

CHAPTER 20 : ADMINISTRATION AND DISPUTE SETTLEMENT**ARTICLE 20.1 : JOINT COMMITTEE**

1. The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.
 - (a) The Joint Committee shall be composed of government officials of each Party and shall be chaired by (i) the United States Trade Representative and (ii) Singapore's Minister for Trade and Industry or their designees.
 - (b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing committees or working groups, and seek the advice of non-governmental persons or groups.
2. The Joint Committee shall:
 - (a) review the general functioning of this Agreement;
 - (b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives, such as those related to customs administration, technical barriers to trade, electronic commerce, the environment, labor, the Medical Products Working Group, and distilled spirits;
 - (c) facilitate the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Articles 20.3 and 20.4;
 - (d) consider and adopt any amendment to this Agreement or other modification to the commitments therein, subject to completion of necessary domestic legal procedures by each Party;
 - (e) as appropriate, issue interpretations of this Agreement, including as provided in Articles 15.21 (Governing Law) and 15.22 (Interpretation of Annexes);
 - (f) consider ways to further enhance trade relations between the Parties and to further the objectives of this Agreement; and
 - (g) take such other action as the Parties may agree.
3. At its first meeting, the Joint Committee shall consider the review performed by each Party of the environmental effects of this Agreement and shall provide the public an opportunity to provide views on those effects.
4. The Joint Committee shall establish its own rules of procedure.
5. Unless the Parties otherwise agree, the Joint Committee shall convene:

- (a) in regular session every year in order to review the general functioning of the Agreement, with such sessions to be held alternately in the territory of each Party; and
- (b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties. A requirement under Article 20.4 that the Joint Committee take any action with regard to a dispute shall not be interpreted to require the convening of a special session of the Joint Committee.

6. Recognizing the importance of transparency and openness, the Parties reaffirm their respective practices of considering the views of members of the public in order to draw upon a broad range of perspectives in the implementation of this Agreement.

7. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee on the same basis as the Party providing the information.

ARTICLE 20.2 : ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

1. Each Party shall:

- (a) designate an office that shall be responsible for providing administrative assistance to panels established under Article 20.4;
- (b) be responsible for the operation and costs of its designated office; and
- (c) notify the other Party of the location of its office.

2. The Joint Committee shall establish the amounts of remuneration and expenses to be paid to panelists.

3. The remuneration of panelists and their assistants, their travel and lodging expenses, and all general expenses relating to proceedings of a panel established under Article 20.4 shall be borne equally by the Parties.

4. Each panelist shall keep a record and render a final account of the panelist's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

ARTICLE 20.3 : CONSULTATIONS

1. Except as otherwise provided in this Agreement, either Party may request consultations with the other Party with respect to any matter that it considers might affect the operation of this Agreement by delivering written notification to the other Party's office designated under Article 20.2.1(a). If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

2. 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.

3. In the consultations, each Party shall:

- (a) provide sufficient information to enable a full examination of how the matter subject to consultations 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.

ARTICLE 20.4 : ADDITIONAL DISPUTE SETTLEMENT PROCEDURES

1. Except as otherwise provided in this Agreement or as the Parties otherwise agree, the provisions of this Article shall apply 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 benefit the Party could reasonably have expected to accrue to it under Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin), Chapter 8 (Cross Border Trade in Services), or Chapter 16 (Intellectual Property Rights) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. (a) The Parties shall first seek to resolve a dispute described in paragraph 1 through consultations under Article 20.3. If the consultations fail to resolve the dispute within 60 days of the delivery of a Party's request for consultations under Article 20.3.1, either Party may, by delivering written notification to the other Party's office designated under Article 20.2.1(a), refer the matter to the Joint Committee, which shall endeavor to resolve the dispute.

(b) Subject to Article 20.3.3(b), promptly after requesting or receiving a request for consultations related to a matter identified in paragraph 1, each Party shall solicit and consider the views of members of the public in order to draw upon a broad range of perspectives.

3. (a) Where a dispute regarding any matter referred to in paragraph 1 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.

- (b) The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
 - (c) Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.
 - (d) For the purposes of this paragraph, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.
4. (a) If the Joint Committee has not resolved a dispute within 60 days after delivery of the notification described in paragraph 2(a) or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party's office designated under Article 20.2.1(a).²⁰⁻¹ Unless the Parties otherwise agree:
- (i) The panel shall have three members.
 - (ii) Each Party shall appoint one panelist, in consultation with the other Party, within 30 days after the matter has been referred to a panel. If a Party fails to appoint a panelist within such period, a panelist shall be selected by lot from the contingent list established under subparagraph (b) to serve as the panelist appointed by that Party.
 - (iii) The Parties shall endeavor to agree on a third panelist who shall serve as chair.
 - (iv) If the Parties are unable to agree on the chair of the Panel within 30 days after the date on which the second panelist has been appointed, the chair shall be selected by lot from the contingent list established under subparagraph (b).
 - (v) The date of establishment of the panel shall be the date on which the chair is appointed.
- (b) (i) By the date of entry into force of this Agreement, the Parties shall establish a contingent list of five individuals who are willing and able to serve as a panelist or chair.
- (ii) Each such individual shall have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements; shall be independent of, and not be affiliated with or

²⁰⁻¹ This paragraph is subject to the letter referred to in Article 15.26(c) (Status of Letter Exchanges).

take instructions from, any Party; and shall comply with the code of conduct to be established by the Joint Committee.

