordance with customary rules of interpretation of public international law.

Article 3
Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in this Article, regulate its own procedures unless the Parties agree otherwise in writing. The arbitral tribunal shall ensure:
 - (a) that each Party has the right to at least one hearing before the arbitral tribunal;
 - (b) that each Party has the right to make initial submissions and rebuttal submissions;
 - (c) that a copy of any submissions or documents that a Party submits to the arbitral tribunal shall also be simultaneously provided to the other Party; and
 - (d) the protection of information designated as confidential by the Parties.
2. The arbitral tribunal shall, within 90 days after the chairperson is appointed, or as otherwise agreed by both Parties, present to the Parties an initial report containing its findings of fact and its determinations and rulings on the dispute before it. A Party may submit written comments on the initial report to the arbitral tribunal within 15 days of the presentation of the initial report.

3. After considering any written comments by the Parties on the initial report, the arbitral tribunal may modify its report and make any further examination it considers appropriate. The arbitral tribunal shall present a final report to the Parties within 30 days of presentation of the initial report, unless the Parties agree otherwise. The final report of the arbitral tribunal shall be binding.
4. An arbitral tribunal shall meet in closed session to the public. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Annex shall preclude a Party from disclosing statements of its position or its submissions to the public; provided that a Party shall treat as confidential any information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential.
5. There shall be no *ex parte* communications with the arbitral tribunal concerning any matter under consideration by it. The arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties agree, and subject to any terms and conditions that the Parties may agree to impose.
6. When the arbitral tribunal considers that it cannot provide its report(s) within the timeframes set out in this Annex, 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 such reports.

Article 4

Implementation, Compensation and Suspension of Benefits

1. Upon the presentation of the arbitral tribunal's final report, the Joint Committee shall endeavour to resolve the dispute through any means it deems appropriate, taking the report into account. If the Joint Committee does not resolve the dispute within a period of 30 days after the presentation of the arbitral tribunal final report, the Parties shall comply with the recommendations of the arbitral tribunal within a reasonable period of time, which shall be mutually determined by the Parties, within a further 15 days after the expiration of aforesaid 30 days.
2. If the Parties fail to agree on the reasonable period of time within the time provided above, either Party may refer the matter to the original arbitral tribunal, which shall determine the reasonable period of time following consultations with the Parties. Where the original arbitral tribunal cannot hear the matter for any reason, a new arbitral tribunal shall be appointed pursuant to Article 1 of this Annex.

3. The arbitral tribunal shall provide its report on the reasonable period of time to the Parties within 45 days after the date of the referral of the matter to it. If the Party concerned fails to remove or bring the measure found to be inconsistent with the Agreement into compliance with the report of the arbitral tribunal within the reasonable period of time, that Party shall, if so requested, immediately enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.
4. If no mutually satisfactory agreement on compensation has been reached within 21 days after the commencement of negotiations on compensatory adjustment, the complaining Party shall be entitled to suspend only the application of benefits granted under this Agreement equivalent to those affected by the measure found to be inconsistent within this Agreement.
5. In considering what benefits to suspend under Article 4.4 of this Annex:
 - a. the Party that invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitral tribunal has found to be inconsistent with this Agreement; and
 - b. the Party having invoked the dispute settlement procedures may suspend benefits in other sectors if it is not practicable or effective to suspend benefits in the same sector or sectors.
6. The complaining Party shall notify the other Party of the benefits, which it intends to suspend no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from that notification, the other Party may request the original arbitral tribunal to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement. The ruling of the arbitral tribunal shall be given within 30 days of that request. In such a case, no Party shall be entitled to suspend such benefits until the arbitral tribunal has issued its ruling. Where the original arbitral tribunal cannot hear the matter for any reason, a new arbitral tribunal shall be appointed pursuant to Article 1 of this Annex.

7. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.
8. Any dispute between the Parties on whether a measure found to be inconsistent with this Agreement has been removed or brought into conformity with the arbitral tribunal's recommendations shall be referred to the original arbitral tribunal for a final decision. The complaining Party shall refer the matter to the arbitral tribunal together with its submissions and the other Party shall respond within 15 days thereafter so that the arbitral tribunal can give its final decision within 15 days of the latter Party's response. Where the original arbitral tribunal cannot hear the matter for any reason, a new arbitral tribunal shall be appointed pursuant to Article 1 of this Annex.

Article 5

Suspension and Termination of Proceedings

1. Where the Parties agree in writing, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months from the date of such agreement, the authority for establishment of the tribunal shall automatically lapse unless the Parties agree otherwise.
2. The Parties may agree in writing to terminate the proceedings of an arbitral tribunal established under this Agreement.