

CHAPTER 19
DISPUTE SETTLEMENT

Article 19.1
Definitions

For the purposes of this Chapter:

- (a) **“Code of Conduct”** means the code of conduct referred to in Article 19.11 (Rules of Procedure and Code of Conduct) and set out in Annex 19B (Code of Conduct for Dispute Settlement);
- (b) **“complaining Party”** means the Party requesting consultations under Article 19.5 (Consultations);
- (c) **“compliance review panel”** means a panel reconvened under Article 19.15 (Compliance Review);
- (d) **“confidential information”** means information which is designated as confidential by a Party;
- (e) **“DSU”** means the *Understanding on Rules and Procedures Governing the Settlement of Disputes* set out in Annex 2 of the WTO Agreement;
- (f) **“panel”** means a panel established under Article 19.7 (Request for Establishment of a Panel);
- (g) **“reconvened panel”** means a panel reconvened under Article 19.16 (Compensation and Suspension of Concessions or Other Obligations) or Article 19.17 (Review after the Suspension of Concessions or Other Obligations);
- (h) **“responding Party”** means the Party to which a request for consultations is made under Article 19.5 (Consultations); and
- (i) **“Rules of Procedure”** means the rules of procedure referred to in Article 19.11 (Rules of Procedure and Code of Conduct) and set out in Annex 19A (Rules of Procedure for Dispute Settlement).

Article 19.2
Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement in accordance with customary rules of interpretation of public international law. The Parties shall make every attempt through cooperation

and consultations to arrive at a mutually agreed solution to any matter that might affect its operation.

Article 19.3 Scope

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or whenever 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.
2. Unless the Parties agree otherwise, the timeframes and procedural rules set out in this Chapter shall apply to all disputes governed by this Chapter.
3. Findings, determinations or recommendations of a panel, a compliance review panel, or a reconvened panel cannot add to or diminish the rights, and obligations of the Parties under this Agreement.
4. The Parties agree that a panel appointed under this Chapter shall interpret and apply this Agreement in accordance with customary rules of interpretation of public international law.
5. The panel shall take into account any relevant findings in adopted GATT dispute settlement reports, and rulings and recommendations of the WTO Dispute Settlement Body.

Article 19.4 Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and another international agreement to which the Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute. The forum selected shall be used to the exclusion of other fora.¹
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

¹ The exclusion of other fora includes the exclusion of consultations in those fora.

Article 19.7 (Request for Establishment of a Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel under another international agreement. Where panel procedures are not provided for under another international agreement, the complaining Party shall be deemed to have selected the forum when it commences a dispute under the dispute settlement procedures in the relevant international agreement.

Article 19.5 Consultations

1. Either Party may request consultations with the other Party with respect to any matter described in Article 19.3 (Scope) by providing written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and any other issue of concern. Each Party shall accord adequate opportunity for consultations regarding the request for consultation made by the other Party.
2. If a request for consultations is made, the Party to which the request is made shall reply to the request within 10 days of receipt of the request and shall enter into consultations within a period no later than 30 days after the receipt of the request or, within 15 days of receipt of the request in the case of perishable goods, with a view to reaching a mutually agreed solution.
3. The Parties shall make every effort to reach a mutually agreed solution to any matter through consultations. To this end:
 - (a) the Parties shall provide sufficient information as may be available at the stage of consultations to enable a full examination of the matter subject to consultations;
 - (b) the Parties shall endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations;
 - (c) the Parties shall treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information; and
 - (d) the consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 19.6
Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation, or mediation. Such procedures may begin at any time and be terminated by either Party at any time.
2. Proceedings involving good offices, conciliation, or mediation and the particular positions taken by the Parties in these proceedings shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.
3. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel established under Article 19.7 (Request for Establishment of a Panel).

