

## **CHAPTER 14 DISPUTE SETTLEMENT**

### **Article 14.1: Objective**

1. The objective of this Chapter is to provide an effective and efficient dispute settlement process between the Parties—for the avoidance and settlement of disputes arising under this Agreement.
2. The Parties shall endeavour to agree on the interpretation and application of this Agreement and shall make all efforts through cooperation, and consultations, to arrive at a mutually satisfactory solution concerning any matter raised under the scope of this Chapter.

### **Article 14.2: Scope**

Except for matters arising under Chapter 10 (Government Procurement), and as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement 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 has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit it could reasonably have expected to accrue to it under a provision of Chapters 2 (Trade in Goods), 3 (Rules of Origin), or 4 (Customs Administration and Trade Facilitation) is being nullified or impaired as a result of the application of a measure of the other Party that is not inconsistent with this Agreement, within the meaning of Article XXIII:1(b) of the GATT 1994.

### **Article 14.3: Mutually Agreed Solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. The Parties shall jointly notify the Joint Committee of any such solution. Upon notification of the mutually agreed solution, any dispute settlement procedure under this Chapter shall be terminated.

### **Article 14.4: Consultations**

1. Any dispute with respect to any matter referred to in Article 14.2 (Scope) shall, as far as possible, be settled by consultations between the Parties.
2. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures or other matter referred to in Article

14.2 (Scope), and an indication of the legal basis of the request, including the provisions of the Agreement considered to be applicable.

3. If a request for consultation is made pursuant to paragraph 2, the Party to which the request is made shall reply to the request within 15 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually agreed solution.

4. Consultations in cases of urgency, including those involving perishable goods shall be held within 15 days after the date of receipt of the request.

5. Consultations shall take place, unless the Parties agree otherwise, in the territory of the Party complained against.

6. The Parties shall make every effort to reach a mutually satisfactory solution to any matter through consultations. To this end, the Parties shall:

- (a) provide sufficient information as may be reasonably available to it to enable a full examination of how the matter or measure subject to consultation might affect the operation of the Agreement; and
- (b) treat as confidential any information exchanged during the consultations.

#### **Article 14.5: Good Offices, Conciliation or Mediation**

1. The Parties may at any stage of any dispute settlement procedure under this Chapter agree to undertake good offices, conciliation or mediation. Good offices, conciliation or mediation may begin at any time and be suspended or terminated by either Party at any time.

2. All proceedings and any documents submitted under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

#### **Article 14.6: Choice of Forum**

Disputes regarding any matter covered both by this Agreement and the WTO Agreement or any other free trade agreement to which both Parties are party may be settled in either forum selected by the complaining Party. Once dispute settlement procedures are initiated under Article 14.8 (Request for the Establishment of an Arbitral Tribunal) to this Agreement or under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 to the WTO Agreement or any other free trade agreement to which both Parties are party, the forum thus selected shall be used to the exclusion of the other fora.

#### **Article 14.7: Qualification of Arbitrators**

1. All arbitrators shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in settlement of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from either Party;
- (d) be nationals of states having diplomatic relations with both Parties; and
- (e) comply with the Code of Conduct attached as Annex 14B (Code of Conduct) to this Agreement.

2. An individual shall not serve as a member of an arbitral tribunal for a dispute in which that person has participated under Article 14.5 (Good Offices, Conciliation or Mediation).

#### **Article 14.8: Request for the Establishment of an Arbitral Tribunal**

1. Unless the Parties agree otherwise, the complaining Party that requested consultations under Article 14.4 (Consultations) may request the establishment of an arbitral tribunal if the Parties failed to resolve the matter:

- (a) within 60 days of the date of receipt of the request for consultations; or
- (b) within 25 days of the date of receipt of the request for consultations for matters referred to in Article 14.4(4).

2. Requests for the establishment of an arbitral tribunal shall be made in writing to the Party complained against. The complaining Party shall identify in its request the specific measure or other matter at issue, and clearly present the legal basis for the complaint, including indicating the relevant provisions of this Agreement.

#### **Article 14.9 Terms of Reference of the Arbitral Tribunal**

Unless the Parties otherwise agree, within 20 days after the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal 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 arbitral tribunal pursuant to Article 14.8(2), and to make findings, determinations and any jointly requested recommendations, as provided in Article 14.12(4).”

