

## CHAPTER 19

### DISPUTE SETTLEMENT

#### Article 19.1: Definitions

For the purposes of this Chapter:

- (a) **Complaining Party** means any Party or Parties that requests consultations pursuant to paragraph 1 of Article 19.6 (Consultations);
- (b) **Parties to the dispute** means the Complaining Party and the Responding Party;
- (c) **Party to the dispute** means the Complaining Party or the Responding Party;
- (d) **Responding Party** means any Party to which the request for consultations is made pursuant to paragraph 1 of Article 19.6 (Consultations);
- (e) **Rules of Procedures** means the *Rules of Procedures for Panel Proceedings* adopted by the RCEP Joint Committee; and
- (f) **Third Party** means any Party that makes a notification pursuant to paragraph 2 of Article 19.10 (Third Parties).

#### Article 19.2: Objective

The objective of this Chapter is to provide effective, efficient, and transparent rules and procedures for settlement of disputes arising under this Agreement.

#### Article 19.3: Scope<sup>1</sup>

1. Unless otherwise provided in this Agreement, this Chapter shall apply:

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<sup>1</sup> Non-violation complaints shall not be permitted under this Agreement.

- (a) to the settlement of disputes between Parties regarding the interpretation and application of this Agreement; and
  - (b) when a Party considers that a measure of another Party is not in conformity with the obligations under this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement.
2. Subject to Article 19.5 (Choice of Forum), this Chapter shall be without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is party.

#### **Article 19.4: General Provisions**

1. This Agreement shall be interpreted in accordance with the customary rules of interpretation of public international law.
2. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of WTO panels and the WTO Appellate Body, adopted by the WTO Dispute Settlement Body. The findings and determinations of the panel cannot add to or diminish the rights and obligations under this Agreement.<sup>2</sup>
3. All notifications, requests, and replies made pursuant to this Chapter shall be in writing.
4. The Parties to the dispute are encouraged at every stage of a dispute to make every effort through cooperation and consultations to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be jointly notified by the Parties to the dispute to the other Parties.
5. Any period of time provided in this Chapter may be modified by agreement of the Parties to the dispute provided that any modification shall be without prejudice to the rights of the Third Parties provided in Article 19.10 (Third Parties).

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<sup>2</sup> The Parties confirm that the first sentence of this paragraph does not prevent a panel from considering relevant interpretations in reports of WTO panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body, with respect to a provision of the WTO Agreement which is not incorporated into this Agreement.

6. The prompt settlement of disputes in which a Party considers that any benefits accruing to it directly or indirectly under this Agreement is being impaired by measures taken by another Party is essential to the effective functioning of this Agreement and the maintenance of a proper balance between the rights and obligations of the Parties.

#### **Article 19.5: Choice of Forum**

1. Where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to settle the dispute and that forum shall be used to the exclusion of other fora.
2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel or tribunal under another international trade or investment agreement.
3. This Article shall not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

#### **Article 19.6: Consultations**

1. Any Party may request consultations with any other Party with respect to any matter described in paragraph 1 of Article 19.3 (Scope). A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.
2. Any request for consultations made pursuant to paragraph 1 shall give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis for the complaint.
3. The Complaining Party shall simultaneously provide a copy of the request for consultations made pursuant to paragraph 1 to the other Parties.

4. The Responding Party shall immediately acknowledge its receipt of the request for consultations made pursuant to paragraph 1, by way of notification to the Complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the Responding Party's receipt of the request. The Responding Party shall simultaneously provide a copy of the notification to the other Parties.
5. The Responding Party shall:
  - (a) reply to the request for consultations made pursuant to paragraph 1 no later than seven days after the date of its receipt of the request; and
  - (b) simultaneously provide a copy of the reply to the other Parties.
6. The Responding Party shall enter into consultations no later than:
  - (a) 15 days after the date of its receipt of the request for consultations made pursuant to paragraph 1 in cases of urgency including those which concern perishable goods; or
  - (b) 30 days after the date of its receipt of the request for consultations made pursuant to paragraph 1 regarding any other matter.
7. The Parties to the dispute shall engage in consultations in good faith and make every effort to reach a mutually agreed solution through consultations. To this end, the Parties to the dispute shall:
  - (a) provide sufficient information in the course of consultations to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;
  - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
  - (c) endeavour to make available for the consultations personnel of their government agencies or other regulatory

bodies who have responsibility for or expertise in the matter.

