

**CHAPTER 9**  
**DISPUTE SETTLEMENT**

**ARTICLE 73**

**Scope and Coverage**

Unless otherwise provided in this Agreement, wherever a Party considers that a measure of the other Party is inconsistent with the rights and obligations of this Agreement, the dispute settlement provisions of this Chapter shall apply.

**ARTICLE 74**

**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, including 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 75**

**Consultations**

1. In case of any divergence with respect to the interpretation, implementation and application of this Agreement, the Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory solution.

2. Each Party may request in writing consultations with the other Party regarding any measure which is found to be inconsistent with the rights and obligations of this Agreement. The request for consultations shall set out the reasons for the request, including identification of the measure at issue and a brief summary of the legal basis for the complaint. The other Party shall reply to the request within 10 days after the date of its receipt.

3. The consultations shall take place in the Joint Committee if a Party so requests within 30 days from the receipt of the notification referred to in paragraph 2, with a view to finding a commonly acceptable solution. Consultations on urgent matters shall commence within 15 days from the receipt of the request for consultations. If the Party to which a request is made in accordance with paragraph 2 does not reply within 10 days or does not enter into consultations within 30 days after the receipt of the request, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 77 (Establishment of Arbitration Panel).

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

## **ARTICLE 76**

### **Good Offices, Conciliation or Mediation**

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of an arbitration panel established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

## **ARTICLE 77**

### **Establishment of Arbitration Panel**

1. Disputes between the Parties relating to the interpretation of rights and obligations under this Agreement, which have not been settled through direct consultations or in the Joint Committee within 60 days, or 30 days in relation to urgent matters, from the date of the receipt of the request for consultations, may be referred to arbitration by the complaining Party by means of a written notification addressed to the Party complained against.

2. The request for arbitration shall identify the specific measure at issue and provide a brief summary of the legal basis of the complaint.

3. The arbitration panel shall comprise three members. Within 25 days of the receipt of the notification referred to in paragraph 1, each party shall appoint one member. The two members already appointed shall agree on the appointment of the third member within 30 days of the appointment of the second member. The third member shall not be a national of the Parties, nor permanently reside in the territory of any of the Parties. The member thus appointed shall be the Chair of the arbitration panel.

4. If any member of the arbitration panel has not been designated within 55 days after the receipt of the written request for arbitration in accordance with paragraph 1, at the request of any Party to the dispute, the Director General of the WTO is expected to designate a member within a further 30 days. In the event that the Director General of the WTO is a national of any Party or unable to perform this task, the Deputy Director General of the WTO who is not a national of any Party shall be requested to perform such task. If the Deputy Director General of the WTO is unable to perform this task as well, the President of the Permanent Court of Arbitration (PCA) shall be requested to perform this task.

All panelists shall:

- (a) have expertise or experience in law, international trade or the resolution of disputes arising under international trade agreements and, if possible, have expertise in the matter covered by the dispute;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;
- (c) be independent of and not be affiliated with or take instructions from any Party;

(d) comply with a code of conduct in conformity with the relevant rules established in the document WT/DSB/RC/1 of the WTO.

5. 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 arbitration panel shall be suspended during the appointment of the successor panelist.

## **ARTICLE 78**

### **Functions of Arbitration Panel**

1. The arbitration panel shall make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity of this Agreement. The decision of the arbitration panel shall be final and binding upon the Parties to the dispute.

2. Where an arbitration panels concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.

3. The arbitration panel shall make its decision based on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law.

4. The arbitration panel, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

## **ARTICLE 79**

### **Rules of Procedure**

1. Unless the Parties agree otherwise, the arbitration panel proceedings shall be conducted in accordance with the Rules of Procedure set out in Annex 5 (Rules of Procedure of Arbitration Panel). These Rules and any time frames specified in this Chapter may be amended by the Joint Committee.

2. Unless the Parties otherwise agree within 30 days from the date of receipt of the request for arbitration in accordance with paragraph 1, its 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 arbitration panel pursuant to Article 77 (Establishment of Arbitration Panel) and to make findings of law and fact together with the reasons therefor, for the resolution of the dispute.”

3. The arbitration panel shall strive to take its decisions by consensus. If it is unable to reach consensus, it may take its decisions by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed. The arbitration panel may not disclose which members are associated with majority or minority opinions.

