

## **Chapter 17**

### **Dispute Settlement**

#### **Article 17.1: Cooperation**

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations or other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

#### **Article 17.2: 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 the other Party has otherwise failed to carry out its obligations under this Agreement.

#### **Article 17.3: Choice of Forum**

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. Once a Party has requested the establishment of a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others in respect of that matter, unless both Parties otherwise agree.

#### **Article 17.4: Consultations**

1. A Party may request, in writing, consultations with the other Party with respect to any measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the

measure or other matter at issue and an indication of the legal basis for the complaint.

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

- (a) provide sufficient information to enable a full examination of how the measure or other matter at issue might affect the operation 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 the consultations under this Article, any consulting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter which is the subject of the consultations.

5. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in a place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

6. The consultation period shall not exceed 45 days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period. On disputes concerning perishable goods<sup>33</sup>, the consultation period shall not exceed 20 days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period.

7. If the requested Party does not answer the request for consultations within 10 days from the date of receipt of the formal request to initiate consultations, if consultations are not held within the periods laid down in paragraph 6, or if the consultation period has expired and the dispute has not been resolved, the requesting Party may request the establishment of a Panel in accordance with Article 17.6 (Request for a Panel).

8. Consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

---

<sup>33</sup> For greater certainty, the term "perishable goods" means perishable agricultural and fish goods classified in chapters 1 through 24 of the Harmonized System.

### **Article 17.5: Good Offices, Conciliation and Mediation**

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the Parties so agree.
2. Proceedings involving good offices, conciliation and mediation, and in particular the positions taken by the disputing Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter.
3. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time and be terminated at any time.
4. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a Panel established under Article 17.8 (Panel Selection).

### **Article 17.6: Request for a Panel**

1. Where the Parties have failed to resolve the dispute in accordance with Article 17.4 (Consultations), the complaining Party may send a written request to the other Party for the establishment of a Panel to consider the matter. The request shall include an identification of the measure or other matter at issue and the provisions of this Agreement considered pertinent, as well as any other relevant circumstances.
2. Unless otherwise agreed by the disputing Parties, the Panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

### **Article 17.7: List of Panelists**

1. The Parties shall establish within 6 months of the date of entry into force of this Agreement and maintain a list of up to 15 individuals who are willing and able to serve as panelists. Each Party may propose up to 5 individuals to serve as panelists. The Parties may also agree on the selection of up to 5 individuals who are not nationals of either Party, who shall act as chairperson of the Panel. The members of the list shall be appointed by consensus, and may be reappointed. The Parties, by consensus, may modify the list or include new members when they consider it necessary.
2. Members of the list 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 the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO*.

3. The Parties may proceed to use the list, even if it is incomplete, with the candidates already proposed and appointed by consensus under paragraph 1.

#### **Article 17.8: Panel Selection**

1. The Parties shall apply the following procedures in selecting a Panel:
  - (a) The Panel shall comprise 3 members.
  - (b) Each Party shall appoint a panelist within 10 days of the delivery of the request for the establishment of the Panel.
  - (c) Panelists shall normally be selected from the list. Any Party may exercise a peremptory challenge against any individual not on the list who is proposed as a panelist by a Party within 10 days after the individual has been proposed.
  - (d) The Parties shall endeavour to agree on a third panelist who shall not be a national of any of the Parties to serve as the chairperson of the Panel within 15 days of the appointment of the second panelist. If the Parties cannot reach an agreement during this period, the 2 appointed panelists shall endeavour to unanimously select a third panelist to serve as chairperson within the following 10 days.
  - (e) In the event that a panelist cannot be appointed in accordance with the procedures set out in subparagraphs (c) and (d), said panelist shall be selected by lot among the relevant list members established under Article 17.7 (List of Panelists); namely, the members of the list proposed by the Party that did not appoint a panelist or the members of the list that the Parties agreed on to act as chairperson. The chair of the Commission or the chair's designee shall carry out the lot within 5 days of receipt of a request to do so from one or both Parties. The lot shall be carried out at a time and place to be promptly communicated to the Parties. The Parties may, if they so choose, be present during the lot in person or by any technological means.

- (f) All panelists shall meet the qualifications set out in Article 17.7 (List of Panelists). Each Party shall endeavour to appoint panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.
  - (g) Individuals may not serve as panelists for a dispute in which they have participated in another capacity pursuant to Article 17.5 (Good Offices, Conciliation and Mediation).
2. The date of establishment of the Panel shall be the date on which the chairperson is appointed.
  3. If any of the panelists resigns or becomes unable to act, a new panelist shall be appointed in accordance with this Article.
  4. If a Party believes that a panelist is in violation of the *Rules of Conduct* referred to in Article 17.7 (List of Panelists), both Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be appointed in accordance with this Article.
  5. Where, in accordance with paragraphs 3 and 4, there is a need to appoint a new panelist, panel proceedings shall be suspended until the new panelist is appointed. The new panelist shall have all the powers and duties of the original panelist.
  6. The procedures set out in this Article shall apply in those cases where the original Panel or some of its members are unable to reconvene pursuant to Article 17.15 (Implementation of the Final Report), Article 17.16 (Review of any Measure Taken to Comply with the Final Report), Article 17.17 (Non-Implementation – Compensation and Suspension of Benefits) and Article 17.18 (Compliance Review). In these cases, the period for notifying the report shall be counted from the date on which the last panelist is appointed.