8. The consultations shall be confidential and without prejudice to the rights of any Party to the dispute in any further or other proceedings.
9. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute no later than seven days after the date of receipt of the copy of the request for consultations referred to in paragraph 3, of its desire to be joined in the consultations. The notifying Party shall simultaneously provide a copy of the notification to the other Parties. The notifying Party shall be joined in the consultations if the Parties to the dispute agree.

#### **Article 19.7: Good Offices, Conciliation, or Mediation**

1. The Parties to the dispute may at any time agree to voluntarily undertake an alternative method of dispute resolution, including good offices, conciliation, or mediation. Procedures for such alternative methods of dispute resolution may begin at any time, and may be terminated by any Party to the dispute at any time.
2. If the Parties to the dispute agree, such procedures referred to in paragraph 1 may continue while the matter is being examined by a panel under this Chapter.
3. Proceedings involving such procedures referred to in paragraph 1 and positions taken by a Party to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Party to the dispute in any further or other proceedings.

#### **Article 19.8: Request for Establishment of a Panel**

1. The Complaining Party may request the establishment of a panel to examine the matter, by way of notification to the Responding Party, if:
  - (a) the Responding Party does not:

- (i) reply to the request for consultations in accordance with subparagraph 5(a) of Article 19.6 (Consultations); or
  - (ii) enter into consultations in accordance with paragraph 6 of Article 19.6 (Consultations); or
- (b) the consultations fail to resolve a dispute within:
  - (i) 20 days after the date of the Responding Party's receipt of the request for consultations made pursuant to paragraph 1 of Article 19.6 (Consultations) in cases of urgency including those which concern perishable goods; or
  - (ii) 60 days after the date of the Responding Party's receipt of the request for consultations made pursuant to paragraph 1 of Article 19.6 (Consultations) regarding any other matter.

2. A request for the establishment of a panel made pursuant to paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis for the complaint, including the relevant provisions of this Agreement, to be addressed by the panel, sufficient to present the problem clearly.
3. The Complaining Party shall simultaneously provide a copy of the request for the establishment of a panel made pursuant to paragraph 1 to the other Parties.
4. The Responding Party shall immediately acknowledge its receipt of the request for the establishment of a panel made pursuant to paragraph 1, by way of notification to the Complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the Responding Party's receipt of the request. The Responding Party shall simultaneously provide a copy of the notification to the other Parties.
5. Where a request for the establishment of a panel is made pursuant to paragraph 1, a panel shall be established in accordance with Article 19.11 (Establishment and Reconvening of a Panel).

### **Article 19.9: Procedures for Multiple Complainants**

1. Where more than one Party requests the establishment or reconvening of a panel relating to the same matter, a single panel should be established or reconvened to examine the complaints relating to that matter whenever feasible.
2. The single panel shall organise its examination and present its findings and determinations to the Parties to the disputes in such a manner that the rights which the Parties to the disputes would have enjoyed had separate panels examined the complaints are in no way impaired.
3. If more than one panel is established or reconvened to examine the complaints relating to the same matter, the Parties to the disputes shall endeavour to ensure that the same individuals serve as panellists on each of the separate panels. The panels shall consult with each other and the Parties to the disputes to ensure, to the greatest extent possible, that the timetables for the panels' processes are harmonised.

