

## **Chapter 13    Dispute Settlement**

### **Article 13.1    Cooperation**

The Parties shall at all times 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 when a dispute occurs.

### **Article 13.2    Scope of Application<sup>7</sup>**

Unless otherwise provided in this Agreement, wherever a Party considers that a measure of the other Party is inconsistent with its obligations under this Agreement or the other Party has otherwise failed to carry out its obligations under this Agreement, and with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, the dispute settlement provisions of this Chapter shall apply.

### **Article 13.3    Choice of Forum**

1. Where a dispute arises under this Agreement and under any other trade agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested establishment of, or otherwise referred a matter to, a panel or tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

### **Article 13.4    Consultations**

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.

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<sup>7</sup> The Parties agree that this Chapter does not apply to proposed measures and/or non violation complaints (nullification or impairment of a benefit in cases where there is no violation of the Agreement's provisions).

2. A Party may request consultations with the other Party with respect to any measure, or other matter that it considers may affect the interpretation or application of this Agreement. The request for consultations shall be made in writing and shall set out the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the responding Party.

3. If a request for consultations is made, the responding Party shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within a period of:

(a) 15 days after the date of receipt of the request for urgent matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

4. In a consultation, each Party shall provide sufficient information to enable a full examination of how the measure in force or other matter at issue might affect the operation and application of this Agreement.

5. If the responding Party does not reply or enter into consultations within the timeframe specified in paragraph 3, then the complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 13.6 (Request for Establishment of an Arbitral Tribunal).

6. Consultations may be held in person or by any technological means available to the Parties. Unless otherwise agreed by the Parties, if in person, consultations shall be held in a rotating basis between cities of each Party. The city for such meetings will be identified by the hosting Party. In person meetings will begin to be held in a city of the responding Party.

7. The consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

### **Article 13.5 Good Offices, Conciliation and Mediation**

1. The Parties may at any time voluntarily agree to good offices, conciliation and mediation. These procedures may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without

prejudice to the rights of either Party in any further or other proceedings.

### **Article 13.6 Request for Establishment of an Arbitral Tribunal**

1. If the consultation referred to in the Article 13.4 (Consultations) fails to resolve a matter within 60 days, or 30 days in relation to urgent matters concerning perishable goods, after receipt of the request for consultations, the complaining Party may request in writing the establishment of an arbitral tribunal to consider the matter and shall nominate an arbitrator.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint, sufficient to present the problem clearly, and shall deliver the request to the responding Party. An arbitral tribunal is established upon receipt of a request.

3. Unless otherwise agreed by the disputing Parties, the tribunal shall be established, selected and perform its functions in a manner consistent with this Chapter.

### **Article 13.7 Composition of an Arbitral Tribunal**

1. The Parties shall apply the following procedures in selecting a Tribunal:

(a) An arbitral tribunal shall comprise three members;

(b) Within 15 days after the establishment of an arbitral tribunal, the responding Party shall nominate an arbitrator;

(c) The Parties shall appoint by common agreement the third arbitrator, who shall serve as chair, within 30 days after the establishment of the arbitral tribunal;

(d) If any arbitrator of the arbitral tribunal has not been designated or appointed within 30 days after the establishment of the arbitral tribunal, either Party may request that the Director-General of the WTO designates an arbitrator within 30 days of that request. If one or more arbitrators are designated according to this paragraph, the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal. The date of composition of the tribunal shall be the date on which the chairperson is appointed.

2. Unless the Parties agree otherwise, the chair of the arbitral tribunal shall:

(a) not be a national of either Party;

(b) not have his or her usual place of residence in the territory of either Party;

- (c) not be employed by either Party; and
- (d) not have dealt with the matter in any capacity.

3. 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 relevant to the subject matter of the dispute;

(b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, either Party;

(d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

4. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 30 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the replacement of the successor.

5. If a Party believes that an arbitrator is in violation of the code of conduct referred to in paragraph 3 (d), both Parties shall consult and, if they agree, the arbitrator shall be removed, and a new arbitrator shall be appointed in accordance with this Article.

### **Article 13.8      Functions of an Arbitral Tribunal**

1. The function of an arbitral tribunal is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Unless the Parties otherwise agree within 20 days from the date of the establishment of the arbitral tribunal, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 13.6 (Request for Establishment of an Arbitral Tribunal) and to make findings of law and fact together with the reasons as well as recommendations, if any, for the resolution of the dispute."

3. Where the Parties have agreed on different terms of reference they shall notify them to the tribunal within 2 days of its composition.

4. Where an arbitral tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.

5. The arbitral tribunal shall consider this Agreement in accordance with the customary rules of interpretation of public international law. The arbitral tribunal, in its findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

#### **Article 13.9 Rules of Procedure of an Arbitral Tribunal**

1. Unless the Parties agree otherwise, the arbitral tribunal shall follow the rules of procedure set out in Annex 6 (Rules of Procedure of Arbitral Tribunal) and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with Annex 6.

2. The remuneration of the arbitrators and other expenses of the arbitral tribunal shall be borne by the Parties in equal shares.

#### **Article 13.10 Suspension or Termination of Proceedings**

The Parties may agree that the arbitral tribunal suspends 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, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise, without prejudice of the complaining Party's right to request consultations and subsequently request the establishment of a tribunal on the same matter at a later stage. This paragraph shall not apply where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 13.5 (Good Offices, Conciliation and Mediation).

The Parties may agree to terminate the proceedings of an arbitral tribunal prior to the notification of the tribunal report.