#### **Article 17.9: Rules of Procedure**

1. The Commission shall establish Rules of Procedure no later than during its first session. The Rules of Procedure shall ensure:
  - (a) a right to at least one hearing before the Panel;
  - (b) an opportunity for each Party to provide initial and rebuttal written submissions;
  - (c) the protection of confidential information; and
  - (d) the possibility of using technological means to conduct the proceedings.

2. Unless the Parties otherwise agree, the Panel shall conduct its proceedings in accordance with the Rules of Procedure.

3. The Parties may, by agreement, modify the Rules of Procedure for specific proceedings.

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the 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 panel request and to make findings, determinations and recommendations, as provided in Article 17.11 (Initial Report) and Article 17.12 (Final Report).”*

5. Where the Parties have agreed on different Terms of Reference, they shall notify these to the Panel within 2 days of their agreement.

6. If a Party wishes the Panel to make findings as to the degree of adverse trade effects on either Party of any measure or matter at issue found not to conform with the obligations of the Agreement, the Terms of Reference shall so indicate.

7. The location of any hearings of the Panel, if they are held in person, shall be decided by mutual agreement of the Parties, failing which, it shall be held in the capital of the Party complained against.

8. The remuneration of the panelists and other expenses of the Panel shall be borne by the Parties in equal shares.

#### **Article 17.10: Role of Experts**

1. On request of a Party, or on its own initiative, unless both Parties disapprove it, the Panel may seek information and technical advice from any person or body that it deems appropriate.

2. Before the Panel may request information or technical advice, appropriate procedures shall be established in consultation with the Parties. The Panel shall provide the Parties with:

- (a) prior notification and time to make observations before the Panel regarding requests for information and technical advice pursuant to paragraph 1; and
- (b) a copy of any information or technical advice submitted in answer to a request made pursuant to paragraph 1, and the time to submit comments.

3. When the Panel takes into consideration such information or technical advice in the preparation of its report, it shall also take into account any comments or observations submitted by the Parties on the information or technical advice.

4. When a request for information or technical advice is made in accordance with this Article, any period regarding the procedure shall be suspended from the delivery of the request to the date when the written report is delivered to the Panel.

#### **Article 17.11: Initial Report**

1. Unless the Parties otherwise agree, the Panel shall base its report on the relevant provisions of the Agreement, the submissions and arguments of the Parties, and any information taken into consideration pursuant to Article 17.10 (Role of Experts).

2. Unless the Parties otherwise agree, the Panel shall, within 90 days, and within 50 days in the case of perishable goods, after the establishment of the Panel, notify to the Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 17.9.6 (Rules of Procedure);
- (b) its determination as to whether the measure or other matter at issue is inconsistent with this Agreement or any other determination requested in the Terms of Reference; and
- (c) its recommendations, if any, for resolution of the dispute.

3. A Party may submit written comments to the Panel on its initial report within 14 days of the notification of the report or within such other period as the Parties may agree. A copy of the comments submitted shall be provided to the other Party.

4. After considering any such written comments on the initial report, the Panel may reconsider its report, and make any further examination it considers appropriate.

#### **Article 17.12: Final Report**

1. The Panel shall notify its final report to the Parties, containing the elements listed in Article 17.11.2 (Initial Report), and including any separate opinions on matters not unanimously agreed, within 30 days of notification of the initial report, unless the Parties otherwise agree.

2. The Parties shall release the final report to the public within 15 days thereafter or 7 days after a clarification pursuant to Article 17.13 (Request for

Clarification of the Final Report), subject to the protection of confidential information.

3. Where the Panel considers that the deadlines referred to in paragraph 1 cannot be met, the chairperson of the Panel shall promptly notify the Parties in writing, stating the reasons for the delay and the date on which the Panel plans to conclude its work. Unless exceptional circumstances apply, the report should be notified no later than 150 days from the date of the establishment of the Panel, and 90 days in the case of perishable goods.

4. The Panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter shall be decided by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed, however, no panel may, in its initial and final reports, disclose which panelists are associated with majority or minority opinions.

5. The report of the Panel shall be final and shall not add to or diminish the rights and obligations of the Parties under this Agreement.

