

## **CHAPTER 20**

### **DISPUTE SETTLEMENT**

#### **ARTICLE 20.1 : CO-OPERATION**

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

#### **ARTICLE 20.2 : SCOPE AND COVERAGE**

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance and settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), and 9 (Cross Border Trade on Services).
2. Unless otherwise agreed by the Parties, the timeframes and procedural rules set out in this Chapter and its Annex[es] shall apply to all disputes governed by this Chapter.
3. Findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.
4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by the relevant authorities within the territory of a Party. When an arbitral panel has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance within its territory.
5. The Parties and the arbitral panel appointed under this Chapter shall interpret and

apply the provisions of this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of public international law.

#### **ARTICLE 20.3 : CHOICE OF FORUM**

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.
2. Once dispute settlement procedures have been initiated under Article 20.6 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.
3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

#### **ARTICLE 20.4 : CONSULTATIONS**

1. A Party may request in writing consultations with the other Party on any matter affecting the implementation, interpretation or application of this Agreement or whenever a party considers that any measure or any other matter that is inconsistent with the obligations of this Agreement or causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), and 9 (Cross Border Trade in Services).
2. If a request for consultation is made, the Party to which the request is made shall reply to the request within ten (10) days after the date of its receipt and shall enter into consultations within a period of no more than twenty (20) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
  - (a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and

- (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

#### **ARTICLE 20.5 : GOOD OFFICES, CONCILIATION OR MEDIATION**

1. The Parties may at any time agree to 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 and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter or any other proceedings before a forum selected by the Parties.
3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 20.6.

#### **ARTICLE 20.6 : REQUEST FOR AN ARBITRAL PANEL**

1. A Party may request in writing for the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 20.4, within forty-five (45) days after the date of receipt of the request for consultations.
2. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.
3. Upon delivery of the request, an arbitral panel shall be established.
4. Unless otherwise agreed by the Parties, an arbitral panel shall be established and perform its functions in accordance with the provisions of this Chapter.

#### **ARTICLE 20.7 : COMPOSITION OF ARBITRAL PANELS**

1. The arbitral panel referred to in Article 20.6 shall consist of three (3) members. Each Party shall appoint a member within thirty (30) days of the receipt of the request under Article 20.6. The Parties shall jointly appoint the third member who shall serve as the chair of the arbitral panel within thirty (30) days of the appointment of the second member.
2. If the Parties are unable to agree on the chair of the arbitral panel within thirty (30) days after the date on which the second member has been appointed, they shall within the next ten (10) days exchange their respective list comprising four (4) nominees each who shall not be nationals of either Party. The chair shall then be appointed in the presence of both Parties by lot from the lists within forty (40) days from the date of appointment of the second member. If a Party fails to submit its list of four (4) nominees, the chair shall be appointed by lot from the list already submitted by the other Party.
3. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning on the date when the original member becomes unable to act and ending on the date when the new member is appointed.
4. Any person appointed as a member of the arbitral panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the bases of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

#### **ARTICLE 20.8 : TERMINATION OF PROCEEDINGS**

The Parties may agree to terminate the proceedings before an arbitral panel at any time by jointly notifying the chair to this effect.

#### **ARTICLE 20.9 : PROCEEDINGS OF ARBITRAL PANELS**

1. Unless the Parties agree otherwise, the arbitral panel shall follow the model rules of procedure in the Annex 20A, which shall ensure:

- (a) that an arbitral panel shall meet in closed session;
- (b) a right to at least one hearing before the arbitral panel;
- (c) an opportunity for each Party to provide initial and rebuttal submissions;
- (d) that each Party's written submissions, written versions of its oral statement, and written response to a request or question from the arbitral panel may be made public after they are submitted, subject to clause (g);
- (e) that the arbitral panel may consider requests from non-governmental entities in the Parties' territories to provide written views regarding the dispute that may assist the arbitral panel in evaluating the submissions and arguments of the Parties;
- (f) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 3 of Article 20.11; and
- (g) the protection of confidential information.

2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

#### **ARTICLE 20.10 : INFORMATION AND TECHNICAL ADVICE**

1. Upon request of a Party, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own

initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

#### **ARTICLE 20.11 : INITIAL REPORT**

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 20.10.

2. Unless the Parties otherwise agree, the arbitral panel shall, within ninety (90) days after the last member is selected, present to the Parties an initial report containing:

- (a) findings of law and/or fact together with reasons;
- (b) its determination as to the implementation, interpretation or application of this Agreement or whether the measure at issue is inconsistent with the obligations of this Agreement or causes nullification or impairment of any benefit accruing to a Party under this Agreement, or any other determination requested in the terms of reference; and
- (c) its recommendations, if any, on the means to resolve the dispute.

3. The Parties may submit written comments on the initial report within fourteen (14) days of its presentation.

4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

#### **ARTICLE 20.12 : FINAL REPORT**

1. The arbitral panel shall present a final report to the Parties, within thirty (30) days of presentation of the initial report, unless the Parties otherwise agree.

2. The final report of the arbitral panel shall be made publicly available within fifteen

(15) days of its delivery to the Parties.

#### **ARTICLE 20.13 : IMPLEMENTATION OF FINAL REPORT**

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.
2. On receipt of the final report of an arbitral panel, the Parties shall agree on:
  - (a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitral panel; and
  - (b) the reasonable period of time which is necessary in order to implement the means to resolve the dispute. If the Parties fail to agree on the reasonable period of time, a Party may request the original arbitral panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitral panel shall be presented within fifteen (15) days from that request.
3. If, in its final report, the arbitral panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall, whenever possible, be to eliminate the non-conformity or the nullification or impairment.

#### **ARTICLE 20.14 : NON-IMPLEMENTATION – COMPENSATION AND SUSPENSION OF BENEFITS**

1. If the Parties
  - (a) are unable to agree on the means to resolve the dispute pursuant to paragraph 2(a) of Article 20.13 within thirty (30) days of issuance of the final report; or
  - (b) have agreed on the means to resolve the dispute pursuant to Article 20.13 and the Party complained against fails to implement the aforesaid means within thirty (30) days following the expiration of the reasonable period of time determined in accordance with paragraph 2(b) of Article 20.13,

the Party complained against shall enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within twenty (20) days after the Parties have entered into negotiations on compensatory adjustment, the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to that Party of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits thirty (30) days after the date when it provides notice to the Party complained against under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.

3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.

4. In considering what benefits to suspend under paragraph 2:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
- (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment has been removed, or a mutually satisfactory solution is reached.

6. If the Party complained against considers that:

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

arbitral panel has found,

it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within thirty (30) days after it reconvenes.

7. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment for the arbitral panel set out in Article 20.7 shall be applied.

#### **ARTICLE 20.15 : OFFICIAL LANGUAGE**

1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.

2. When an original document submitted to the arbitral panel by a Party is not in the English language, that Party shall translate it into the English language and submit it with the original document at the same time.

#### **ARTICLE 20.16 : EXPENSES**

1. Unless the Parties otherwise agree, the costs of the arbitral 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 arbitral proceedings.