

## **CHAPTER 15: DISPUTE SETTLEMENT**

### **Section A Dispute Settlement**

#### **Article 15.01 General Provisions**

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.
2. All solutions to matters formally raised under the provisions of this Chapter, shall be consistent with this Agreement and shall not nullify or impair benefits accruing to any Party under this Agreement, nor impede the attainment of any objective of this Agreement.
3. Mutually agreed solutions to matters formally raised under the consultations of this Chapter made by the Parties of the matters related with this Agreement shall be notified to the Commission within a thirty (30) day period after a solution is reached.
4. For the purpose of this Chapter, “disputing Parties” means the complaining Party and the Party complained against.

#### **Article 15.02 Scope of Application**

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

- (a) with respect to the prevention or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;
- (b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) wherever a Party considers that an actual or proposed measure of the other Party causes or would cause nullification or impairment in the sense of Annex 15.02.

#### **Article 15.03 Choice of Forum**

1. The disputes arising in connection with the provisions of this Agreement and the WTO Agreement or agreements negotiated in accordance with the WTO Agreement may be settled in one of those fora, as the complaining Party chooses.

2. Where a Party has requested the establishment of the arbitral panel under Article 15.07, or has requested the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement, the forum chosen shall be used to the exclusion of the other.

#### **Article 15.04 Perishable Goods**

1. On disputes regarding perishable goods<sup>1</sup>, the Parties and the panel referred to in Article 15.07 may expedite the procedure. For this purpose, the Parties shall, by mutual agreement, shorten the timeframes established in this Chapter.

2. In cases of urgency, including issues regarding perishable goods, the consultations shall begin within fifteen (15) days upon receipt of the request.

#### **Article 15.05 Consultations**

1. A Party may request in writing consultations with the other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement, as referred to in Article 15.02.

2. The Party shall deliver the request to the other Party, and shall set out the reasons for the request, including an identification of the actual or proposed measure or other matter at issue, and the legal basis for the complaint.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article. For this purpose, the Parties shall:

(a) provide information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

#### **Article 15.06 Commission – Good Offices, Conciliation, and Mediation**

1. Any consulting Party may<sup>2</sup> request in writing a meeting of the Commission, if the Parties fail to resolve a matter pursuant to Article 15.04 or 15.05 within:

(a) sixty (60) days of delivery of a request for consultations;

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<sup>1</sup> For greater certainty, the term “perishable goods” means perishable agricultural and fish goods classified in chapters 1 through 24 of the Harmonized System; as long as the goods are located in customs at the point of arrival and they are not being released.

<sup>2</sup> This shall not be understood as a preliminary step needed to request the establishment of an arbitral panel, pursuant to Article 15.07.

(b) fifteen (15) days of delivery of a request for consultations in matters regarding perishable goods; or

(c) such other terms as they may agree.

2. The requesting Party shall deliver the request to the other Party and shall set out the reasons for the request, including an identification of the measure or other matter at issue, and the legal basis for the complaint.

3. Unless it decides otherwise, the Commission shall convene within ten (10) days of delivery of the request and shall endeavour to resolve the dispute promptly. The Commission may:

(a) call on technical advisers or create working groups or expert groups as it deems necessary;

(b) resort to good offices, conciliation, mediation or other dispute resolution procedures; or

(c) make recommendations, in order to assist the consulting Parties in reaching a mutually satisfactory resolution of the dispute.

4. Unless otherwise decided, pursuant to this Article, the Commission shall consolidate two or more proceedings presented for its consideration, relating to the same measure. The Commission may consolidate two or more proceedings presented for its consideration, relating to other matters whenever it deems appropriate to consider these proceedings jointly.

#### **Article 15.07 Establishment of an Arbitral Panel**

1. If the Parties fail to resolve the matter within:

(a) thirty (30) days after the Commission has convened pursuant to Article 15.06;

(b) thirty (30) days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 15.06 (4);

(c) fifteen (15) days after a Party has delivered a request for consultations under Article 15.05 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 15.06 (1);

(d) sixty (60) days after a Party has delivered a request for consultations under Article 15.05, if the Commission has not convened pursuant to Article 15.06 (3);  
or

(e) such other terms as the consulting Parties may agree;

any Party that requested a meeting of the Commission in accordance with Article 15.05 may request in writing the establishment of an arbitral panel to consider the matter, and shall set out the reasons for the request, including an identification of the actual measure or other matter at issue, and the legal basis for the complaint.