### **Article 19.10: Third Parties**

1. The interests of the Parties to the dispute and those of other Parties shall be fully taken into account during the panel process.
2. Any Party having a substantial interest in a matter before a panel may notify the Parties to the dispute of its interest no later than 10 days after the date of the request made pursuant to:
  - (a) paragraph 1 of Article 19.8 (Request for Establishment of a Panel); or
  - (b) paragraph 1 of Article 19.16 (Compliance Review); or
  - (c) paragraph 13 of Article 19.17 (Compensation and Suspension of Concessions or Other Obligations).

The notifying Party shall simultaneously provide a copy of the notification to the other Parties.

3. Any Party notifying its substantial interest pursuant to paragraph 2 shall have the rights and obligations of a Third Party.

4. Subject to the protection of confidential information, each Party to the dispute shall make available to each Third Party its written submissions, written versions of its oral statements, and its written responses to questions, made prior to the issuance of the interim report, at the time such submissions, statements, and responses are submitted to the panel.
5. A Third Party shall have the right to:
  - (a) subject to the protection of confidential information, be present at the first and second hearings of the panel with the Parties to the dispute prior to the issuance of the interim report;
  - (b) make at least one written submission prior to the first hearing;
  - (c) make an oral statement to the panel and respond to questions from the panel during a session of the first hearing set aside for that purpose; and
  - (d) respond in writing to any questions from the panel directed to the Third Parties.
6. If a Third Party provides any submissions or other documents to the panel, it shall simultaneously provide them to the Parties to the dispute and the other Third Parties.
7. A panel may, with the agreement of the Parties to the dispute, grant additional or supplemental rights to any Third Party regarding its participation in panel proceedings.

#### **Article 19.11: Establishment and Reconvening of a Panel**

1. Where a request for the establishment of a panel is made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), a panel shall be established in accordance with this Article.
2. Unless the Parties to the dispute agree otherwise, the panel shall consist of three panellists. All appointments and nominations of panellists under this Article shall conform with the requirements referred to in paragraphs 10 and 13.

3. Within 10 days of the date of the receipt of the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the panel, taking into account the factual, technical, and legal aspects of the dispute. Any such procedures agreed upon shall also be used for the purposes of paragraphs 15 and 16.
4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the panel within 20 days of the date of the receipt of the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), any Party to the dispute may at any time thereafter notify the other Party to the dispute that it wishes to use the procedures set out in paragraphs 5 through 7. Where such a notification is made, the panel shall be composed in accordance with paragraphs 5 through 7.
5. The Complaining Party shall appoint one panellist within 10 days of the date of the receipt of the notification made pursuant to paragraph 4. The Responding Party shall appoint one panellist within 20 days of the date of the receipt of the notification made pursuant to paragraph 4. A Party to the dispute shall notify the appointment of its panellist to the other Party to the dispute.
6. Following the appointment of the panellists in accordance with paragraph 5, the Parties to the dispute shall agree on the appointment of the third panellist who shall serve as the chair of the panel. To assist in reaching such agreement, each Party to the dispute may provide to the other Party to the dispute a list of up to three nominees for the chair of the panel.
7. If any panellist has not been appointed within 35 days of the date of the receipt of the notification made pursuant to paragraph 4, any Party to the dispute, within a further period of 25 days, may request the Director-General of the WTO to appoint the remaining panellists within 30 days of the date of such request. Any list of nominees which was provided under paragraph 6 shall also be provided to the Director-General of the WTO, and may be used in making the required appointments.
8. If the Director-General of the WTO notifies the Parties to the dispute that he or she is unavailable, or does not appoint the remaining panellists within 30 days of the date of the request made pursuant to paragraph 7, any Party to the dispute may

request the Secretary-General of the Permanent Court of Arbitration to appoint the remaining panellists promptly. Any list of nominees which was provided under paragraph 6 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments under paragraph 12.<sup>3</sup>

9. The date of establishment of the panel shall be the date on which the last panellist is appointed.
10. Each panellist shall:
  - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
  - (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) not have dealt with the matter in any capacity;
  - (e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to his or her independence or impartiality; and
  - (f) comply with the Code of Conduct as annexed to the Rules of Procedures.
11. In addition to the requirements of paragraph 10, each panellist appointed under paragraph 7 or 8 shall:
  - (a) have expertise in law including public international law, international trade, and the resolution of disputes arising under international trade agreements;
  - (b) be a well-qualified governmental or non-governmental individual including an individual who has served on a WTO panel or the WTO Appellate Body or in the WTO Secretariat, taught or published on international trade law

