



★ 28 ★

Dispute Settlement

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

The United States seeks rigorous implementation of agreements we sign and strong mechanisms to enforce U.S. rights when there are failures of implementation. TPP’s Dispute Settlement chapter provides both. It ensures that the dispute settlement system—using tariff retaliation when neces-

sary—applies to the full range of issues covered by the agreement, from market access to labor, environment, services trade, intellectual property rights, and others. And it ensures that the dispute settlement system has strong rules against bias and conflict of interest; is transparent and open to the public; and encourages resolution of complaints when possible through cooperation and consultation. The Dispute Settlement chapter governs disputes between governments. It is unrelated to the Investor-State dispute settlement (ISDS) mechanism, which applies exclusively to commitments in the investment chapter and relates to disputes between private parties and governments.

CHAPTER OVERVIEW

Overall Application

The dispute settlement mechanism generally applies across the TPP Agreement, including to obligations under the Labor and Environment chapters, as well as newer disciplines related to cross-border data flows and state-owned enterprises.

Transparency

The Dispute Settlement chapter guarantees the right of the public in each TPP country to follow proceedings, by ensuring that submissions made in a dispute will be made publicly available, hearings will be open to the public, and final decisions by panels will be made publicly available. Further, non-governmental entities will have the right to request making written submissions to panels during disputes.

Cooperation and Alternative Mechanisms

The chapter commits the TPP Parties to make every attempt to resolve disputes through cooperation and consultation, and encourages the use of alternative dispute resolution mechanisms where the Parties believe that it would be helpful to resolve a dispute.

Formal Consultations and Panel Review within Specified Timeframes

Under the Dispute Settlement chapter, the first formal step is to hold con-

sultations between the relevant Parties, with a view to early resolution of the issue. In the event that these consultations fail, the dispute can proceed with a Party requesting the establishment a dispute settlement panel tasked with determining whether a Party has failed to comply with its obligations under the Agreement. Specified timeframes are set to ensure an efficient system—a panel may be requested within 60 days after the date of receipt of a request for consultations or 30 days after the date of receipt of a request for perishable goods.

Composition of Panels

Panels will be composed of three objective international trade and subject matter experts. Timeframes for selection of arbitrators will be established, including procedures to ensure that the panel can be composed even if a Party fails to appoint an arbitrator within a set period of time.

Functioning and Integrity of Panels

Clear rules of procedure will guide the functioning of panels and, in particular, ensure the transparency aspects noted above. In addition, panelists will be subject to a code of conduct to be agreed by TPP Parties to ensure the integrity of the dispute settlement mechanism.

Panel Report

Panels must present an initial report to the disputing Parties within 150 days after the last panelist is appointed or 120 days in cases of urgency. That report will be confidential to allow the disputing Parties to review and submit any written comments to the panel. The panel will then issue its final report within 30 days of the presentation of the initial report. The disputing Parties will then be required to release the final report publicly within 15 days thereafter, subject to the protection of any confidential information.

Implementation of the Final Report

In order to maximize compliance with the obligations agreed to, the Dispute Settlement chapter allows for the use of trade retaliation (suspension of benefits or payment of a monetary assessment) if a Party that has been found not to have abided by its obligations fails to fix the problem identified by the panel. Before that may happen, a Party that is found in violation can negotiate or arbitrate a reasonable period of time in which to fix the

problem. While the Parties recognize the importance of prompt compliance with panel determinations, nothing in the Agreement can require the United States or other Parties to change a law or regulation.

Private rights

No TPP Party can provide for a private right of action under its domestic law against any other TPP Party for failure to carry out the obligations in the TPP Agreement.

Alternative Dispute Resolution

The chapter encourages use of arbitration and other alternative dispute resolution with respect to private commercial disputes.

NEW FEATURES

The TPP Agreement provides for more expeditious resolution of disputes, closes various potential loopholes in the existing template that could allow a TPP country to delay or prevent establishing a panel, while also—as in previous U.S. Free Trade Agreements (FTAs)—providing for the ability of non-governmental entities to provide written views to panels and ensuring that panel hearings are open to the public. It also requires that Parties to a dispute make their written submissions public—the first time that some TPP Parties will commit to this level of transparency in dispute settlement.

IMPACT

When the United States negotiates a trade agreement, we expect our trading partners to abide by the rules and obligations agreed. All earlier U.S. trade agreements since the U.S.-Canada agreement of 1989, as well as the World Trade Organization (WTO) Agreement, have accordingly included a dispute settlement mechanism to adjudicate disputes over compliance.

This is particularly important for the TPP, which creates a wider set of obligations than we have been able to achieve in earlier agreements in areas such e-commerce, labor and environment, state-owned enterprises, and other areas. The TPP dispute settlement mechanism will give us the tools to be able to enforce the strong, high-standard obligations that have been negotiated.