2. The complaining Party shall deliver the request to the other Party, and shall set out the reasons for the request, including an identification of the measure or other matter at issue and the legal basis for the complaint.

3. The disputing Parties may consolidate two (2) or more proceedings regarding other issues whenever they deem it appropriate to consider these proceedings jointly.

4. Arbitral panel procedures shall be considered invoked when the Party complained against receives the request to establish a panel. The disputing Parties shall adopt all necessary measures pursuant to Article 15.10 for the establishment of the panel.

5. Unless otherwise decided by the disputing Parties, the panel shall be established and shall carry out its functions in consistency with the provisions of this Chapter.

6. Notwithstanding paragraph 1, an arbitral panel may not be established to review a proposed measure.

#### **Article 15.08 Roster**

1. Within six (6) months of the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of up to thirty (30) individuals with the required qualification to serve as panelists. Said roster shall be composed of the "Roster of Panelists of the Parties" and the "Roster of Panelists of Non-Party Countries". Each Party may designate five (5) national panelists to form the "Roster of Panelists of the Parties", and five (5) panelists of Non-Party countries to form the "Roster of Panelists of Non-Party Countries".

2. The roster of panelists may be modified every three (3) years. Notwithstanding, the Commission may revise, by request of a Party, the roster of panelists before the expiration of this period.

3. The members of the roster of panelists shall meet the qualifications set forth in Article 15.09.

#### **Article 15.09 Qualifications of the Panelists**

1. The panelists shall meet the following qualifications:

- (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 judgment; and
  - (c) be independent of, and not be affiliated with or take instructions from, any Party.
2. The panelists shall comply with a Code of Conduct to be established by the Commission.
3. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 15.06.

#### **Article 15.10 Panel Selection**

1. The disputing Parties shall apply the following procedures in selecting a panel:
- (a) the arbitral panel shall be composed of three (3) members;
  - (b) the disputing Parties shall endeavour to agree on the designation of the chair of the arbitral panel within fifteen (15) days of receipt of the request for the establishment of the arbitral panel;
  - (c) if the disputing Parties do not reach an agreement within the above-mentioned timeframe, the chair shall be chosen by drawing lot from the “Roster of Panelists of Non-Party Countries”;
  - (d) within fifteen (15) days after the designation of the chair, each Party shall select a panelist from the “Roster of Panelists of the Parties”; and
  - (e) if a disputing Party does not select a panelist, the panelist shall be chosen by drawing from the “Roster of Panelists of the Parties” and shall be of that Party’s nationality.
2. Where a disputing Party considers that a panelist has violated the Code of Conduct, the disputing Parties shall hold consultations and decide whether to remove that panelist and select a new one pursuant to the provisions of this Article.

#### **Article 15.11 Model Rules of Procedure**

1. Upon the entry into force of this Agreement, the Commission shall establish the Model Rules of Procedure in accordance with the following principles:

- (a) the procedures shall ensure the right to at least one hearing before the arbitral panel and an opportunity for each disputing Party to provide initial and rebuttal written submissions; and
  - (b) the hearing before the arbitral panel, the deliberations and the preliminary report, as well as all the writings and communications presented in it shall be confidential.
2. Unless the disputing Parties otherwise agree, the arbitral panel shall conduct its proceedings in accordance with the Model Rules of Procedure.
  3. Unless the disputing Parties otherwise agree, within twenty (20) days of receipt of the request for the establishment of the arbitral panel, the terms of reference shall be:

"To examine, in the light of the provisions of this Agreement, the matters submitted for its consideration and to make findings, decisions, and recommendations as provided in Articles 15.13 (2) and 15.14".
  4. If a complaining Party claims that a matter causes nullification or impairment of benefits referred to in Annex 15.02, the terms of reference shall so indicate.
  5. When a disputing Party requests that the arbitral panel makes findings on the extent of the adverse trade effects brought upon by the measure adopted by the other disputing Party and it is considered by the disputing Party as inconsistent with the Agreement, or that the measure has caused nullification or impairment in the sense of Annex 15.02, the terms of reference shall so indicate.

#### **Article 15.12 Role of Experts**

Upon request of a disputing Party, or *ex officio*, the arbitral panel may seek information and technical advice from any persons or institutions that it deems appropriate under the Model Rules of Procedure.

