

## **CHAPTER 17 DISPUTE SETTLEMENT**

### **Article 17.1: Objective**

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

### **Article 17.2: Cooperation**

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

### **Article 17.3: Scope of Application**

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation, or application of this Agreement (hereinafter referred to as “covered provisions”), 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 otherwise failed to carry out its obligations under this Agreement.
2. This Chapter shall not cover non-violation complaints and other situation complaints.

### **Article 17.4: Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

### **Article 17.5: Request for Information**

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Articles 17.6 (Consultations) or 17.7 (Good Offices, Conciliation or Mediation) respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

### **Article 17.6: Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 17.3 (Scope of Application) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual basis and the legal basis specifying the covered provisions that it considers applicable.
3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. Consultations shall be held within 30 days of the date of receipt of the request. The consultations shall be deemed to be concluded within 45 days of the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations on matters of urgency including those which concern perishable goods, shall be held within 15 days of the date of receipt of the request. The consultations shall be deemed to be concluded within those 20 days unless the Parties agree otherwise.
5. During consultations each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure is affecting the operation and application of this Agreement.
6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
7. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.
8. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed

solution has been reached, the Party that sought consultations may have recourse to Article 17.8 (Establishment of a Panel).

#### **Article 17.7: Good Offices, Conciliation or Mediation**

1. The Parties may at any time agree to undertake 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 or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings.
3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the panel procedures proceed.

#### **Article 17.8: Establishment of a Panel**

1. The complaining Party may request the establishment of a panel if:
  - (a) the respondent Party does not reply to the request in accordance with the time frames referred to in Article 17.6 (Consultations); or
  - (b) the consultations referred to in Article 17.6 (Consultations) are not held or fail to settle a dispute within 45 days or 20 days in relation to urgent matters including those which concern perishable goods after the date of the receipt of the request for consultations by the respondent Party.
2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the factual basis of the complaint and the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent with those provisions.
3. When a request is made by the complaining Party in accordance with paragraph 1, a panel shall be established.

#### **Article 17.9: Composition of a Panel**

1. The Parties shall apply the following procedures in establishing a panel:
  - (a) the panel shall comprise three panellists, unless the Parties agree otherwise;
  - (b) within 30 days after the date of receipt of the request for the establishment of the panel, each Party shall notify the other Party of its appointment of a panellist and propose up to four candidates, who are not nationals of either Party and do not have their usual place of residence in either Party, to serve as the chairperson of the panel. If a Party fails to appoint a panellist within this time, the panellist

shall be appointed by the other Party from the candidates proposed for the chairperson by the Party that failed to appoint a panellist, if such a list exists or, in the absence of such a list, from the other Party's proposed candidates;

- (c) the Parties shall endeavour to agree on a third panellist who shall serve as chairperson from among the candidates proposed, within 15 days from the date the second panellist has been appointed or selected. If the Parties fail to decide on a chairperson within this time period, within a further seven days, the chairperson shall be appointed after selection by lot, from the candidates proposed, in the presence of representatives of both Parties.
2. The date of establishment of the panel shall be the date upon which the chairperson is appointed.
  3. If a panellist appointed by a Party withdraws, is removed or becomes unable to serve, a replacement shall be appointed by that Party within 30 days and, in cases of urgency, within 15 days, failing which the replacement shall be appointed by the other Party from the candidates proposed for the chairperson in accordance with the second sentence of subparagraph 1(b).
  4. If the chairperson of the panel withdraws, is removed or becomes unable to serve, the Parties shall endeavour to decide on the appointment of a replacement within 30 days and, in cases of urgency, within 15 days, failing which the replacement shall be appointed in accordance with subparagraph 1(c).
  5. If an appointment in paragraph 3 or paragraph 4 would require selecting from the list of candidates proposed for chairperson and there are no remaining candidates, each Party shall propose up to three additional candidates within 30 days and, within a further seven days the panellist or the chairperson shall be appointed after selection by lot, from the candidates proposed, in the presence of representatives of both Parties.

#### **Article 17.10: Decision on Urgency**

If a Party so requests, the panel shall give a preliminary ruling, within 15 days of its composition, as to whether the dispute concerns matters of urgency.