#### **Article 13.11 Report of the Arbitral Tribunal**

1. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and other information, if any, it has obtained pursuant to paragraph 14 of Annex 6 (Rules of Procedure of Arbitral Tribunal).

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall present to the Parties an initial report:

- (a) within 120 days after the date of its composition; or
- (b) in case of urgent matters concerning perishable goods, within 60 days after the date of the composition of the arbitral tribunal.

3. The initial report shall contain:

- (a) findings of fact and law; and
- (b) its conclusions as to whether a Party has not conformed with its obligations under this Agreement, or any other determination if requested in the terms of reference.

4. In exceptional cases, if the arbitral tribunal considers it cannot issue its initial report within 120 days, or within 60 days in case of urgent matters concerning perishable goods, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

5. Unless the Parties otherwise agree, each Party may submit written comments to the arbitral tribunal within 15 days of the issuance of the initial report.

6. The arbitral tribunal shall make every effort to make its decisions by consensus. If the arbitral tribunal is unable to reach consensus, it may make its decision by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the arbitral tribunal's report by individual arbitrators shall be anonymous.

7. After considering any written comments on the initial report, the arbitral tribunal may reconsider its report and make any further examination it considers appropriate.

## **Article 13.12 Final Report**

1. After considering the written comments submitted by the Parties, and making any further examination it considers appropriate, the arbitral tribunal shall present to the Parties its final report, including any separate opinions on matters not unanimously agreed, within 30 days of issuance of the initial report, or 15 days in case of urgent matters concerning perishable goods.

2. Unless either Party disagrees, the final report shall be made available to the public no later than 15 days after its issuance to the Parties, subject to the protection of confidential information.

3. The final report of the arbitral tribunal is final and binding on the Parties.

### **Article 13.13 Request for Clarification of the Report**

1. Within 15 days of the notification of the report, either Party may submit a written request to the tribunal for clarification of any items the Party considers require further explanation or definition. The arbitral tribunal shall send a copy of the requirement to the other Party.

2. The tribunal shall respond the request within 15 days following the submission of such request. The clarification of the tribunal shall only be a more precise explanation of the contents of the report, and not an amendment of such report.

3. The filing of this request for clarification will not postpone the effect of the tribunal report or the compliance of the adopted decision, unless the tribunal decides otherwise.

### **Article 13.14 Implementation of Arbitral Tribunal's Final Report**

1. Where the arbitral tribunal concludes that a Party has not conformed to its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

2. Unless the Parties reach an agreement on compensation or other mutually satisfactory solution, the responding Party shall implement the recommendations contained in the final report of the arbitral tribunal within a reasonable period of time if it is not practicable to comply immediately.

### **Article 13.15 Reasonable Period of Time**

1. The reasonable period of time referred to in Article 13.14: (Implementation of Arbitral Tribunal's Final Report ) shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the issuance of the arbitral tribunal's final report, either Party may, to the extent possible, refer the matter to the original arbitral tribunal, which shall determine the reasonable period of time.

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

3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitral tribunal's final report. The reasonable period of time may be extended by mutual agreement of the Parties.

### **Article 13.16 Compliance Review**

1. Without prejudice to the procedures in Article 13.17 (Suspension of Concessions or Other Obligations), if the responding Party considers that it has eliminated the non-conformity that the arbitral tribunal has found, it may provide written notice to the complaining Party with a description of how the non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 45 days after receipt of such written notice, and the matter will be decided through recourse to the dispute settlement procedures under this Chapter. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations as referred in Article 13.17 (Suspension of Concessions or Other Obligations).

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

3. The provisions in this Chapter concerning the procedure of arbitral tribunal shall apply *mutatis mutandis* to the procedure under this Article.



## **Article 13.17      Suspension of Concessions or Other Obligations**

1. If the arbitral tribunal under Article 13.16 (Compliance Review) finds that the responding Party fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations and rulings of the arbitral tribunal within the reasonable period of time established, or the responding Party expresses in writing that it will not implement the recommendations and rulings, such Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 20 days after entering into negotiations for compensation, or if no such request has been made, the complaining Party may suspend the application of concessions or other obligations to the responding Party. The complaining Party shall notify the responding Party 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.

3. The suspension of concessions or other obligations shall be temporary measures, and shall only be applied until the measure found to be inconsistent with this Agreement has been removed, or otherwise a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations under this Agreement; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s), it may suspend concessions or other obligations in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

5. Upon written request of the responding Party, the original arbitral tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2 and/or whether paragraph 3 has not been followed. If the arbitral tribunal cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 13.7 (Composition of an Arbitral Tribunal).

6. The arbitral tribunal shall present its determination within 60 days from the request made pursuant to paragraph 5, or if an arbitral tribunal cannot be established with its original members, from the date on which the last arbitrator is appointed.

7. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitral tribunal's determination pursuant to this Article.

### **Article 13.18 Post Suspension**

1. Without prejudice to the procedures in Article 13.17 (Suspension of Concessions or Other Obligations), if the responding Party considers that it has complied with the arbitral tribunal's final report, it may provide written notice to the complaining Party to request the end of the suspension of concessions or other obligations.

2. If the complaining Party agrees, it shall reinstate any concessions or other obligations suspended under Article 13.17 (Suspension of Concessions or Other Obligations). If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

3. The arbitral tribunal shall issue its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the arbitral tribunal concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

### **Article 13.19 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.

### **Article 13.20: Time Limits**

Any period referred to in this Chapter and in the Annex 6 (Rules of Procedure of Arbitral Tribunal) may be modified by mutual agreement of the Parties.