Article 19.7
Request for Establishment of a Panel

1. The complaining Party may request the establishment of a panel to examine the matter, if:
 - (a) the responding Party does not enter into consultations within 30 days of receipt of the request for consultations under Article 19.5 (Consultations) or within 15 days of such a request in the case of perishable goods; or
 - (b) the Parties fail to resolve the matter within 60 days of receipt of the request for consultations or within 30 days of such a request in the case of perishable goods, or within such other period as the Parties mutually agree.
2. The request to establish a panel shall be made in writing and shall identify:
 - (a) the specific measures at issue;
 - (b) whether consultations have been held; and
 - (c) a brief summary of the factual, and legal, basis of the complaint sufficient to present the problem clearly, including the relevant provisions of this Agreement at issue.
3. Once a request for the establishment of a panel is made in conformity with paragraph 2, a panel shall be established in accordance with Article 19.8 (Composition of Panels).

Article 19.8
Composition of Panels

1. Unless the Parties agree otherwise, a panel shall consist of three members.
2. Within 30 days of the receipt of the written notification requesting the establishment of a panel, each Party shall appoint one panellist, who may be its national, and provide to the other Party a list of up to four nominees for appointment as the chair. The Parties shall agree on the chair from the nominees proposed by each Party.
3. Within 45 days of receipt of the request for the establishment of a panel, any panellist not yet appointed shall be appointed by the Parties, on request of either Party, by draw of lot from the list of the candidates proposed in accordance with paragraph 2. Where more than one panellist, including the chair is to be selected by draw of lot, the chair shall be selected first.
4. Where a Party fails to submit its list of up to four nominees within the period specified in paragraph 2, the chair shall be appointed by random draw of lot from the list of nominees already submitted by the other Party.
5. The date of establishment of the panel shall be the date on which the last panellist is appointed.
6. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. In such a case, the work of the panel and any time period applicable to the panel proceedings shall be suspended for the period beginning the date the original panellist becomes unable to act and ending on the date the new panellist is appointed.
7. Where a panel is reconvened under paragraph 1 of Article 19.15 (Compliance Review), paragraph 6 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), or paragraph 4 of Article 19.17 (Review after the Suspension of Concessions or Other Obligations) the reconvened panel shall, where possible, have the same panellists as in the original panel. If the panel cannot be reconvened with all of its original panellists, the procedures for selection of the panellists set out in paragraphs 2 through 5 shall apply for the appointment of any replacement panellist.

Article 19.9
Qualification of Panellists

1. Any person appointed as a panellist pursuant to Article 19.8 (Composition of Panels) 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 impartiality, objectivity, reliability, sound judgement and independence;
 - (c) not be employed by, affiliated with, or take instructions from either Party;
 - (d) not have dealt with the matter in any capacity;
 - (e) disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality; and
 - (f) comply with the Code of Conduct.
2. In addition to the requirements under paragraph 1, the chair shall neither be a national of either Party, nor have their usual place of residence in either Party. The chair shall also have experience in dispute settlement procedures.
3. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 19.6 (Good Offices, Conciliation, or Mediation).
4. If a Party believes that a panellist is in violation of any of these requirements, the Parties shall consult and, if they agree, the panellist shall be replaced by a new panellist in accordance with the manner prescribed for the appointment of the original panellist. The new panellist shall have all the powers and duties of the original panellist.

Article 19.10
Functions and Proceedings of Panels

1. Unless the Parties agree otherwise, a panel shall perform its functions and conduct its proceedings in a manner consistent with this Agreement, the Rules of Procedure, and the Code of Conduct.
2. A panel shall make an objective assessment of the matter before it, including an objective assessment of:
 - (a) the facts of the case;

- (b) the applicability of the relevant provisions of this Agreement cited by the Parties;
 - (c) whether:
 - (i) the measure at issue is inconsistent with the obligations of this Agreement; or
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; and
 - (d) any other issue of concern that the Parties have jointly requested that the panel address.
3. Unless the Parties agree otherwise within 30 days of the date of receipt of the request for the establishment of the panel, or within 15 days of the date of receipt of the request for establishment in the case of perishable goods, the panel's terms of reference shall be:

“To examine, in light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the panel under paragraph 1 of Article 19.7 (Request for Establishment of a Panel), and to make and present in a written report, its findings of law and fact and, if jointly requested by the Parties, its recommendations.”