#### **Article 17.11: Requirements for Panellists**

1. Each panellist shall:
  - (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement or in the resolution of disputes arising under international trade agreements;
  - (b) be independent of, and not be affiliated with or take instructions from, either Party;

- (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute;
  - (d) comply with the Code of Conduct established in Annex 17B (Code of Conduct); and
  - (e) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment.
2. The chairperson shall also have experience in dispute settlement procedures.
  3. Persons who provided good offices, conciliation or mediation to the Parties, pursuant to Article 17.7 (Good Offices, Conciliation or Mediation) in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panellists in that matter.

#### **Article 17.12: Replacement of Panellists**

If any of the panellists of the original panel becomes unable to act, withdraws or needs to be replaced because that panellist does not comply with the requirements of the code of conduct, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist under Article 17.9 (Composition of a Panel) and the work of the panel shall be suspended during the appointment of the successor panellist.

#### **Article 17.13: Functions of the Panel**

Unless the Parties otherwise agree, the panel:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity of the measure at issue with the covered provisions;
- (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and
- (c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

#### **Article 17.14: Terms of Reference**

1. Unless the Parties otherwise agree within 15 days after the date of establishment of the panel, the terms of reference of the panel shall be:

“to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings as to the conformity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to

resolve the dispute, and to deliver a report in accordance with Articles 17.18 (Interim Report) and 17.19 (Final Report)”.

2. If the Parties agree on other terms of reference than those referred to in paragraph 1 within the timeline specified therein, they shall notify the agreed terms of reference to the panel no later than five days after their agreement.

#### **Article 17.15: Rules of Interpretation**

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.
2. When appropriate, the panel may also take into account relevant interpretations in reports of panels established under this Agreement and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.
3. The rulings of the panel cannot add to or diminish the rights and obligations of the Parties provided for under this Agreement.

#### **Article 17.16: Procedures of the Panel**

1. Unless the Parties otherwise agree, the panel shall follow the Rules of Procedure set out in Annex 17A (Rules of Procedure for the Panel).
2. There shall be no *ex parte* communications with the panel concerning matters under its consideration.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential.
4. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
5. The panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution.
6. The panel shall make its decisions, including its reports by consensus, but if consensus is not possible then by majority vote. Any panellist may furnish separate opinions on matters not unanimously agreed, and such separate opinions shall not be disclosed.
7. Rulings of the panel shall be binding on the Parties.

### **Article 17.17: Receipt of Information**

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.
2. On request of a Party or on its own initiative, the panel may seek from any source any information it considers appropriate.
3. On request of a Party, or on its own initiative, the panel may seek technical advice or expert opinion from any individual or body that it deems appropriate, and subject to any terms and conditions as the Parties agree.
4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

### **Article 17.18: Interim Report**

1. The panel shall deliver an interim report to the Parties within 90 days after the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. Under no circumstances shall the delay exceed 30 days after the deadline. The interim report shall not be made public.
2. The interim report shall set out a descriptive part and the panel's findings and conclusions.
3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within 15 days of the date of issuance of the interim report. A Party may comment on the other Party's request within 10 days of the delivery of the request.
4. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

### **Article 17.19: Final Report**

1. Unless the Parties otherwise agree, the panel shall issue a final report to the Parties within 30 days of the date of issuance of the interim report. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline.
2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

3. The final report shall be made public within 15 days of its delivery to the Parties unless the Parties otherwise agree to publish the final report only in parts or not to publish the final report. The publication of the report shall be subject to requirement to protect confidential information.

#### **Article 17.20: Implementation of the Final Report**

1. Where the panel finds that the respondent Party has acted inconsistently with a covered provision pursuant to Article 17.3 (Scope of Application), the respondent Party shall take any measure necessary to comply promptly and in good faith with the Panel ruling.
2. If it is impossible to comply immediately, the respondent Party shall, no later than 30 days after the delivery of the final report, notify the complaining Party of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

#### **Article 17.21: Reasonable Period of Time for Compliance**

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party shall, no later than 20 days after the date of receipt of the notification made by the respondent Party in accordance with paragraph 2 of Article 17.20 (Implementation of the Final Report) request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent Party. The 20-day period referred to in this paragraph may be extended by mutual agreement of the Parties.
2. The original panel shall deliver its decision to the Parties within 20 days from the relevant request.
3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

#### **Article 17.22: Compliance Review**

1. The respondent Party shall deliver a written notification of its progress in complying with the final report to the complaining Party at least 30 days before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.
2. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report along with a description on how the measure ensures compliance sufficient to allow the complaining Party to assess the measure before the expiry of the reasonable period of time.