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<sup>3</sup> For greater certainty, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules shall not be used to appoint any remaining panellist under this paragraph.

or policy, or served as a senior trade policy official of a WTO Member; and

(c) in the case of the chair of the panel, wherever possible:

(i) have served on a WTO panel or the WTO Appellate Body; and

(ii) have expertise or experience relevant to the subject matter of the dispute.

12. In appointing a panellist under paragraph 8, and in accordance with the requirements referred to in paragraphs 10 and 11, the following procedure shall be used, unless the Parties to the dispute agree otherwise:

(a) the Secretary-General of the Permanent Court of Arbitration shall notify the Parties to the dispute of an identical list containing at least three nominees for panellists;

(b) within 15 days of the date of the receipt of the list referred to in subparagraph (a), each Party to the dispute may return the list to the Secretary-General of the Permanent Court of Arbitration after having deleted any of the nominees which it objects to and having numbered the remaining nominees on the list in the order of its preference;

(c) after the expiry of the period of time referred to in subparagraph (b), the Secretary-General of the Permanent Court of Arbitration shall appoint the remaining panellists from the remaining nominees on any list returned to him or her and in accordance with the order of preference indicated by the Parties to the dispute; and

(d) if for any reason the remaining panellists cannot be appointed in accordance with the procedure set out in this paragraph, the Secretary-General of the Permanent Court of Arbitration may appoint, in his or her discretion, the remaining panellists in accordance with this Chapter.

13. Unless the Parties to the dispute agree otherwise, the chair shall not be a national of any Party to the dispute or a Third Party and shall not have his or her usual place of residence in any Party to the dispute.

14. Each panellist shall serve in his or her individual capacity and not as a government representative, nor as a representative of any organisation. Any Party shall not give any panellist instructions nor seek to influence any panellist as an individual with regard to matters before a panel.
15. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. The work of the panel shall be suspended until the successor panellist is appointed. In such a case, any relevant period of time for the panel proceedings shall be suspended until the successor panellist is appointed.
16. Where a panel is reconvened pursuant to Article 19.16 (Compliance Review) or Article 19.17 (Compensation and Suspension of Concessions or Other Obligations), the reconvened panel shall, where feasible, have the same panellists as the original panel. Where this is not feasible, a replacement panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist, and shall have all the powers and duties of the original panellist.

### **Article 19.12: Functions of Panels**

1. The panel shall make an objective assessment of the matter before it, including an objective assessment of:
  - (a) the facts of the case;
  - (b) the applicability of the provisions of this Agreement cited by the Parties to the dispute; and
  - (c) whether:
    - (i) the measure at issue is not in conformity with the obligations under this Agreement; or
    - (ii) the Responding Party has otherwise failed to carry out its obligations under this Agreement.

2. The panel shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days of the date of the establishment of the panel:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), and to make findings and determinations as provided for in this Agreement.”

3. The panel shall set out in its report:
  - (a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;
  - (b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;
  - (c) its determinations as to whether:
    - (i) the measure at issue is not in conformity with the obligations under this Agreement; or
    - (ii) the Responding Party has otherwise failed to carry out its obligations under this Agreement; and
  - (d) the reasons for its findings and determinations referred to in subparagraphs (b) and (c).
4. In addition to paragraph 3, a panel shall include in its report any other findings and determinations pertaining to the dispute which have been jointly requested by the Parties to the dispute or provided for in its terms of reference. The panel may suggest ways in which the Responding Party could implement the findings and determinations.
5. Unless the Parties to the dispute agree otherwise, a panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties to the dispute, and any information or technical advice it has received in accordance with paragraphs 12 and 13 of Article 19.13 (Panel Procedures).
6. A panel shall only make the findings, determinations, and suggestions provided for in this Agreement.