## **Article 14.10: Composition of the Arbitral Tribunal**

1. The Parties shall apply the following procedures in establishing an arbitral tribunal:
  - (a) the arbitral tribunal shall comprise three arbitrators, unless the Parties agree otherwise;
  - (b) within 30 days after the date of receipt of the request for the establishment of the arbitral tribunal, each Party shall notify the other Party of its appointment of an arbitrator 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 chair of the arbitral tribunal. If a Party fails to appoint an arbitrator within this time, the arbitrator shall be appointed by the other Party from the candidates proposed for the chair by the Party that failed to appoint an arbitrator, 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 arbitrator who shall serve as chair from among the candidates proposed, within 15 days from the date the second arbitrator has been appointed or selected. If the Parties fail to decide on a chair within this time period, within a further seven days, the chair 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 arbitral tribunal shall be the date upon which the chair is appointed.
3. In case a Party raises a reasoned objection against an arbitrator regarding his or her compliance with the Code of Conduct attached as Annex 14B (Code of Conduct), the Parties shall follow the procedures provided for in rules 18 to 20 of Annex 14A (Rules of Procedure).
4. If an arbitrator 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 chair in accordance with the second sentence of paragraph 1(b).
5. If the chair of the arbitral tribunal 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 paragraph 1(c).
6. If an appointment in paragraph 4 or paragraph 5 would require selecting from the list of candidates proposed for chair 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 arbitrator or the chair shall be appointed after selection by lot, from the candidates proposed, in the presence of representatives of both Parties.

#### **Article 14.11: Function of Arbitral Tribunals**

1. The arbitral tribunal shall make an objective assessment of the matter before it, in accordance with the request for the establishment of an arbitral tribunal, including an examination of the facts of the case and their applicability and consistency with this Agreement. If the arbitral tribunal determines that a measure is inconsistent with a provision of this Agreement, it shall recommend that the Party complained against bring the measure into conformity with that provision.

2. The arbitral tribunal shall base its report on the relevant provisions of this Agreement and on the information provided by the Parties during the proceedings, including submissions, evidence and arguments made at the hearings.

3. The arbitral tribunal established under this Chapter shall consider the provisions of this Agreement in accordance with applicable customary rules of interpretation of treaties including those set forth in the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May 1969. The report of the arbitral tribunal cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

#### **Article 14.12: Proceedings of Arbitral Tribunals**

1. Unless agreed otherwise by the Parties, the arbitral tribunal shall apply the Rules of Procedure attached as Annex 14A (Rules of Procedure) that shall ensure:

- (a) confidentiality of the proceedings and all written submissions to, and communications with, the arbitral tribunal;
- (b) that the deliberations, sessions and meetings of the arbitral tribunal shall be held in closed sessions;
- (c) that the hearings of the arbitral tribunal shall be held in open sessions, unless a Party requests otherwise;
- (d) a right for each Party to at least one hearing before the arbitral tribunal;
- (e) an opportunity for each Party to provide initial and rebuttal submissions;
- (f) the ability of the arbitral tribunal to seek information, technical advice and expert opinions; and
- (g) the protection of confidential information.

2. An arbitral tribunal shall adopt its decisions by consensus. In the event that an arbitral tribunal is unable to reach consensus, it shall adopt its decisions by majority vote.

3. Unless the Parties agree otherwise, the venue for the proceedings shall be at the capital of the Party complained against.

4. Unless the Parties otherwise agree, the arbitral tribunal shall, within 90 days after the chair is appointed, present to the Parties an initial report. The report shall include:

- (a) findings of fact;
- (b) the determination of the arbitral tribunal as to whether:
  - (i) the measure at issue is inconsistent with obligations in this Agreement;  
or
  - (ii) a Party has otherwise failed to carry out its obligations in this Agreement.
- (c) any recommendations other than payment of monetary compensation that the Parties have jointly requested for the resolution of the dispute; and
- (d) the reasons for the findings and determinations.

5. The arbitral tribunal shall allow the Parties 14 days to review the draft of the report prior to its finalization and shall include a discussion of any comments by the Parties in its report.

6. The arbitral tribunal shall present a final report to the Parties within 30 days of the presentation of the initial report, unless the Parties otherwise agree. When the arbitral tribunal considers that it cannot issue its report within 120 days after the date of its establishment, it shall inform the Parties in writing of the reasons for the delay and shall indicate the estimated period of time within which it will issue its report. Under no circumstances shall a report be issued later than 150 days after the date of establishment of the arbitral tribunal.

