

## **Chapter 14**

### **Dispute Settlement**

#### **Article 14.1: Scope**

Except as otherwise provided in this Agreement, the dispute settlement provisions of 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, which includes wherever 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.

#### **Article 14.2: 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 14.3: Consultations**

1. Either Party may request in writing consultations with the other Party concerning any matter on the implementation, interpretation or application of this Agreement, including a matter relating to a measure that the other Party proposes to adopt.

2. The requesting Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.

3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations of any matter raised in accordance with this Article.

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 under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

#### **Article 14.4: Good Offices, Conciliation and Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.
2. Good offices, conciliation or mediation may continue while procedures of an arbitral panel established in accordance with this Chapter are in progress.

#### **Article 14.5: Referral of Matters to the Commission**

1. If the consultations fail to resolve the matter within forty (40) days of the delivery of a Party's request for consultations under Article 14.3.2, or twenty (20) days in cases of urgency including those which concern perishable goods, the complaining Party may refer the matter to the Commission by delivering written notification to the other Party. The Commission shall endeavour to resolve the matter.
2. 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 such other dispute resolution procedures; or
  - (c) make recommendations;as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

#### **Article 14.6: Establishment of Arbitral Panels**

1. The complaining Party that requested consultations under Article 14.3 may request in writing the establishment of an arbitral panel, if the Parties fail to resolve the matter within:
  - (a) forty-five (45) days after the date of receipt of the request for consultation if there is no referral to the Commission under Article 14.5;
  - (b) thirty (30) days of the Commission convening pursuant to Article 14.5, or fifteen (15) days in cases of urgency, including those which concern perishable goods; or
  - (c) sixty (60) days after a Party has delivered a request for consultation under Article 14.3, or thirty (30) days in cases of urgency, including those which concern perishable goods, if the Commission has not convened after a referral under Article 14.5.
2. The establishment of an arbitral panel shall not be requested on any matter relating to a proposed measure, as referred to in Article 14.3.1.

3. Any request to establish an arbitral panel pursuant to this Article shall identify:
  - (a) the specific measure at issue;
  - (b) the legal basis of the complaint including any provision of this Agreement alleged to have been breached and any other relevant provisions; and
  - (c) the factual basis for the complaint.
4. The arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.
5. The date of the establishment of an arbitral panel shall be the date on which the chair is appointed.

#### **Article 14.7: Composition of Arbitral Panels**

1. An arbitral panel shall comprise three panelists.
2. Each Party shall, within forty (40) days after the date of receipt of the request for the establishment of an arbitral panel, appoint one panelist who may be its national and propose up to three candidates to serve as the third panelist who shall be the chair of the arbitral panel. The third panelist shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
3. The Parties shall agree on and appoint the third panelist within fifty (50) days after the date of receipt of the request for the establishment of an arbitral panel, taking into account the candidates proposed pursuant to paragraph 2.
4. If a Party has not appointed a panelist pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third panelist pursuant to paragraph 3, the panelist or panelists not yet appointed shall be chosen within seven (7) days by lot from the candidates proposed pursuant to paragraph 2.
5. All panelists shall:
  - (a) have expertise or experience in law, international trade or other matters covered by this Agreement;
  - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (c) be independent of, and not be affiliated with or receive instructions from, the government of either Party; and
  - (d) comply with a code of conduct to be agreed by the Parties after the entry into force of this Agreement.

6. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within twenty (20) days in accordance with the appointment procedure provided for in paragraphs 2, 3 and 4, which shall be applied respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original panelist. The work of the arbitral panel shall be suspended for a period beginning on the date the original panelist dies, becomes unable to act or resigns. The work of the arbitral panel shall resume on the date the successor is appointed.

#### **Article 14.8: Functions of Arbitral Panels**

1. An arbitral panel established under Article 14.7:
  - (a) shall make its report in accordance with this Agreement and applicable rule of international law;
  - (b) shall set out, in its report, its findings of facts and law, together with its reasons therefore; and
  - (c) may, in addition to its findings of facts and law, include in its report, recommendations for the Parties to consider in implementing the findings.
2. The report of the arbitral panel shall be final and binding on the Parties.
3. The arbitral panel shall attempt to make its decision, including its report, by consensus but may also make such decisions by majority vote.

#### **Article 14.9: Terms of Reference of Arbitral Panels**

Unless the Parties otherwise agree within twenty (20) days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference of the arbitral panel 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 14.6, to make findings of facts and law, and determinations on whether the measure is not in conformity with the Agreement together with the reasons therefore, and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral panel may make recommendations for resolution of the dispute.”