7. Each Third Party's submission shall be reflected in the report of the panel.
8. The findings and determinations of the panel cannot add to or diminish the rights and obligations under this Agreement.
9. The panel shall consult regularly with the Parties to the dispute and provide adequate opportunities for the Parties to the dispute to develop a mutually agreed solution.
10. Paragraphs 1 through 4 shall not apply to a panel reconvened pursuant to Article 19.16 (Compliance Review) and Article 19.17 (Compensation and Suspension of Concessions or Other Obligations).

### **Article 19.13: Panel Procedures**

1. A panel shall adhere to this Chapter and, unless the Parties to the dispute agree otherwise, shall follow the Rules of Procedures.
2. On request of a Party to the dispute or on its own initiative, a panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with this Chapter and with the Rules of Procedures. A panel reconvened pursuant to Article 19.16 (Compliance Review) or Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) may, after consulting the Parties to the dispute, establish its own rules of procedures which do not conflict with this Chapter and the Rules of Procedures, drawing as it deems appropriate from this Chapter or the Rules of Procedures.
3. Panel procedures should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the panel process.

### **Timetable**

4. After consulting the Parties to the dispute, a panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) shall, as soon as practicable and whenever possible within 15 days of the date of its establishment, fix the timetable for the panel process. The period of time from the date of establishment of a panel until the date of issuance of the panel's final report to

the Parties to the dispute shall, as a general rule, not exceed seven months.

5. A panel reconvened pursuant to Article 19.16 (Compliance Review) or paragraph 13 of Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) shall, as soon as practicable and whenever possible within 15 days of the date of its reconvening, fix the timetable for the compliance review process taking into account the periods of time specified in Article 19.16 (Compliance Review).

### **Panel Proceedings**

6. The panel shall make its findings and determinations by consensus, provided that where the panel is unable to reach consensus, it may make its findings and determinations by majority vote. A panellist may furnish dissenting or separate opinions on matters not unanimously agreed. Opinions expressed by an individual panellist in the report shall be anonymous.
7. Panel deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the panel to appear before it.
8. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

### **Submissions**

9. Each Party to the dispute shall have the opportunity to set out in writing the facts of its case, its arguments and counter arguments. Further to paragraphs 4 and 5, the timetable fixed by the panel shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

### **Hearings**

10. Further to paragraphs 4 and 5, the timetable fixed by the panel shall provide for at least one hearing for the Parties to the dispute to present their case to the panel. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

## **Confidentiality**

11. Written submissions to the panel shall be treated as confidential, but shall be made available to the Parties to the dispute and, where provided for in Article 19.10 (Third Parties), the Third Parties. The Parties to the dispute, the Third Parties, and the panel shall treat as confidential, information submitted by a Party to the dispute or a Third Party to the panel which that Party has designated as confidential. For greater certainty, nothing in this paragraph shall preclude a Party to the dispute or a Third Party from disclosing statements of its own positions to the public, provided that there is no disclosure of statements or information submitted by a Party to the dispute or a Third Party to the panel which that Party has designated as confidential. A Party to the dispute or a Third Party shall, on request of a Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

## **Additional Information and Technical Advice**

12. Each Party to the dispute and each Third Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.
13. On request of a Party to the dispute or on its own initiative, a panel may seek additional information and technical advice from any individual or body which it deems appropriate. However, before doing so the panel shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the panel should not seek the additional information or technical advice, the panel shall not do so. The panel shall provide the Parties to the dispute with any additional information or technical advice it receives and an opportunity to provide comments. Where the panel takes into account the additional information or technical advice in preparation of its report, it shall also take into account any comments by a Party to the dispute on the additional information or technical advice.

## **Reports of the Panel**

14. The panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) shall issue its interim report to the Parties to the dispute within 150 days of the date of its establishment. In cases of urgency including those which concern perishable goods, the panel shall endeavour to issue its interim report within 90 days of the date of its establishment.