- (iii) Individuals on the contingent list shall be appointed by agreement of the Parties for terms of three years, and may be reappointed.
- (c) Panelists other than those chosen by lot from the contingent list shall meet the criteria set out in subparagraph (b)(ii) and have expertise or experience relevant to the subject matter that is under dispute.
- (d) The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:
 - (i) a right to at least one hearing before the panel, which, subject to clause (vi), shall be open to the public;
 - (ii) an opportunity for each Party to provide initial and rebuttal submissions;
 - (iii) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel will be made public within ten days after they are submitted, subject to clause (vi);
 - (iv) that the panel shall consider requests from nongovernmental entities in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
 - (v) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 5(a); and
 - (vi) the protection of confidential information.

Unless the Parties agree otherwise, the panel shall follow the model rules of procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

- 5. (a) Unless the Parties agree otherwise, the panel shall, within 150 days after the chair is appointed, present to the Parties an initial report containing findings of fact and its determination as to whether:
 - (i) the measure at issue is inconsistent with the obligations of this Agreement;
 - (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

- (iii) the measure at issue causes a nullification or impairment described in subparagraph 1(c); as well as any other determination requested by both Parties with regard to the dispute.
- (b) The panel shall base its report on the submissions and arguments of the Parties. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.
- (c) After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.
- (d) The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

ARTICLE 20.5 : IMPLEMENTATION OF THE FINAL REPORT

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.
2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.4.1(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 20.6 : NON-IMPLEMENTATION

1. If a panel has made a determination of the type described in Article 20.5.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 20.5.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.
2. If the 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 or on a resolution pursuant to Article 20.5.1 and 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 office designated by the other Party pursuant to Article 20.2.1(a) that it intends to suspend the application to the

other Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice to the other Party's designated office under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

- (a) the level of benefits that the other Party has proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall reconvene as soon as possible after delivery of the request to the designated office and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). 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 Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party's office designated pursuant to Article 20.2.1(a) that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Singaporean currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and

expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

8. This Article shall not apply with respect to a matter described in Article 20.7.1.

ARTICLE 20.7 : NON-IMPLEMENTATION IN CERTAIN DISPUTES

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 17.2.1(a) (Application and Enforcement of Labor Laws) or Article 18.2.1(a) (Application and Enforcement of Environmental Laws), and the Parties:

- (a) are unable to reach agreement on a resolution pursuant to Article 20.5.1 within 45 days of receiving the final report; or
- (b) have agreed on a resolution pursuant to Article 20.5.1 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 request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining Party shall deliver its request in writing to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall reconvene as soon as possible after delivery of the request to the designated office.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

- (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;
- (c) the reasons for the Party's failure to effectively enforce the relevant law;
- (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- (e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and
- (f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20A.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any other time thereafter, the complaining Party may provide notice in writing to the office designated by the other Party pursuant to Article 20.2.1(a) demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Singaporean currency, in equal, quarterly installments beginning on the later of:

- (a) 60 days after the date on which the panel determines the amount; or
- (b) 60 days after the complaining Party provides the notice described in this paragraph.

4. Assessments shall be paid into a fund established by the Joint Committee and shall be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Joint Committee shall consider the views of interested persons in the Parties' territories.

5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the other Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

6. If the complaining Party cannot obtain the funds from the other Party's escrow account within 30 days of the date on which payment is due, or if the other Party has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

ARTICLE 20.8 : COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.6.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.6 or 20.7 and the Party complained against shall no longer be

required to pay any monetary assessment it has agreed to pay under Article 20.6.5 or that has been imposed on it under Article 20.7.

ARTICLE 20.9 : FIVE-YEAR REVIEW

The Joint Committee shall review the operation and effectiveness of Articles 20.6 and 20.7 not later than five years after the date of entry into force of this Agreement, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

ARTICLE 20.10 : 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.

ANNEX 20A**INFLATION ADJUSTMENT FORMULA FOR MONETARY ASSESSMENTS**

1. An annual monetary assessment imposed before December 31, 2004 shall not exceed 15 million U.S. dollars.
2. Beginning January 1, 2005, the 15 million U.S. dollar annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.
3. The period used for the accumulated inflation adjustment shall be calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.
4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.
5. The inflation adjustment shall be estimated according to the following formula:

$$\$15 \text{ million} \times (1 + \pi_i) = A$$

π_i = accumulated U.S. inflation rate from calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.

A = cap for the assessment for the year in question.