Article 19.11 Rules of Procedure and Code of Conduct

1. The Rules of Procedure shall ensure that:
- (a) there is at least one hearing before the panel at which each Party may present views orally;
 - (b) hearings shall be open to the public, unless the Parties agree otherwise;
 - (c) each Party has an opportunity to provide at least an initial submission;
 - (d) the panel may at any time during the proceeding address questions in writing to a Party or the Parties;
 - (e) subject to subparagraph (g), each Party may release to the public its own:
 - (i) written submissions;
 - (ii) written versions of oral statements; or

- (iii) responses to any requests or questions from the panel;
 - (f) subject to consultations with the Parties, the panel may seek information or technical advice from an expert that it deems appropriate; and
 - (g) confidential information is protected.
2. The panel, after consulting with the Parties, or on the joint request of the Parties may adopt additional Rules of Procedure not inconsistent with this Chapter or the Rules of Procedure.

Article 19.12 Reports of the Panel

1. The reports of the panel shall be drafted without the presence of the Parties. The panellists shall assume full responsibility for the drafting of the reports. Opinions expressed in the reports of the panel by individual panellists shall be anonymous. The reports shall include any separate or dissenting opinions on matters not unanimously agreed by the panel.

Initial Report

2. Unless the Parties agree otherwise, the panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information or technical advice it has obtained in accordance with the Rules of Procedure.
3. Unless the Parties agree otherwise, the panel shall, within 180 days of the date the panel is established, or in the case of perishable goods, endeavour to, within 120 days of the date the panel is established, present to the Parties an initial report containing:
- (a) a descriptive section summarising the submissions and arguments of the Parties;
 - (b) its findings of fact;
 - (c) its findings as to whether:
 - (i) the measure at issue is inconsistent with obligations under this Agreement; or
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement.
 - (d) any other issue of concern that the Parties have jointly requested that the panel address;
 - (e) the reasons for the panel's findings; and

- (f) if jointly requested by the Parties, its recommendations, if any, on the means to resolve the dispute.
- 4. Each Party may submit written comments to the panel on its initial report within 20 days of presentation of the report unless otherwise agreed between the Parties.
- 5. If the panel receives written comments from the Parties pursuant to paragraph 4, the panel may reconsider and modify its report, including on the basis of any further examination it considers appropriate after taking into account those comments. The panel shall specify the reasons for any modifications to its report in its final report including a discussion of written comments.
- 6. If the panel considers that it cannot present its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise and in the case of perishable goods, the panel shall make every effort to not exceed 15 days.

Final Report

- 9. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise.
- 10. Either Party may make the final report available to the public once it has been presented to the Parties, subject to the protection of confidential information

Article 19.13 Implementation of Final Report

- 1. The final report of a panel shall be binding on the Parties and shall not be subject to appeal.
- 2. Where the final report of a panel contains a finding that the measure at issue of the responding Party is inconsistent with its obligations under this Agreement, or that it has otherwise failed to carry out its obligations under this Agreement, the responding Party has an obligation to bring the measure at issue into conformity with this Agreement.
- 3. Within 30 days of the presentation of the final report of the panel to the Parties, the responding Party shall notify the complaining Party:
 - (a) of its intentions with respect to implementation, including an indication of actions it proposes to take to comply with paragraph 2;

- (b) whether such implementation can take place immediately; and
- (c) if such implementation is not practicable immediately, the reasonable period of time the responding Party would need to implement its proposed actions.

Article 19.14
Reasonable Period of Time

1. If the responding Party makes a notification that a reasonable period of time is required pursuant to subparagraph 3(c) of Article 19.13 (Implementation of Final Report), it shall, whenever possible, be mutually agreed by the Parties. Where the Parties are unable to agree on the reasonable period of time within 45 days of the presentation of the final report, either Party may request the chair of the panel to determine the reasonable period of time. Such request shall be made no later than 90 days after the presentation of the final report.
2. Where a request is made pursuant to paragraph 1, the chair of the panel shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination no later than 45 days after the request to the panel.
3. As a guideline, the reasonable period of time determined by the panel should not exceed 15 months from the date of the presentation of the report made pursuant to paragraph 2. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances. Further, the panel, in the determination of the reasonable period of time, may take into account relevant jurisprudence under Article 21.3(c) of the DSU.

