

ANNEX-E

DISPUTE SETTLEMENT PROCEDURES

CHAPTER I SCOPE

Article I

1. Any dispute that may arise in connection with the interpretation, application or non-compliance with the provisions of this Agreement, shall be submitted to this Dispute Settlement Procedure established in this Annex.
2. Any dispute regarding matters arising under this Agreement that are regulated also in the agreements negotiated at the WTO may be settled in accordance with this Annex or with the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (DSU).
3. After the conclusion of consultations as established in Chapter II of this Annex, the Parties shall endeavor to reach an agreement on a single forum. If no agreement is reached on the forum, the complaining Party shall select the forum of dispute.
4. Once a dispute settlement procedure has been initiated under this Annex or under the WTO Agreement, the forum selected shall exclude the other for the same subject matter of the dispute. However, this provision may be reviewed by the Committee, within 5 years of implementation of this Agreement.
5. For the purpose of paragraph 4, a dispute settlement procedure shall be considered initiated under the WTO whenever the complaining Party requests for the establishment of a Panel under Article 6 of the DSU. Likewise, a dispute settlement procedure shall be considered initiated under this Annex whenever a Party requests for the establishment of an arbitral panel under Article 9.

CHAPTER II

CONSULTATIONS

Article 2

1. Parties shall make all reasonable efforts to settle the disputes referred to in Article 1 through consultations with a view to reaching a mutually satisfactory solution.
2. Consultations shall be conducted, in the case of Chile by the General Director, General Directorate for International Economic Affairs, and in the case of India, by the Secretary, Department of Commerce, or their representatives.

Article 3

The request for consultations shall be submitted to the other Party in writing and shall identify the measure(s), give the reasons of the request and a brief summary of the legal basis of the dispute. All requests for consultations shall be notified to the other Party, in conformity with Article 19.

Article 4

1. The Party to which the request is made shall reply within 10 days after the date of its receipt.
2. The Parties shall provide sufficient information as may be reasonably available in order to facilitate the consultations. Consultations shall be confidential.

3. Consultations shall last no more than thirty (30) days after the date of receipt of the request unless the Parties extend the consultations for a mutually agreed period in order to settle the dispute. Consultations on matters regarding perishable agricultural goods shall last no more than twenty (20) days of the date of receipt of the request.

CHAPTER III

Intervention of the Committee

Article 5

1. If consultations fail to settle a dispute within the period established in Article 4, the complaining Party may request in writing to the other Party, for convening a meeting of the Committee, with the specific purpose of dealing with the case.

2. The request shall identify any measure (s) at issue and shall state the facts and the legal basis of the dispute, indicating the applicable provisions of the Agreement.

Article 6

1. The Committee shall meet within thirty (30) days of the date of receipt of the request referred to in Article 5. In matters regarding perishable agricultural goods, the meeting of the Joint Committee shall commence within twenty (20) days of the date of the receipt of the request.

2. For the purposes of determining the term mentioned in paragraph 1, the other Party shall notify immediately, and no later than 5 days of the receipt of the request.

Article 7

The Committee may, by consensus, examine jointly two or more requests under this Chapter only when, by their nature, they are related.

Article 8

1. The Committee shall examine the dispute and give the opportunity to the Parties to present their positions and, if necessary, to give additional information in order to reach a mutually satisfactory solution.

2. The Committee shall issue its recommendations within thirty (30) days of the date of its first meeting. In matters regarding perishable agricultural goods the time period shall be twenty (20) days.

CHAPTER IV

ARBITRAL PROCEEDING

Article 9

Request for an Arbitral Panel

If the consultations and the Joint Committee procedures fail to settle a dispute within the timeframes established under Chapters II and III respectively of this Annex, the Party, which made the request for consultations, may make a written request for establishment of an arbitral panel to the other Party under this Article. The request shall identify the specific measure(s) at issue and provide brief statement of the legal basis. Unless the Parties otherwise agree, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Annex.