#### **Article 14.10: Proceedings of Arbitral Panels**

1. The arbitral panel shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral panel to appear before it.
2. The deliberations of the arbitral panel and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose and treat as confidential, information or written submissions submitted by the other Party to the arbitral panel which the latter Party has designated as confidential. Where a Party has

provided information or written submissions designed to be confidential, that Party shall provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

3. The arbitral panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute.

4. The Parties shall transmit to the arbitral panel written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:

- (a) for the Party which requested the establishment of the arbitral panel, within thirty (30) days of the establishment of that panel; and
- (b) for the other Party, within thirty (30) days of the transmission of the written submission of the Party which requested the establishment of the arbitral panel.

5. Each Party's written submissions, including any comments on the draft report made in accordance with Article 14.12.3, written versions of oral statements and responses to questions put by the arbitral panel shall be made available to the other Party.

6. At the request of a Party, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate, and subject to such terms and conditions as the Parties may set. The arbitral panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

7. The arbitral panel shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter and in Annex 14.10.

8. Any time period or other rules and procedures for arbitral panels provided for in this Chapter, including Annex 14.10, may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

#### **Article 14.11: Suspension or Termination of Proceedings**

1. Where the Parties agree, an arbitral panel may suspend its work at any time for a period not exceeding twelve (12) months. In the event of such a suspension, all relevant time-frames set out in this Chapter and in Annex 14.10 shall be extended by the amount of time that the work was suspended. If the work of the arbitral panel has been suspended for more than twelve (12) months, the arbitral panel's authority for considering the dispute shall lapse unless the Parties agree otherwise.

2. The Parties may agree at any time to terminate the proceedings of the arbitral panel established under this Chapter by jointly notifying the chair of that arbitral panel.

#### **Article 14.12: Report**

1. The report of the arbitral panel shall be drafted without the presence of the Parties. The arbitral panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitral panel.
2. The arbitral panel shall, within one hundred and twenty (120) days, or within sixty (60) days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft report.
3. The draft report shall contain both the descriptive part summarising the submissions and arguments of the Parties, and the findings and determinations of the arbitral panel. If the Parties agree, the arbitral panel may make recommendations for resolution of the dispute in its report. The findings and determinations of the arbitral panel and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.
4. When the arbitral panel considers that it cannot submit its draft report within the aforementioned one hundred and twenty (120) or sixty (60) day period, it may extend that period with the consent of the Parties.
5. A Party may provide written comments to the arbitral panel on its draft report within fifteen (15) days after the date of submission of the draft report.
6. After considering any written comments on the draft report, the arbitral panel may reconsider its draft report and make any further examination it considers appropriate.
7. The arbitral panel shall issue its final report, within thirty (30) days after the date of submission of the draft report. The report shall include any separate opinions on matters not unanimously agreed, not disclosing which panelists are associated with majority or minority opinions.
8. The final report of the arbitral panel shall be available to the public within fifteen (15) days after the date of issuance, subject to the requirement to protect confidential information.

#### **Article 14.13: Implementation of the Report**

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity as determined in the report of the arbitral panel immediately, or if this is not practicable, within a reasonable period of time.
2. The Parties shall continue to consult at all times on the possible development of a mutually satisfactory resolution.
3. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within forty five (45) days after the date of issuance of the report of the arbitral panel

referred to in Article 14.12, either Party may refer the matter to an arbitral panel as provided for in Article 14.14.7, which shall determine the reasonable period of time.

4. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity, as determined in the report of the arbitral panel, within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to an arbitral panel as provided for in Article 14.14.7.

#### **Article 14.14: Non-Implementation – Compensation and Suspension of Concessions or other Obligations**

1. If the Party complained against notifies the complaining Party that it is impracticable, or the arbitral panel to which the matter is referred pursuant to Article 14.13.4 confirms that the Party complained against has failed to eliminate the non-conformity as determined in the report of the arbitral panel within the reasonable period of time as determined pursuant to Article 14.13.3, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within twenty (20) days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension thirty (30) days in advance. Such notification may only be given twenty (20) days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitral panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- (a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the arbitral panel referred to in Article 14.12 has found a failure to comply 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 with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitral panel.

7. The arbitral panel that is established for the purposes of this Article or Article 14.13 shall have, wherever possible, as its panelists, the panelists of the original arbitral panel. If this is not possible, then the panelists to the arbitral panel that is established for the purposes of this Article or Article 14.13 shall be appointed pursuant to Article 14.7. The arbitral panel established under this Article or Article 14.13 shall issue its report within sixty (60) days after the date when the matter is referred to it. When the arbitral panel considers that it cannot issue its report within the aforementioned sixty (60) day period, it may extend that period for a maximum of thirty (30) days with the consent of the Parties. The report shall be available to the public within fifteen (15) days after the date of issuance, subject to the requirement to protect confidential information. The report shall be final and binding on the Parties.