15. In exceptional cases, if the panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) considers it cannot issue its interim report within the period of time referred to in paragraph 14, it shall notify the Parties to the dispute of the reasons for the delay together with an estimate of the period within which it will issue its interim report to the Parties to the dispute. Any delay shall not exceed a further period of 30 days.
16. A Party to the dispute may submit written comments to the panel on its interim report within 15 days of the date of the receipt of the interim report. After considering any written comments by the Parties to the dispute on the interim report, the panel may make any further examination it considers appropriate and modify its interim report.
17. The panel shall issue its final report to the Parties to the dispute within 30 days of the date of issuance of the interim report.
18. The interim and final reports of the panel shall be drafted without the presence of the Parties to the dispute.
19. The panel shall circulate its final report to the other Parties within seven days of the date of issuance of the final report to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the final report publicly available subject to the protection of any confidential information contained in the final report.

#### **Article 19.14: Suspension and Termination of Proceedings**

1. The Parties to the dispute may agree at any time that the panel suspend its work for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel proceedings shall resume on request of any Party to the dispute. In the event of such suspension, any relevant period of time for the panel proceedings shall be extended by the period of time that the work was suspended. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties to the dispute agree otherwise.
2. The Parties to the dispute may agree to terminate the panel proceedings in the event that a mutually agreed solution has been

found. In such event, the Parties to the dispute shall jointly notify the chair of the panel.

3. Before the panel issues its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.
4. The Parties to the dispute shall jointly notify the other Parties that the panel proceedings have been suspended or terminated or the authority for the establishment of the panel has lapsed, pursuant to paragraph 1 or 2.

#### **Article 19.15: Implementation of the Final Report**

1. The findings and determinations of the panel shall be final and binding on the Parties to the dispute. The Responding Party shall:
  - (a) if the panel makes a determination that the measure at issue is not in conformity with the obligations under this Agreement, bring the measure into conformity; or
  - (b) if the panel makes a determination that the Responding Party has otherwise failed to carry out its obligations under this Agreement, carry out those obligations.
2. Within 30 days of the date of the issuance of the panel's final report to the Parties to the dispute pursuant to paragraph 17 of Article 19.13 (Panel Procedures), the Responding Party shall notify the Complaining Party of its intentions with respect to implementation and:
  - (a) if the Responding Party considers it has complied with the obligation under paragraph 1, it shall notify the Complaining Party without delay. The Responding Party shall include in the notification a description of any measure it considers achieves compliance, the date the measure comes into effect, and the text of the measure, if any; or
  - (b) if it is impracticable to comply immediately with the obligation under paragraph 1, the Responding Party shall notify the Complaining Party of the reasonable period of time the Responding Party considers it would need to comply with the obligation under paragraph 1 along with

an indication of possible actions it may take for such compliance.

3. If the Responding Party makes a notification pursuant to subparagraph 2(b) that it is impracticable for it to comply immediately with the obligation under paragraph 1, it shall have a reasonable period of time to comply with the obligation under paragraph 1.
4. The reasonable period of time referred to in paragraph 3 shall, whenever possible, be agreed by the Parties to the dispute. Where the Parties to the dispute are unable to agree on the reasonable period of time within 45 days of the date of the issuance of the panel's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the panel determine the reasonable period of time, by way of notification to the chair and the other Party to the dispute. Such a request shall be made within 120 days of the date of the issuance of the panel's final report to the Parties to the dispute.
5. Where a request is made pursuant to paragraph 4, the chair of the panel shall present the Parties to the dispute with a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the receipt by the chair of the panel of the request.
6. As a guideline, the reasonable period of time determined by the chair of the panel should not exceed 15 months from the date of the issuance of the panel's final report to the Parties to the dispute. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.
7. Where the Responding Party considers it has complied with the obligation under paragraph 1, it shall notify the Complaining Party without delay. The Responding Party shall include in the notification a description of any measure it considers achieves compliance, the date the measure comes into effect, and the text of the measure, if any.