Article 19.15
Compliance Review

1. Where there is disagreement as to whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report), a Party may request that the panel reconvene to decide the matter.
2. A request pursuant to paragraph 1 may only be made after the earlier of either:
 - (a) the expiry of the reasonable period of time determined in accordance with Article 19.14 (Reasonable Period of Time); or
 - (b) a notification by the responding Party that it has complied with paragraph 2 of Article 19.13 (Implementation of Final Report).

3. Any request for the compliance review panel shall provide a brief summary of the factual, and legal, basis for the complaint, including the reason why the complaining Party considers that the responding Party has not complied with paragraph 2 of Article 19.13 (Implementation of Final Report).
4. When a request is made by the complaining Party in accordance with paragraphs 1 through 3, the compliance review panel shall be reconvened within 30 days of receipt of the request. The period for the compliance review panel proceedings, from the date of its reconvening until the date on which it presents its report to the Parties, shall not exceed 135 days, unless the Parties agree otherwise.
5. The compliance review panel shall make an objective assessment of the matter before it, including an objective assessment of:
 - (a) the factual aspects of any implementation action taken by the responding Party to comply with paragraph 2 of Article 19.13 (Implementation of Final Report); and
 - (b) whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report),
6. The compliance report of the compliance review panel shall include:
 - (a) a descriptive part summarising the submissions and arguments of the Parties;
 - (b) its findings on the facts of the dispute arising under this Article;
 - (c) its findings on whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report); and
 - (d) the reasons for such findings.
7. The compliance review panel shall, where possible, present an interim compliance report to the Parties within 90 days of the panel reconvening pursuant to paragraph 4, and thereafter its final report within 45 days of issuing the interim compliance report. In exceptional cases, if the compliance review panel considers that it cannot release its interim compliance report within this time period, it shall promptly inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its report. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.
8. The compliance review panel shall accord adequate opportunity to the Parties to submit written comments on the interim compliance report. Such comments shall be submitted to the compliance review panel within 20 days of the presentation of the interim compliance report, unless the Parties agree otherwise. After considering any written

comments by the Parties on the interim compliance report, the panel may modify its report and make any further examination it considers appropriate. The panel shall include a discussion in its final compliance report of any comments made by the Parties on the interim compliance report.

Article 19.16

Compensation and Suspension of Concessions or Other Obligations

1. The responding Party shall, if requested by the complaining Party, enter into negotiations with a view to agreeing on mutually acceptable compensation, where:
 - (a) the responding Party has notified the complaining Party that it will not comply with paragraph 2 of Article 19.13 (Implementation of Final Report) within the reasonable period of time determined in accordance with Article 19.14 (Reasonable Period of Time);
 - (b) the responding Party has failed to notify pursuant to paragraph 3 of Article 19.13 (Implementation of Final Report); or
 - (c) the compliance panel finds, pursuant to Article 19.15 (Compliance Review), that the responding Party has failed to comply with the final report.

2. If:
 - (a) no mutually satisfactory agreement on compensation is reached within 30 days of the date of the request to enter into negotiations in accordance with paragraph 1; or
 - (b) the Parties have agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the responding Party specifying the level of concessions or other obligations that it intends to suspend equivalent to the level of nullification or impairment. The complaining Party shall have the right to begin suspending concessions or other obligations 30 days after receipt of the written notice.