#### **Article 17.13: Request for Clarification of the Final Report**

1. Within 10 days of the notification of the final report by the Panel, either Party may submit a written request to the Panel for clarification of its final report. Any clarification by the Panel shall not affect its findings, determinations and recommendations.

2. The Panel shall respond to the request within no more than 20 days, counted from the date of submission of the request. The request for clarification shall not postpone the deadline for compliance with the adopted decision, unless the Panel decides otherwise or if the circumstances so require.

#### **Article 17.14: Suspension and Termination of Proceedings**

1. The Parties may agree to suspend the work of the Panel at any time for a period not exceeding 12 months from the date of such agreement. In any event, if the work of the Panel has been suspended for more than 12 months, the Terms of Reference of the Panel shall lapse unless the Parties agree otherwise. If the Terms of Reference of the Panel have lapsed and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting consultations and subsequently, the establishment of a Panel on the same matter at a later stage. The Terms of Reference shall not lapse where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 17.5 (Good Offices, Conciliation and Mediation).



2. The Parties may agree to terminate the proceedings before a Panel at any time by jointly notifying the chairperson of the Panel to this effect.

#### **Article 17.15: Implementation of the Final Report**

1. On receipt of the final report of a Panel, the Party complained against shall, without undue delay, take any measure necessary to comply in good faith with the final report.
2. The disputing Parties may also agree at any time on a mutually satisfactory solution to the dispute, which normally shall conform with the determinations and recommendations, if any, of the Panel.
3. If it is not practicable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to comply, within 30 days after the date of the notification of the final report.
4. Failing agreement between the Parties on the reasonable period of time in accordance with paragraph 3, either Party may request the original Panel to determine the length of the reasonable period of time. Such a request shall be made in writing and notified to the other Party. The Panel shall notify its report to the Parties within 20 days from the date of the submission of the request.
5. The reasonable period of time may be extended by mutual agreement of the Parties. All periods contained in this Article constitute part of the reasonable period of time.

#### **Article 17.16: Review of any Measure Taken to Comply with the Final Report**

1. The Party complained against shall notify the complaining Party by the end of the reasonable period of time of any measure that it has taken to comply with the final report of the Panel and provide the details such as the effective date, the relevant text of the measure and a factual and juridical explanation of how the measure taken to comply brings the Party complained against into compliance.
2. In the event of disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request the original Panel to rule on the matter. Such request shall be made in writing, identify the specific measure at issue and explain how such measure is inconsistent with the provisions of this Agreement. The Panel shall notify its report within 45 days of the date of the submission of the request.

## **Article 17.17: Non-Implementation – Compensation and Suspension of Benefits**

1. If a Panel has made a determination of the type described in Article 17.12 (Final Report) and the Party complained against fails to notify any measure taken to comply with the final report of the Panel before the expiry of the reasonable period of time, or if the complaining Party considers that the Party complained against has failed to carry out the mutually satisfactory solution, or if the Panel rules that the measure notified under Article 17.16 (Review of any Measure Taken to Comply with the Final Report) is inconsistent with that Party's obligations under this Agreement, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation. This compensation shall be effective from the moment the Parties agree to it until the Party complained against complies.

2. If the disputing Parties:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
- (b) have agreed on compensation and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application, to that Party, of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. The complaining Party may begin suspending benefits 30 days after the date on which it provides written notice under this paragraph, or 7 days after the Panel issues its determination under paragraph 3, as the case may be, and until the Party complained against complies.

3. If the Party complained against considers that:

- (a) the level of benefits proposed to be suspended is manifestly excessive; or
- (b) it has complied,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original Panel be reconvened to consider the matter. The Party complained against shall also deliver its request in writing to the complaining Party. The Panel shall reconvene as soon as possible after delivery of the request and shall notify its determination to the disputing Parties within 60 days after it reconvenes. If the Panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the Panel has determined under paragraph 3 or, if the Panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the Panel has determined that the Party complained against has complied.

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

- (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the Panel has found to be inconsistent with the obligations of this Agreement; and
- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

#### **Article 17.18: Compliance Review**

1. In those cases where suspension of benefits has been applied, and the Party complained against considers that it has complied, it may provide written notice to the complaining Party to request the end of the suspension of benefits. If the complaining Party disagrees, the Party complained against may refer the matter to the Panel. The Panel shall notify its report on the matter within 30 days after the Party complained against refers the matter to it.

2. If the Panel decides that the Party complained against has complied, the complaining Party shall promptly reinstate any benefits suspended under Article 17.17 (Non-Implementation – Compensation and Suspension of Benefits).

#### **Article 17.19: Time Periods**

1. All time periods laid down in this Chapter and in the Rules of Procedure, including the periods for Panels to notify their reports, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time period referred to in this Chapter and in the Rules of Procedure may be modified by mutual agreement of the Parties in specific proceedings.