7. In cases of urgency, including those involving perishable goods, the arbitral tribunal shall make every effort to issue its report within 45 days from the date of its establishment. Under no circumstances shall the report be issued later than 75 days after the establishment of the arbitral tribunal. The arbitral tribunal shall give a preliminary ruling within 10 days of its establishment, on whether it deems the case to be urgent.

8. The report shall be final and binding on the Parties. The final report of the arbitral tribunal shall set out the elements specified in paragraph 4 of this Article.

9. Unless otherwise agreed by the Parties, the report of the arbitral tribunal may be published by either Party within 15 days after it is issued to the Parties, subject to the protection of confidential information.

#### **Article 14.13: Suspension and Termination of Proceedings**

1. Where the Parties agree, the Arbitral Tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority of the tribunal shall lapse unless the Parties agree otherwise.

2. In the event that the Parties reach a mutually satisfactory solution to the dispute, the Parties shall terminate the proceedings of an arbitral tribunal established under this Chapter.

3. Unless the Parties agree otherwise, suspension or termination of the proceedings is without prejudice to the rights of either Party in another proceeding on the same matter under this Chapter.

4. Before the arbitral tribunal issues its report, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

#### **Article 14.14: Implementation of Report**

1. The report of the arbitral tribunal shall be complied with promptly unless the Parties agree otherwise. If it is impracticable to do so, the Parties shall endeavour to agree on a reasonable period of time to comply. In the absence of such agreement, within 30 days from the date of the issuance of the report, either Party may request the original arbitral tribunal to determine the length of the reasonable period of time, in light of the particular circumstances of the case. A guideline for the arbitral tribunal shall be that the reasonable time to comply with the report should not exceed 15 months from the date the report was issued. However, in exceptional circumstances such reasonable period of time may be longer, but shall not exceed 24 months from the date the report was issued. The ruling of the arbitral tribunal should be given within 30 days from that request.

2. In case of disagreement as to the existence of a measure complying with the report of the arbitral tribunal or to the consistency of that measure with the report of the arbitral tribunal, such dispute shall be decided by the same arbitral tribunal before compensation can be sought or suspension of benefits can be applied in accordance with Article 14.15 (Compensation and Suspension of Benefits). In the event the original arbitral tribunal, or any of its members, is not available, the procedures established in Article 14.10 (Composition of the Arbitral Tribunal) shall apply. The ruling of the arbitral tribunal shall normally be rendered within 90 days of the request to the original arbitral tribunal or from the date of the appointment of the last arbitrator in the event that the original arbitral tribunal or any of its members is not available.

#### **Article 14.15: Compensation and Suspension of Benefits**

1. If the Party concerned does not comply with the report within a reasonable period of time as provided for in Article 14.14(1), or notifies the complaining Party that it does not intend to do so, or if the arbitral tribunal determines that the responding Party did not comply with the arbitral tribunal report in accordance with Article 14.14(2), that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only at a level equivalent to those affected by the measure or matter that the arbitral tribunal has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or matter that the

arbitral tribunal has found to be inconsistent with this Agreement. The 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.

3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 20 days from the receipt of such notification, the Party complained against may request the original arbitral tribunal to rule on whether the benefits which the complaining Party intends to suspend are at a level 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. In the event that the original arbitral tribunal or any of its members is not available, the procedures established in Article 14.10 (Composition of the Arbitral Tribunal) shall apply. The ruling of the arbitral tribunal shall be given within 45 days from the receipt of such request. Benefits shall not be suspended until the arbitral tribunal 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 or matter 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.

5. At the request of a Party, the original arbitral tribunal shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. In the event the original arbitral tribunal, or any of its members, is not available, the procedures established in Article 14.10 (Composition of the Arbitral Tribunal) shall apply. The ruling of the arbitral tribunal shall be given within 30 days from the date of that request.

#### **Article 14.16: Time Frames**

All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the Parties.

#### **Article 14.17: Remuneration and Expenses**

The remuneration and expenses of the arbitral tribunal shall be borne in equal parts by the Parties in accordance with Annex 14A (Rules of Procedure). All other expenses not specified in Annex 14A (Rules of Procedure) shall be borne by the Party incurring those expenses.