## **Article 19.16: Compliance Review<sup>4</sup>**

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report), such dispute shall be settled through recourse to a panel reconvened for this purpose (hereinafter referred to as “Compliance Review Panel” in this Chapter). The Complaining Party may request the reconvening of a Compliance Review Panel by way of notification to the Responding Party. The Complaining Party shall simultaneously provide a copy of the request to the other Parties.
2. The request referred to in paragraph 1 may only be made after the earlier of either:
  - (a) the expiry of the reasonable period of time established in accordance with Article 19.15 (Implementation of the Final Report); or
  - (b) a notification to the Complaining Party made by the Responding Party pursuant to subparagraph 2(a) or paragraph 7 of Article 19.15 (Implementation of the Final Report) that it has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report).
3. A Compliance Review Panel shall make an objective assessment of the matter before it, including an objective assessment of:
  - (a) the factual aspects of any action taken by the Responding Party to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
  - (b) the existence or consistency with this Agreement of any measure taken by the Responding Party to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report).
4. The Compliance Review Panel shall set out in its report:
  - (a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;

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<sup>4</sup> For greater certainty, consultations under Article 19.6 (Consultations) are not required for the procedures under this Article.

- (b) its findings on the facts of the case arising under this Article and on the applicability of the provisions of this Agreement;
- (c) its determinations on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
- (d) its reasons for its findings and determinations referred to in subparagraphs (b) and (c).

5. Where a request is made pursuant to paragraph 1, a Compliance Review Panel shall reconvene within 15 days of the date of the request. The Compliance Review Panel shall, where possible, issue its interim report to the Parties to the dispute within 90 days of the date of its reconvening, and its final report 30 days thereafter. If the Compliance Review Panel considers that it cannot issue either report within the relevant period of time, it shall notify the Parties to the dispute of the reasons for the delay together with an estimate of the period of time within which it will issue the report.

6. The period of time from the date of the request made pursuant to paragraph 1 until the date of issuance of the final report of the Compliance Review Panel shall not exceed 150 days.

#### **Article 19.17: Compensation and Suspension of Concessions or Other Obligations**

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) within the reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report). Compensation is voluntary and, if granted, shall be consistent with this Agreement.
2. Where any of the following circumstances exists:
  - (a) the Responding Party has notified the Complainant Party that it does not intend to comply with the obligation under

paragraph 1 of Article 19.15 (Implementation of the Final Report); or

- (b) the Responding Party fails to notify the Complaining Party in accordance with paragraph 2 of Article 19.15 (Implementation of the Final Report); or
- (c) the Responding Party fails to notify the Complaining Party in accordance with paragraph 7 of Article 19.15 (Implementation of the Final Report) by the expiry of the reasonable period of time; or
- (d) the Compliance Review Panel determines that the Responding Party has failed to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) in accordance with Article 19.16 (Compliance Review),

the Responding Party shall, on request of the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If the Parties to the dispute have:

- (a) been unable to agree on compensation within 30 days after the date of the receipt of the request made pursuant to paragraph 2; or
- (b) agreed on compensation but the Responding Party has failed to observe the terms and conditions of that agreement,

the Complaining Party may at any time thereafter notify the Responding Party and the other Parties that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification or impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of the receipt of the notification.

4. Notwithstanding paragraph 3, the Complaining Party shall not exercise the right to begin suspending concessions or other obligations under that paragraph where:

- (a) a review is being undertaken pursuant to paragraph 9; or
- (b) a mutually agreed solution has been reached.

