

## Chapter X

### Dispute Settlement

#### Article 79 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.

#### Article 80 Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; and

(b) wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or that the other Party has failed to carry out its obligations under this Agreement.

#### Article 81 Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

#### Article 82 Consultations

1. Either Party may request in writing consultations with the other Party with respect to any measure that it considers might affect the operation of this Agreement.

2. The requesting 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 shall deliver the request to the other Party.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation and application 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. 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.

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

#### Article 83 Commission - Good Offices, Conciliation, and Mediation

1. A Party may request in writing a meeting of the Commission if the Parties fail to resolve a matter pursuant to Article 82 within:

- (a) 60 days of receipt of a request for consultations;
- (b) 15 days of receipt of a request for consultations in matters regarding perishable goods; or
- (c) such other period as they may agree.

2. A Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 58 or 69.

3. The requesting Party shall state in the request the measure complained of and the provisions of this Agreement considered relevant and deliver the request to the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of receipt of the request and shall endeavor to resolve the dispute promptly. The Commission may:

- (a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
- (b) have recourse to good offices, conciliation, mediation; or
- (c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. The proceedings under this Article and the positions taken by the Parties during these proceedings shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

#### **Article 84 Request for an Arbitral Panel**

1. If the Parties fail to resolve a matter within:

- (a) 30 days of the Commission convening pursuant to Article 83;
- (b) 75 days after receipt of the request for consultations under Article 82, if the Commission has not convened pursuant to Article 83;
- (c) 30 days after receipt of the request for consultations under Article 82 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 83; or
- (d) such other period as the Parties agree,

either Party may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall state in the request the measure complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party. An arbitral panel shall be established upon receipt of a request.

2. Unless the Parties otherwise agree, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

#### **Article 85 Composition of an Arbitral Panel**

1. An arbitral panel shall comprise three members.

2. In the written request under Article 84, the 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 Party to which it was addressed shall designate one member of the arbitral panel.
4. The Parties shall designate by common agreement the appointment of the third panelist within 15 days of the appointment of the second panelist. The panelist thus appointed shall chair the arbitral panel.
5. If any member of the arbitral panel has not been designated or appointed within 30 days from the date of receipt of the request referred to in paragraph 2, at the request of any Party to the dispute the necessary designations shall be made by the Director-General of the WTO within a further 30 days.
6. The Chair of the arbitral panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed by any of the Parties, nor have dealt with the matter in any capacity.
7. All panelists 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;
  - (c) be independent of, and not be affiliated with or take instructions from, any Party; and
  - (d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.
8. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 83.
9. If a panelist appointed under this Article resigns or becomes unable to act, a successor panelist shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. The work of the arbitral panel shall be suspended during the appointment of the successor panelist.

#### **Article 86      Functions of Arbitral Panel**

1. The function of an arbitral panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.
2. Where an arbitral panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement. In addition to its recommendations the arbitral panel may suggest ways in which the responding Party could implement the recommendations.
3. The arbitral panel, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

#### **Article 87      Rules of Procedure of an Arbitral Panel**

1. Unless the Parties agree otherwise, the arbitral panel proceedings shall be conducted in accordance with the rules of procedure set out in Annex 7.
2. The arbitral panel shall, apart from the matters set out in this Article, regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations in consultation with the Parties.

3. The arbitral panel shall take its decisions by consensus; provided that where an arbitral panel is unable to reach consensus it may take its decisions by majority vote.

4. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral 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 request for the establishment of an arbitral panel pursuant to Article 84 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

5. Each Party shall bear the cost of its appointed panelist and its own expenses. The cost of the chair of an arbitral panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

#### **Article 88      Suspension or Termination of Proceedings**

1. The Parties may agree that the arbitral panel 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 panel has been suspended for more than 12 months, the authority for establishment of the arbitral panel shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral panel in the event that a mutually satisfactory solution to the dispute has been found.

#### **Article 89      Experts and Technical Advice**

1. On its own initiative unless the Parties disapprove, or upon request of a Party, the arbitral panel may seek information and technical advice on matters raised by a Party in a proceeding, from any person or body that it deems appropriate.

2. Before an arbitral panel seeks information or technical advice, it shall establish appropriate procedures in consultation with the Parties. The arbitral panel shall provide the Parties:

(a) advance notice of, and an opportunity to provide comments to the arbitral panel on, proposed requests for information and technical advice pursuant to paragraph 1; and

(b) a copy of any information or technical advice submitted in response to a request pursuant to paragraph 1 and an opportunity to provide comments.

3. Where the arbitral panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

#### **Article 90      Initial Report**

1. The arbitral panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.

2. Unless the Parties otherwise agree, the arbitral panel shall:

(a) within 120 days after the last panelist is selected; or

(b) in case of urgency including those relating to perishable goods within 60 days after the last panelist is selected, present to the Parties an initial report.

3. The initial report shall contain:

(a) findings of fact;

(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; and

(c) the recommendation of the arbitral panel on the dispute and the suggestions if requested by the Parties.

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

5. Panelists may furnish separate opinions on matters not unanimously agreed.

6. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report or within such other period as the Parties may agree.

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

#### **Article 91      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. The final report shall be available to the public within 15 days thereafter, subject to the protection of confidential information.

2. No arbitral panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

#### **Article 92      Implementation of Final Report**

1. On receipt of the final report of an arbitral panel, the Parties shall agree on the resolution of the dispute.

2. If in its final report the arbitral panel concludes that a Party has not conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

3. Unless the Parties decide otherwise, they shall implement the recommendations contained in the final report of the arbitral panel within a reasonable period of time if it is not practicable to comply immediately.

4. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral panel's report, either Party may, to the extent possible, refer the matter to the original arbitral panel, which shall determine the reasonable period of time following consultation with the Parties.

5. 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 recommendations of the arbitral panel, such dispute shall be referred to an arbitral panel proceeding, including wherever possible by resort to the original arbitral panel.

6. 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 the 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 93      Non-Implementation - Suspension of Benefits**

1. If the Party concerned fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the arbitral panel under Article 90 within the reasonable period of time established in accordance with Article 92, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If there is no agreement in accordance with paragraph 1 within 20 days after receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application of benefits of equivalent effect to the responding Party if the arbitral panel decides the responding Party does not implement the recommendations contained in the final report to bring the inconsistent measure into conformity within the reasonable period of time established in accordance with Article 92. The complaining Party shall notify the responding Party 30 days before suspending benefits.

3. Compensation and the suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full implementation of the recommendations to bring a measure into conformity with this Agreement. Compensation and suspension of benefits shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral panel's recommendation has done so, or a mutually satisfactory solution is reached.

4. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure that the arbitral panel has found to be inconsistent with the obligations derived of this Agreement ; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits 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 Party concerned, the original arbitral panel shall determine whether the level of benefits to be suspended by the complaining Party is excessive pursuant to paragraph 2. If the arbitral panel cannot be established with its original members, the proceeding set out in Article 85 shall be applied.

6. The arbitral panel shall present its determination within 60 days from the request made pursuant to paragraph 5, or if an arbitral panel cannot be established with its original members, from the date on which the last panelist is selected. The ruling of the arbitral panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

#### **Article 94      Compliance Review**

1. Without prejudice to the procedures in Article 93, if the responding Party considers that it has eliminated the non-conformity that the arbitral panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party has disagreement, it may refer the matter to the original arbitral panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of benefits.

2. The arbitral panel shall release its report within 90 days after the referral of the matter. If the arbitral panel concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of benefits.

#### **Article 95      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.