3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to decide on the matter before compensation can be sought or suspension of benefits can be applied in accordance with subparagraph 1(c) of Article 17.23 (Temporary Remedies in Case of Non-Compliance). Such request shall be notified simultaneously to the respondent Party.
4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the respondent Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.
5. The panel shall deliver its decision to the Parties within 75 days of the date of submission of the request.

#### **Article 17.23: Temporary Remedies in Case of Non-Compliance**

1. If the respondent Party:
  - (a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time; or
  - (b) notifies the complaining Party in writing that it is not possible to comply with the final report within the reasonable period of time; or
  - (c) has failed to eliminate the non-conformity pointed out by the original panel referred to in Article 17.22 (Compliance Review) in the final report within the reasonable period of time;

the respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on mutually satisfactory compensation or any alternative arrangement.

2. If the Parties fail to reach a mutually satisfactory agreement within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application of concessions or other obligations under this Agreement.
3. The complaining Party may begin the suspension of concessions or other obligations referred to in the preceding paragraph 25 days after the notification of such suspension, unless the respondent Party made a request under paragraph 7.
4. The suspension of concessions or other obligations:
  - (a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the respondent Party to comply with the final report; and

- (b) shall be restricted to benefits accruing to the respondent Party under this Agreement.
- 5. In considering what concessions or other obligations to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:
  - (a) the complaining Party should first seek to suspend the concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; and
  - (b) the complaining Party may suspend concessions or other obligations in other sectors, if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s). The communication in which it notifies such a decision shall indicate the reasons on which it is based.
- 6. The suspension of concessions or other obligations or the mutually satisfactory agreement foreseen in paragraph 1 shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions has been removed, or until the Parties have reached a mutually agreed solution pursuant to Article 17.28 (Mutually Agreed Solution) of this Agreement.
- 7. If the respondent Party considers that the suspension of concessions or other obligations does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than 20 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify to the Parties its decision on the matter no later than 45 days of the receipt of the request from the respondent Party, or if the original panel cannot be established with its original members, from the date on which the last panellist of the newly established panel is appointed. Concessions or other obligations shall not be suspended until the panel has delivered its decision pursuant to this paragraph. The suspension of concessions or other obligations shall be consistent with this decision. When the panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

**Article 17.24: Review of any Measure Taken to Comply After the Adoption of Temporary Remedies**

- 1. Upon the notification by the respondent Party to the complaining Party of the measure taken to comply with the final report panel ruling:
  - (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 17.23 (Temporary Remedies in Case of Non-Compliance), the

complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or

- (b) in a situation where necessary compensation has been agreed, the respondent Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the respondent Party. The decision of the panel shall be notified to the Parties no later than 30 days after the date of submission of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the covered provisions, the suspension of concessions or other obligations, or the application of the compensation, as the case may be, shall be terminated no later than 15 days after the date of the decision. If the panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

#### **Article 17.25: Suspension and Termination of Proceedings**

If both Parties so request in writing, the panel shall suspend for a period agreed by the Parties and not exceeding 12 consecutive months from such request. In the event of a suspension of the work of the panel, the relevant time periods provided for from Articles 17.8 (Establishment of a Panel) to 17.24 (Review of any Measure Taken to Comply After the Adoption of Temporary Remedies) shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

#### **Article 17.26: Choice of Forum**

1. Unless otherwise provided for in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.
2. If a dispute with regard to a particular measure arises under this Agreement and under another international trade agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 2, the selected forum shall be used to the exclusion of other fora, unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
4. For the purposes of paragraph 3:
  - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 17.8 (Establishment of a Panel);
  - (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and
  - (c) dispute settlement proceedings under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

#### **Article 17.27: Costs**

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

#### **Article 17.28: Mutually Agreed Solution**

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 17.3 (Scope of Application).
2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

#### **Article 17.29: Time Periods**

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified in this Chapter.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

**Article 17.30: Annexes**

The Joint Committee may modify Annexes 17A (Rules of Procedure for the Panel) and 17B (Code of Conduct).