5. A notification made pursuant to paragraph 3 shall specify the level of the intended suspension of concessions or other obligations and indicate the relevant sector or sectors in which the Complaining Party proposes to suspend such concessions or other obligations.
6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:
  - (a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors in which the panel has determined that there is non-conformity with, or failure to carry out an obligation under this Agreement; and
  - (b) if the Complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may suspend concessions or other obligations in other sectors.
7. The level of the suspension of concessions or other obligations shall be equivalent to the level of nullification or impairment.
8. If the Responding Party:
  - (a) objects to the level of suspension proposed; or
  - (b) considers that it has observed the terms and conditions of the compensation agreement; or
  - (c) considers that the principles set out in paragraph 6 have not been followed,it may, within 30 days of the date of the receipt of the notification made pursuant to paragraph 3, request the reconvening of a panel to examine the matter by way of notification to the Complaining Party. The Responding Party shall simultaneously provide a copy of the request to the other Parties.
9. When a request is made pursuant to paragraph 8, the panel shall reconvene within 15 days of the date of the request. The reconvened panel shall provide its determination to the Parties to the dispute within 45 days of the date of its reconvening.

10. In the event the panel reconvened pursuant to paragraph 9 determines that the level of suspension is not equivalent to the level of nullification or impairment, it shall determine the appropriate level of suspension it considers to be of equivalent effect. In the event the panel determines that the Responding Party has observed the terms and conditions of the compensation agreement, the Complaining Party shall not suspend concessions or other obligations referred to in paragraph 3. In the event the panel determines that the Complaining Party has not followed the principles set out in paragraph 6, the Complaining Party shall apply them consistently with that paragraph.
11. The Complaining Party may suspend concessions or other obligations only in a manner consistent with the panel's determination referred to in paragraph 10.
12. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) has been complied with or a mutually agreed solution has been reached.
13. Where:
  - (a) the right to suspend concessions or other obligations has been exercised by the Complaining Party under this Article;
  - (b) the Responding Party has made a notification pursuant to paragraph 7 of Article 19.15 (Implementation of the Final Report) that it has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
  - (c) the Parties to the dispute disagree on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report),

any Party to the dispute may request the reconvening of a panel to examine the matter by way of notification to the other Party to the dispute. The requesting Party shall simultaneously provide a copy of the request to the other Parties.<sup>5</sup>

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<sup>5</sup> Where a panel is reconvened pursuant to this paragraph, it may also, upon request, determine whether the level of any suspension of concessions or other obligations is

14. Where the panel reconvenes pursuant to paragraph 13, paragraphs 3 through 6 of Article 19.16 (Compliance Review) shall apply *mutatis mutandis*.
15. If the panel reconvened pursuant to paragraph 13 determines that the Responding Party has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report), the Complaining Party shall promptly terminate the suspension of concessions or other obligations.

#### **Article 19.18: Special and Differential Treatment Involving Least Developed Country Parties**

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a Least Developed Country Party, particular consideration shall be given to the special situation of Least Developed Country Parties. In this regard, Parties shall exercise due restraint in raising matters under these procedures involving a Least Developed Country Party. If nullification or impairment is found to result from a measure taken by a Least Developed Country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) or other obligations pursuant to these procedures.
2. Where any Party to the dispute is a Least Developed Country Party, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a Least Developed Country Party that form part of this Agreement which have been raised by that Party in the course of the dispute settlement procedures.

#### **Article 19.19: Expenses**

1. Unless the Parties to the dispute agree otherwise, each Party to the dispute shall bear the costs of its appointed panellist and its own expenses and legal costs.

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still appropriate in light of its findings on the measure taken by the Responding Party and, if not, determine an appropriate level.

2. Unless the Parties to the dispute agree otherwise, the costs of the chair of the panel and other expenses associated with the conduct of the panel proceedings shall be borne in equal parts by the Parties to the dispute.

#### **Article 19.20: Contact Point**

1. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate a contact point for this Chapter and shall notify the other Parties of the contact details of that contact point. Each Party shall promptly notify the other Parties of any change to those contact details.
2. Any notification, request, reply, written submission, or other document relating to any proceedings under this Chapter shall be delivered to the relevant Party through its designated contact point. The relevant Party shall provide confirmation of the receipt of such documents in writing through its designated contact point.

#### **Article 19.21: Language**

1. All proceedings under this Chapter shall be conducted in the English language.
2. Any document submitted for use in any proceedings under this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall submit that document together with an English translation.