

CHAPTER 15 DISPUTE SETTLEMENT

ARTICLE 15.1 COOPERATION

The Parties shall at all times endeavour to agree on the implementation, 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 15.2 SCOPE AND COVERAGE

1. Except as otherwise provided in this Agreement or as the Parties otherwise agree in writing, the provisions of this Chapter shall apply with respect to the avoidance and settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with the obligations of this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a measure of the other Party causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (Trade in Goods), 4 (Rules of Origin), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade), and 8 (Cross-Border Trade in Services).

2. Unless otherwise agreed by the Parties, the time frames and procedural rules set out in this Chapter and its Annex shall apply to all disputes governed by this Chapter.

3. Findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by the relevant authorities within the territory of a Party. When an arbitral panel has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance within its territory.

5. The Parties and the arbitral panel appointed under this Chapter shall interpret and apply the provisions of this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of public international law.

6. Notwithstanding paragraph 1, any disputes arising from Chapters 10 (Competition) and 13 (Intellectual Property Cooperation) shall not be subject to the provisions of this Chapter save that where there are provisions on consultations elsewhere in this Agreement, Articles 15.4 (Consultations) and 15.5 (Good Offices, Conciliation or Mediation) shall apply,

mutatis mutandis.

ARTICLE 15.3 CHOICE OF FORUM

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.
2. Once dispute settlement procedures have been initiated under Article 15.6 (Request for an Arbitral Panel) or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless substantially separate and distinct rights or obligations under different international agreements are in dispute.
3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

ARTICLE 15.4 CONSULTATIONS

1. A Party may request in writing consultations with the other Party on any matter falling under Article 15.2 (Scope and Coverage) of this Chapter.
2. If a request for consultation is made, the Party to which the request is made shall reply to the request within ten (10) days after the date of its receipt and shall enter into consultations within a period of no more than twenty (20) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
 - (a) unless otherwise agreed by the Parties, keep consultations confidential;
 - (b) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and
 - (c) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

ARTICLE 15.5 GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.
2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 15.6 (Request for an Arbitral Panel).

ARTICLE 15.6 REQUEST FOR AN ARBITRAL PANEL

1. A Party may request in writing for the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 15.4 (Consultations), within sixty (60) days after the date of receipt of the request for consultations.

2. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the Parties, an arbitral panel shall be established and perform its functions in accordance with the provisions of this Chapter.

ARTICLE 15.7 COMPOSITION OF ARBITRAL PANELS

1. The arbitral panel referred to in Article 15.6 (Request for an Arbitral Panel) shall consist of three (3) members.

2. Each Party shall appoint a member within thirty (30) days of the receipt of the request under Article 15.6 (Request for an Arbitral Panel).

3. If a Party fails to make such an appointment (hereinafter referred to as “the defaulting Party”) within such period:

- (a) the defaulting Party shall, within fifteen (15) days from the expiry of the time referred to in paragraph 2, select a member from the roster established under subparagraph (b) of Article 15.8 (Establishment of Roster) to serve as the member appointed by the defaulting Party;
- (b) if the defaulting Party fails to select a member under subparagraph (a), a member shall be selected by lot drawn by the other Party from the individuals nominated by the defaulting Party pursuant to subparagraph (b) of Article 15.8 (Establishment of Roster), to serve as the member appointed by the defaulting Party.

4. The Parties shall jointly appoint the third member, who shall serve as the chair of the arbitral panel. If the Parties are unable to agree on the chair of the arbitral panel within thirty (30) days after the date on which the second member has been appointed, the chair shall be selected by lot from the roster established under subparagraph (a) of Article 15.8 (Establishment of Roster).

5. The date of establishment of the arbitral panel shall be the date on which the chair is appointed.

6. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning on the date when the original member becomes unable to act and ending on the date when the new member is appointed.

7. Any person appointed as a member of the arbitral panel shall have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising from international trade agreements. A member shall be chosen strictly on the bases of objectivity, integrity, reliability, sound judgment and independence, and shall not accept instructions from any Party. He or she shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings. All members of the arbitral panel shall comply with the Rule of Conduct for panellists established under the *Understanding of Rules and Procedures Governing the Settlement of Disputes*, which is part of the WTO Agreement. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not be a citizen of, have his or her usual place of residence in the territory of, or be employed by, either Party.

ARTICLE 15.8 ESTABLISHMENT OF ROSTER

The Parties shall establish within one (1) year of the date of entry into force of this Agreement and maintain:

- (a) a roster of five (5) individuals, by mutual agreement of the Parties, who are willing and able to serve as the chair of the arbitral panel referred to in paragraph 4 of Article 15.7 (Composition of Arbitral Panels); and
- (b) a roster of at least ten (10) individuals, with each Party nominating at least five (5) individuals, who are willing and able to serve as members of the arbitral panel referred to in paragraph 3 of Article 15.7 (Composition of Arbitral Panels),

who shall meet the criteria set out in paragraph 7 of Article 15.7 (Composition of Arbitral Panels). The Parties may, by mutual agreement, change or include new individuals on the roster established pursuant to subparagraph (a), whenever they consider it necessary to do so. Either Party may change or include new individuals on the roster established pursuant to subparagraph (b), whenever the Party considers it necessary to do so.