Article 10
Composition of Arbitral Panels

1. The arbitral panel shall comprise three members.
2. In the written request pursuant to Article 9, the complaining Party requesting the establishment of an arbitral panel shall designate one member of that arbitral panel.
3. Within 15 days of the receipt of the request referred to in paragraph 2, the responding Party shall designate one member of the arbitral panel. If a party fails to appoint an arbitrator within 15 days, then the arbitrator appointed by the other Party shall act as the sole arbitrator of the arbitral panel.
4. The Parties shall by agreement appoint the third arbitrator within 15 days of the appointment of the second arbitrator. The arbitrator so appointed shall chair the arbitral panel. If the Parties are unable to agree on the chair of the arbitral panel within 15 days after the date on which the second arbitrator has been appointed, the chair shall be appointed in the presence of both Parties by a draw of lot from a list comprising three nominees of each Party, fulfilling the qualifications and criteria laid down in paragraph 6. If a Party fails to submit its list of three nominees within ten days of the other Party submitting its list, the Chair shall be appointed by a draw of lot from the list already submitted by the other Party.
5. Except in case of sole arbitrator established under paragraph 3, the Chair of the arbitral panel shall not be a national of either Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either Party, nor have dealt with the matter before the arbitral panel in any capacity.
6. All arbitrators 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;
 - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment; and
 - (c) be independent of, and not to take instructions from, any Party.
7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.
8. The date of establishment of the arbitral panel shall be the date on which the Chair is appointed, or in the case of sole arbitrator on the date of expiry of timeframe set out in paragraph 3.

Article 11
Rules of Procedures

1. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Rules of Procedure (Appendix E) and may, after consulting with the Parties, adopt additional procedural rules not inconsistent with this Annex.
2. The Committee may modify the Rules of Procedure.
3. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the panel request and to make findings, determinations and recommendations as provided in Article 13 and to deliver the written reports referred to in Articles 13 and 14."

Article 12
Experts and Technical Advice

At the request of a Party to the arbitral panel proceedings or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the arbitral panel proceedings so agree and subject to such terms and conditions as Parties may agree. The arbitral panel shall provide the Parties a copy of any information or technical advice submitted and an opportunity to provide comments.

Article 13
Initial Report

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any other information before it pursuant to Article 12.
2. Unless the Parties otherwise agree, the arbitral panel shall, within 90 days after establishment, present to the Parties an initial report containing:
 - (a) findings of fact, including any findings pursuant to the request under Article 9;
 - (b) its determination as to whether the measure at issue is inconsistent with the obligations of this Agreement; and
 - (c) recommendations to bring the measure in to compliance with the Agreement and the reasonable period of time within which to bring the measure into compliance.
3. The Parties may submit written comments on the initial report within 14 days of its presentation. The arbitral panel may, at the request of a Party, reconsider its report and make any further examination that it considers appropriate after considering such written comments. The final report shall include a discussion of any comment by the Parties.

Article 14
Final Report

1. The arbitral panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.
2. No arbitral panel may, either in its initial report or its final report, disclose which panellists are associated with the majority or minority of the opinions.
3. The final report of the arbitral panel shall be made publicly available within fifteen (15) days of its delivery to the Parties, unless the Parties agree otherwise.

Article 15
Implementation of Final Report

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal. The Party concerned shall implement the decision contained in the final report of the arbitral panel in the manner and within the time-frame that it recommends, unless the Parties decide otherwise.
2. If, at any time up to thirty (30) days prior to the deadline for implementation determined under paragraph 1, the Party concerned considers that it will require further time to comply with the final report of the arbitral panel, it may inform the complaining Party of the extra period that it requires, and simultaneously shall enter into negotiations with a view to developing a mutually acceptable compensation for this additional period until it comes into compliance with the final report. The Parties may agree to extend the deadline for implementation determined under paragraph 1, any time within twenty (20) days prior to the expiry of the deadline for implementation determined previously.

3. Notwithstanding paragraph 2, where the final report of the panel states that a measure is not in compliance with this Agreement, the responding Party shall bring its measure in conformity with the provisions of the Agreement.

4. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the decision of the arbitral panel, such dispute shall be decided through recourse to the dispute settlement procedures in this Annex, including wherever possible by resorting to the original arbitral panel.

5. The arbitral panel shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for such delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

Article 16

Non-Implementation - Suspension of Benefits

1. If the arbitral panel established under Article 15 finds that the measure of the Party concerned is not in compliance with final report of the arbitral panel under Article 14, the Party concerned, if so requested by the complaining party, shall immediately enter into negotiations with the complaining party with a view to reaching a mutually acceptable compensation or solution. If no mutually acceptable compensation or solution has been reached within 15 days after the request of the complaining Party to enter into negotiations, the complaining Party may suspend the application of benefits of equivalent effect to the responding Party.

2. The suspension of benefits shall last until the responding Party implements the decision of the arbitral panel's final report or until the Parties reach a mutually satisfactory agreement on the dispute.

3. In considering what benefits to suspend pursuant to paragraph 1 the complaining Party may seek to suspend benefits in the same sector(s)⁵ as that affected by the measure that the arbitral panel has found to be inconsistent with the obligations derived of this Agreement.