3. In considering what benefits to suspend in accordance with paragraph 2:
 - (a) a complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; and

- (b) a complaining Party may suspend concessions or other obligations in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector or sectors.
- 4. Any suspension of concessions or other obligations shall be restricted to concessions or other obligations accruing under this Agreement and shall not exceed the level of nullification or impairment.
- 5. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to suspend concessions or other obligations under paragraph 2 where:
 - (a) a review is undertaken in accordance with paragraph 6 or 7; or
 - (b) a mutually agreed solution has been reached.
- 6. If the responding Party:
 - (a) objects to the level of suspension proposed in the notification made in accordance with paragraph 2 on the basis that it exceeds the level of nullification or impairment;
 - (b) considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 1; or
 - (c) claims the complaining Party has failed to follow the principles set out in paragraph 3,

then, the responding Party may request, in writing, no later than 30 days after receipt of the notification referred to in paragraph 2, the panel to reconvene to make findings on the matter.
- 7. If a panel is requested to reconvene pursuant to paragraph 6, it shall reconvene within 30 days of receipt of the request. The reconvened panel shall present its findings and determinations to the Parties no later than 60 days after the receipt of the request. In exceptional cases, if the reconvened panel considers that it cannot present its determination within this time period it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its decision. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.
- 8. The panel's findings and determinations shall be provided in writing and shall include:
 - (a) a descriptive part summarising the submissions and arguments of the Parties;
 - (b) its findings and determinations on the dispute arising under this Article; and

- (c) the reasons for such findings and determinations.
9. Concessions or other obligations shall not be suspended until the reconvened panel has presented its findings and determinations. Any suspension of concessions or other obligations shall be consistent with the reconvened panel's decision.

Article 19.17

Review after the Suspension of Concessions or Other Obligations

1. Compensation and the suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report) or the Parties have reached a mutually agreed solution, whichever is earlier.
2. If the right to suspend benefits has been exercised pursuant to paragraph 2 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), or mutually acceptable compensation has been agreed pursuant to paragraph 1 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), and the responding Party considers that it has complied with paragraph 2 of Article 19.13 (Implementation of Final Report), the responding Party shall notify the complaining Party of the steps it has taken to comply.
3. Subject to paragraph 4, the complaining Party shall terminate the suspension of concessions or other obligations within 30 days of receipt of the notification in paragraph 2. In cases where compensation has been applied, and subject to paragraph 4, the responding Party may terminate the application of such compensation within 30 days of the complaining Party's receipt of the notification in paragraph 2.
4. If the Parties disagree on the existence or consistency with this Agreement of any steps notified in accordance with paragraph 2, no later than 30 days after the date of the complaining Party's receipt of the notification, a Party may request the panel in writing to reconvene to examine the matter.²
5. Paragraphs 5 through 8 of Article 19.15 (Compliance Review) shall apply if the panel reconvenes pursuant to paragraph 4.
6. If the reconvened panel decides that the steps notified in accordance with paragraph 2 achieve compliance with paragraph 2 of Article 19.13 (Implementation of Final Report), the suspension of benefits or the

² Where a panel is reconvened pursuant to this paragraph, it may also, on request of a Party, assess whether the level of any existing suspension of concessions or other obligations by the complaining Party is still appropriate and, if not, assess an appropriate level.

application of the compensation, shall be terminated no later than 30 days after the date of the decision.

7. If the reconvened panel decides that the steps notified in accordance with paragraph 2 do not achieve compliance with paragraph 2 of Article 19.13 (Implementation of Final Report), the suspension of benefits, or the application of the compensation, may continue. Where relevant, the level of suspension of benefits or of the compensation, shall be adapted in light of the decision of the panel.

Article 19.18 Suspension or Termination of Proceedings

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party. If the work of the panel has been suspended for more than 12 consecutive months, the authority for the establishment of the panel shall lapse unless the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chair to this effect. Before the panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The proceedings may be terminated at any time before the presentation of the panel's initial report under Article 19.12 (Reports of the Panel) if the complaining Party withdraws its complaint.

Article 19.19 Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 19.3 (Scope).
2. If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the panel. Upon such notification, the proceedings of the panel shall terminate.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

Article 19.20 Official Language

All proceedings and all documents submitted to the panel shall be in the English language.

Article 19.21
Time Periods

Any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

Article 19.22
Expenses

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

Article 19.23
Contact Point

1. Each Party shall designate a contact point for this Chapter and shall notify the other Party of the contact details of that contact point within 30 days of entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to those contact details.
2. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Article 19.24
Private Rights

Neither Party shall 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 or that the other Party has otherwise failed to carry out its obligation under this Agreement.