ARTICLE 15.9 SUSPENSION AND TERMINATION OF PROCEEDINGS

The Parties may agree to suspend, subject to such terms as the Parties may consider appropriate, or terminate the proceedings before an arbitral panel at any time by jointly notifying the chair to this effect.

ARTICLE 15.10 PROCEEDINGS OF ARBITRAL PANELS

1. Unless the Parties agree otherwise, the arbitral panel shall follow the model rules of procedure in Annex 15, which shall ensure:

- (a) that an arbitral panel shall meet in closed session;
- (b) a right to at least one hearing before the arbitral panel;
- (c) an opportunity for each Party to provide initial and rebuttal submissions;
- (d) that each Party's written submissions, written versions of its oral statement, and written response to a request or question from the arbitral panel may be made public after they are submitted, subject to subparagraph (f);
- (e) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 3 of Article 15.12 (Initial Report); and
- (f) the protection of confidential information.

2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules of procedure in Annex 15.

ARTICLE 15.11 INFORMATION AND TECHNICAL ADVICE

1. Upon 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. Any information and technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel during its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

ARTICLE 15.12 INITIAL REPORT

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it pursuant to Article 15.11 (Information and Technical Advice).

2. Unless the Parties otherwise agree, the arbitral panel shall, within ninety (90) days after the last member is selected, present to the Parties an initial report containing:

- (a) findings of law and/or fact together with reasons;
- (b) its determination as to the implementation, interpretation or application of this

Agreement or whether the measure at issue is inconsistent with the obligations of this Agreement or whether a Party has otherwise failed to carry its obligations under this Agreement or whether the measure at issue causes nullification or impairment of any benefit accruing to a Party under Chapters 3 (Trade in Goods), 4 (Rules of Origin), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade) and 8 (Cross-Border Trade in Services) of this Agreement, or any other determination requested in the terms of reference; and

(c) its recommendations for the resolution of the dispute.

3. The Parties may submit written comments on the initial report within fourteen (14) days of its presentation or such other period as the Parties may agree.

4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

ARTICLE 15.13 FINAL REPORT

1. The arbitral panel shall present to the Parties a final report covering the matters set out in paragraph 2 of Article 15.12 (Initial Report), within thirty (30) days of presentation of the initial report, unless the Parties otherwise agree.

2. The final report of the arbitral panel shall be made publicly available by the Parties within fifteen (15) days of its delivery, except that opinions expressed in such final report by any member of the arbitral panel shall be anonymous.

ARTICLE 15.14 IMPLEMENTATION OF FINAL REPORT

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.

2. On receipt of the final report of an arbitral panel, the Parties shall agree on:

(a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitral panel; and

(b) the reasonable period of time which is necessary in order to implement the means to resolve the dispute. If the Parties fail to agree on the reasonable period of time, a Party may request the original arbitral panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitral panel shall be presented within fifteen (15) days from that request.

3. If, in its final report, the arbitral panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or

impairment, the means to resolve the dispute shall, whenever possible, be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 15.15 NON-IMPLEMENTATION – COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Parties:

- (a) are unable to agree on the means to resolve the dispute pursuant to subparagraph 2(a) of Article 15.14 (Implementation of Final Report) within thirty (30) days of issuance of the final report; or
- (b) have agreed on the means to resolve the dispute pursuant to subparagraph 2(a) of Article 15.14 (Implementation of Final Report) and the Party complained against fails to implement the aforesaid means within thirty (30) days following the expiration of the reasonable period of time determined in accordance with subparagraph 2(b) of Article 15.14 (Implementation of Final Report),

the Party complained against shall enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensatory adjustment has been reached within twenty (20) days after the Parties have entered into negotiations on compensatory adjustment, or having agreed on compensatory adjustment, the complaining Party considers that the other Party has failed to observe the terms of such 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 complaining Party proposes to suspend. The complaining Party may begin suspending benefits thirty (30) days after the date when it provides notice to the Party complained against under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.

3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.

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

- (a) the 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 arbitral panel has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
- (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment has been removed, or a mutually satisfactory solution is reached.

6. If the Party complained against considers that:
 - (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or
 - (b) it has eliminated the non-conformity, nullification or impairment that the arbitral panel has found,

it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within thirty (30) days after it reconvenes. If the arbitral 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.

7. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment for the arbitral panel set out in Article 15.7 (Composition of Arbitral Panels) shall be applied.

ARTICLE 15.16 OFFICIAL LANGUAGE

1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.
2. When an original document submitted to the arbitral panel by a Party is not in the English language, that Party shall translate the whole or such parts of the document that may be relevant or as requested by the panel or the other Party into the English language, and submit it with the original document at the same time.

ARTICLE 15.17 EXPENSES

1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.
2. Each Party shall bear its own expenses and legal costs in the arbitral proceedings.