4. At the request of the either Party or on its own initiative, the arbitration panel may seek scientific information and technical advice from experts as it deems

appropriate.

5. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

## **ARTICLE 80**

### **Suspension or Termination of Proceedings**

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

2. The Parties may agree to terminate the proceedings of an arbitration panel.

## **ARTICLE 81**

### **Report of Arbitration Panel**

1. The report of the arbitration panel shall be drafted without the presence of the Parties in the light of the information provided and the statements made to the arbitration panel.

2. In order to enable the Parties to have an opportunity for review and comment, the arbitration panel shall present the Parties its initial report within 90 days of the tribunal's formation setting out its findings of facts and its determination as to whether a disputing Party has conformed with its obligations under this Agreement. In exceptional cases, if the arbitration panel considers it cannot release its initial report within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.

3. A Party may submit written comments to the arbitration panel within 10 days of receiving the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitration panel shall present the Parties its final report within 30 days of presentation of the initial report, unless the Parties otherwise agree. The final report of the arbitration panel shall be made available as a public document after the lapse of 10 days from the date of its release, subject to the protection of the confidential information, in accordance with the legislation of the Parties.

4. The arbitral report is final.

## **ARTICLE 82**

### **Implementation of the Decision**

1. The Party concerned shall promptly comply with the decision of the arbitration panel. If it is impracticable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 30

days from the date of the award, either Party may, within 10 days from the expiration of such period, request the original arbitration panel to determine the length of the reasonable period of time. The ruling of the arbitration panel should be given within 30 days from the receipt of that request.

2. The Party concerned shall notify the other Party of the measure adopted in order to implement the award, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other Party to assess the measure.

## **ARTICLE 83**

### **Compliance Review**

1. Where the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the recommendations and rulings of the arbitration panel, such dispute shall be decided through recourse to the dispute settlement procedures under this Chapter, including wherever possible by resort to the original arbitration panel.

2. The arbitration panel shall convene as soon as possible after the delivery of the request and shall issue its report on the matter within 60 days of the date of delivery of the written notification. When the arbitration panel considers that it cannot issue 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 issue its report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise.

3. Articles concerning the procedure of arbitration panel in this Chapter shall apply *mutatis mutandis* to the procedure under this Article.

## **ARTICLE 84**

### **Compensation and Suspension of Benefits**

1. If the Party concerned fails to comply with the decision within a reasonable period of time and the Parties have not agreed on any compensation, the other Party may, until the decision has been properly implemented or the dispute has been otherwise resolved, and subject to a prior notification of 30 days, suspend the application of benefits granted under this Agreement, but only equivalent to those affected by the measure that the arbitration panel has found to violate this Agreement.

2. In considering what concessions and obligations to suspend, the complaining Party shall first seek to suspend concessions and obligations in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. If the complaining Party considers it is not practicable or effective to suspend concessions and obligations in the same sector or sectors, it may suspend concessions and obligations in other sectors. In such a case, the

complaining Party shall include in its notification announcing the suspension of concessions or obligations the reasons for its decision.

3. In its notification announcing the suspension of concessions or obligations, the complaining Party shall indicate the concessions or obligations which it intends to suspend, the grounds for such suspension and when suspension will commence. Within 15 days from the receipt of that notification, the Party complained against may request the arbitration panel to rule on whether the concessions or obligations which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 60 days from the receipt of that request. Concessions or obligations shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the Parties have resolved the dispute otherwise. To this end, if the Party complained against considers that it has eliminated the non-conformity that the arbitration panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed.

5. Any dispute regarding the implementation of the decision or the notified suspension shall be decided by the arbitration panel upon request of either Party before compensation can be sought or suspension of benefits can be applied. The arbitration panel may also rule on the conformity with the decision of any implementing measures adopted after the suspension of benefits and whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel under this paragraph shall normally be given within 45 days from the date of receipt of the request.

## **ARTICLE 85**

### **Post Suspension**

1. Without prejudice to the procedures in Article 84 (Compensation and Suspension of Benefits), if the Party complained against considers that it has eliminated the non-conformity that the arbitration 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 disagrees, it may refer the matter to the original arbitration panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The arbitration panel shall issue its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the arbitration panel concludes that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

## **ARTICLE 86**

### **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.