4. Upon written request of the Party concerned, the original arbitral panel shall determine whether the level of benefits proposed to be suspended by the complaining Party is not commensurate with equivalent effects pursuant to paragraph 1. If the arbitral panel cannot be established with its original members, the procedures set out in Article 10 shall be applied.

5. The arbitral panel shall present its determination within 60 days from the request made pursuant to paragraph 4. The ruling of the panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

6. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

⁵ The Parties agree that for the purposes of this Article, "sector" will have the same meaning as in provisions of article 22.3(f) of the Dispute Settlement Understanding of WTO Agreement.

Article 17

Expenses

Each Party shall bear the costs of its own member of the arbitral panel and of its representation in the arbitral proceedings; the costs related to the chairman and any other costs shall be borne equally by the Parties.

Article 18
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.

CHAPTER V
GENERAL PROVISIONS

Article 19

All communications between the Parties shall be transmitted in the case of the Republic of Chile to the General Director, General Directorate for International Economic Affairs, and in the case of the Republic of India, to the Secretary, Department of Commerce, or their representatives.

Article 20

The periods referred to in this Annex are expressed in consecutive days, including non-working days, and shall be calculated as from the day immediately following the relevant act or fact. If the period begins or ends on a non working day, the period shall be deemed to be starting or expiring on the following working day.

Article 21

Documents and acts related to the proceedings established in this Annex shall be confidential.

Article 22

1. At any time during the proceeding the complaining Party may abandon its claim or the Parties may reach an agreement. In either case the dispute shall be closed. The Committee shall be notified in order to take any necessary measures.

2. A Party is deemed to have abandoned its claim this Annex, if it does not pursue its claim under Article 9 within twelve (12) months of the conclusion of consultations under Chapter II.

Article 23

All timeframes stipulated in this Annex may be reduced, waived or extended by mutual agreement of the Parties.

APPENDIX E

RULES OF PROCEDURES

General provisions

1. For the purposes of this Agreement and Annex E:

“**arbitral panel**” means an arbitral panel established pursuant to Article 9;

“**complaining Party**” means a Party that requests the establishment of an arbitral panel under Article 9; and

“**responding Party**” means a Party that has been complained against pursuant to Article 9.

Notifications

2. Any request, notice, written submissions or other document shall be delivered by either Party or the arbitral panel by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.
3. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.
4. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitral panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

Initial submissions

5. The complaining Party shall deliver its initial written submission no later than 20 days after the composition of the arbitral panel. The responding Party shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

Operation of arbitral panels

6. The chair of the arbitral panel shall preside all of its meetings.
7. Except as otherwise provided in these rules, the arbitral panel may conduct its own activities by any means, including telephone, facsimile transmissions or computer links.
8. The drafting of any report shall remain the exclusive responsibility of the arbitral panel. Only arbitrators may take part in the deliberations of the arbitral panel.

Hearings

9. The arbitral panel shall fix the date and time of the hearing in consultation with the Parties. The Chair shall notify in writing to the Parties the date and time of the hearing.
10. Unless the Parties otherwise agree, the hearing shall be held in the responding Party's territory. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organization of hearings, unless otherwise agreed.
11. The arbitral panel may convene additional hearings if the Parties so agree.
12. All arbitrators shall be present at hearings. No later than five days before the date of a hearing, each Party shall deliver a list of the names of its representatives or advisers who will be attending the hearing. The hearings of the arbitral panels shall be held in closed session, unless the Parties decide otherwise. The arbitral panel shall conduct the hearing in the following manner: argument of the complaining Party; argument of the responding Party; rebuttal arguments of the Parties; the reply of the complaining Party; the counter-reply of the responding Party. The arbitral panel may set time limits for oral arguments to ensure that each Party is afforded equal time.
13. Within 10 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing.

Questions in writing

14. The arbitral panel may at any time during the proceedings address questions in writing to one or both Parties. The arbitral panel shall deliver the written questions to the Parties to whom the questions are addressed.

15. A Party to whom the arbitral panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitral panel. Each Party shall be given the opportunity to provide written comments on the reply within 5 days after the date of delivery.

Confidentiality

16. Each Party shall treat as confidential the information submitted by the other Party to the arbitral panel which that Party has designated as confidential. Where a Party to a dispute submits a confidential version of its written submissions to the arbitral 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. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

Ex parte contacts

17. The arbitral panel shall not meet or contact a Party in the absence of the other Party. No Party may contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators. No arbitrator may discuss an aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other arbitrators.

Working language

18. The working language of the dispute settlement proceedings shall be English.