

CHAPTER TWENTY
DISPUTE SETTLEMENT

ARTICLE 20.1: COOPERATION

The Parties shall endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 20.2: SCOPE OF APPLICATION

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

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (Market Access for Goods), Chapter Five (Rules of Origin), Chapter Nine (Government Procurement), Chapter Eleven (Cross-Border Trade in Services), or Chapter Fifteen (Intellectual Property Rights) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this subparagraph with respect to a benefit under Chapter Eleven (Cross-Border Trade in Services) or Chapter Fifteen (Intellectual Property Rights) if the measure is subject to an exception under Article 21.1 (General Exceptions).

ARTICLE 20.3: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 20.7. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

ARTICLE 20.4: CHOICE OF FORUM

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement, or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
3. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.
4. For the purposes of this paragraph, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

ARTICLE 20.5: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. If a Party requests consultations, the other Party shall reply promptly to the request for consultations and enter into consultations in good faith.
2. In 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 subject to consultations.
3. Each Party shall:
 - (a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation 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.
4. Promptly after requesting or receiving a request for consultations pursuant to this Article, each Party shall solicit and consider the views of interested nongovernmental entities on the matter in order to draw on a broad range of perspectives.

ARTICLE 20.6: REFERRAL TO THE JOINT COMMITTEE

If the consultations fail to resolve a matter within 60 days of the delivery of a Party's request for consultations under Article 20.5, or 20 days where the matter concerns perishable goods, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party. The Joint Committee shall endeavor to resolve the matter.

ARTICLE 20.7: ESTABLISHMENT OF PANEL

1. If the Joint Committee has not resolved a matter within 60 days after delivery of the notification described in Article 20.6, within 30 days where the matter concerns perishable goods, or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party.
2. Neither Party may refer a matter concerning any proposed measure to a dispute settlement panel.
3. Unless the Parties agree otherwise:
 - (a) The panel shall have three members.
 - (b) Each Party shall appoint one panelist, in consultation with the other Party, within 30 days after the matter has been referred to a panel. If a Party fails to appoint a panelist within such period, a panelist shall be selected by lot from the reserve list established under paragraph 4 to serve as the panelist appointed by that Party.
 - (c) The Parties shall endeavor to agree on a third panelist who shall serve as chair.
 - (d) If the Parties are unable to agree on the chair within 30 days after the second panelist has been appointed, the chair shall be selected by lot from the reserve list established under paragraph 4.
 - (e) The date of establishment of the panel shall be the date on which the chair is appointed.

4. By the date of entry into force of this Agreement, the Parties shall establish a reserve list of eight individuals who are willing and able to serve as panelists. Individuals on the reserve list shall be appointed by agreement of the Parties for a minimum term of three years, and shall remain on the list until the Parties establish a new reserve list.

5. Individuals appointed to a panel pursuant to paragraph 3 or to the reserve list pursuant to paragraph 4 shall:

- (a) be chosen strictly on the basis of objectivity, reliability, and sound judgment and have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, either Party; and
- (c) comply with a code of conduct to be established by the Parties.

In addition, panelists other than those chosen by lot from the reserve list shall have, as appropriate, expertise or experience relevant to the subject matter that is under dispute.

6. The Joint Committee shall review the operation and effectiveness of this Article not later than five years after the Agreement enters into force, or at such later time as the Parties may agree.

ARTICLE 20.8: RULES OF PROCEDURE

1. The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:

- (a) a right to at least one hearing before the panel and that, subject to subparagraph (f), such hearings shall be open to the public;
- (b) an opportunity for each Party to provide initial and rebuttal submissions;
- (c) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be made available to the public within ten days after they are submitted, subject to subparagraph (f);

- (d) that the panel shall consider requests from nongovernmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
 - (e) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to Article 20.9.1; and
 - (f) the protection of confidential information.
2. Unless the Parties agree otherwise, the panel shall follow the model rules of procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.
3. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

ARTICLE 20.9: PANEL REPORT

1. Unless the Parties agree otherwise, the panel shall, within 180 days after the chair is appointed, present to the Parties an initial report containing findings of fact, and its determination as to whether:
- (a) the measure at issue is inconsistent with the obligations of this Agreement;
 - (b) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (c) the measure at issue is causing nullification or impairment in the sense of Article 20.2(c);

as well as any other determination requested by the Parties with regard to the dispute.

2. The panel shall base its report on the relevant provisions of the Agreement and the submissions and arguments of the Parties. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.
3. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise. The Parties shall make the final report public within 15 days thereafter, subject to the protection of confidential information.

ARTICLE 20.10: IMPLEMENTATION OF THE FINAL REPORT

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.2(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 20.11: NON-IMPLEMENTATION

1. If a panel has made a determination of the type described in Article 20.10.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 20.10.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

2. If the Parties:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun, or
- (b) have agreed on compensation or on a resolution pursuant to Article 20.10.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the other Party that it intends to suspend the application to the other Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:
 - (a) the level of benefits that the other Party has proposed to be suspended is manifestly excessive; or
 - (b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Moroccan currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant,

the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

8. This Article shall not apply with respect to a matter described in Article 20.12.1.

ARTICLE 20.12: NON-IMPLEMENTATION IN CERTAIN DISPUTES

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 16.2.1(a) (Application and Enforcement of Labor Laws) or Article 17.2.1(a) (Application and Enforcement of Environmental Laws), and the Parties:

- (a) are unable to reach agreement on a resolution pursuant to Article 20.10.1 within 45 days of receiving the final report; or
- (b) have agreed on a resolution pursuant to Article 20.10.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining Party shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

- (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;

- (c) the reasons for the Party's failure to effectively enforce the relevant law;
- (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- (e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and
- (f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20-A.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any other time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Moroccan currency, in equal, quarterly installments beginning 60 days after the complaining Party provides such notice.

4. Assessments shall be paid into a fund established by the Joint Committee and shall be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Joint Committee shall consider the views of interested persons in each Party's territory.

5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the other Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

6. If the complaining Party cannot obtain the funds from the other Party's escrow account within 30 days of the date on which payment is due, or if the other Party has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

ARTICLE 20.13: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.11.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the other Party. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.
2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.11 or 20.12 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.11.5 or that has been imposed on it under Article 20.12.

ARTICLE 20.14: FIVE-YEAR REVIEW

The Joint Committee shall review the operation and effectiveness of Articles 20.11 and 20.12 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

ARTICLE 20.15: PRIVATE RIGHTS

Neither Party may provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 20-A
INFLATION ADJUSTMENT FORMULA FOR MONETARY ASSESSMENTS

1. An annual monetary assessment imposed before December 31, 2005, shall not exceed 15 million U.S. dollars.
2. Beginning January 1, 2006, the 15 million U.S. dollars annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.
3. The period used for the accumulated inflation adjustment shall be calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.
4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.
5. The inflation adjustment shall be estimated according to the following formula:

$$\text{\$15 million} \times (1 + \pi_i) = A$$

π_i = accumulated U.S. inflation rate from calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.

A = cap for the assessment for the year in question.