#### **Article 15.13 Preliminary Report**

1. Unless the disputing Parties otherwise agree, the arbitral panel shall base its preliminary report on the communications and arguments presented by the disputing Parties, as well as the relevant provisions of this Agreement and any information received, pursuant to Article 15.12.
2. Unless the disputing Parties otherwise agree, within ninety (90) days after the arbitral panel has notified its acceptance to the Secretariat and a period of eight (8) days has passed from the day on which the Secretariat notifies the establishment to the disputing Parties, the arbitral panel shall present to the disputing Parties a preliminary report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 15.11 (5);
- (b) a decision about whether the measure in question is inconsistent with the obligations arising from this Agreement, or is a cause of nullification or impairment in the sense of Annex 15.02 or any other decision requested in the terms of reference; and
- (c) its recommendations, if any, to settle the dispute.

3. Panelists may furnish separate opinion in writing on matters in which consensus has not been reached.

4. Either disputing Party may submit written comments to the arbitral panel on its preliminary report within fourteen (14) days of presentation of the report. After considering any written comments on the preliminary report, the arbitral panel upon request of a disputing Party, or *ex officio*, may:

- (a) reconsider its report; and
- (b) take any steps deemed appropriate.

#### **Article 15.14 Final Report**

1. Within thirty (30) days of the presentation of the preliminary report, unless the disputing Parties otherwise agree, the arbitral panel shall notify the disputing Parties of its final report reached by majority of votes, including any separate opinions, in writing, on matters in which there is no consensus.

2. No arbitral panel may, in either its preliminary report or its final report, disclose the identity of the panelists that voted with the majority or the minority.

3. Unless the disputing Parties otherwise agree, the disputing Parties shall release the final report to the public within fifteen (15) days of its notification to the disputing Parties.

#### **Article 15.15 Implementation of the Final Report**

1. The final report of the arbitral panel shall be compulsory for the disputing Parties to implement under the terms and conditions specified in it. The term of implementation shall not exceed six (6) months from the date on which the final report was notified to the disputing Parties, unless the disputing Parties otherwise agree.

2. When the final report of the arbitral panel determines that a measure has not conformed to a disputing Party's obligations under this Agreement, the Party

complained against shall be prevented from implementing the measure or shall eliminate the non-conformity.

3. When the final report of the arbitral panel determines that a measure is causing nullification or impairment in the sense of Annex 15.02, it shall indicate the level of nullification or impairment and may suggest mutually satisfactory adjustments for the disputing Parties.

#### **Article 15.16 Suspension of Benefits**

1. Unless the disputing Parties notify the Commission of their agreement on the final report, within fifteen (15) days after the expiration of the timeframe determined by the arbitral panel, the panel shall determine if the Party complained against has conformed to the report.

2. The complaining Party may suspend the Party complained against from the benefits arising from this Agreement that have an effect equivalent to the benefits not received, if the arbitral panel decides that:

(a) a measure is inconsistent with the obligations of this Agreement, and the Party complained against has not implemented the final report within the term established by the panel; or

(b) a measure is the cause of nullification or impairment in the sense of Annex 15.02, and the disputing Parties do not reach a mutually satisfactory agreement of the dispute within the term established by the panel.

3. The suspension of benefits shall last until the Party complained against implements the final report or until the disputing Parties reach a mutually satisfactory agreement of the dispute.

4. In considering what benefits to be suspended pursuant to this Article:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors that are affected by the measure, or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 15.02; and

(b) if the complaining Party considers not feasible or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

5. Once benefits have been suspended, the disputing Parties, upon written request of a disputing Party, shall establish an arbitral panel for determining if the final report has been enforced, or if the level of benefits suspended by the complaining Party is excessive to the Party complained against, in accordance with this Article. When possible, the panel shall be composed of the same panelists who resolved the dispute.

6. When the arbitral panel established in paragraph 5 is composed of the same panelists who resolved the dispute, it shall submit a final report within thirty (30) days as of the request mentioned in paragraph 5. When the arbitral panel established in paragraph 5 is not composed of the same panelists, the panel shall submit a final report within sixty (60) days of the meeting in which it was established, or when the disputing Parties so decide.

7. When the Party complained against cannot comply with the final report, within thirty (30) days after the arbitral panel submits the final report, the Party complained against may request consultations with the complaining Party to reach an agreement on alternative measures to compensate the complaining Party.

8. If an agreement on alternative measures is not reached, the complaining Party may suspend the benefits, notwithstanding the provisions established in paragraphs 2 and 4, to the extent necessary to persuade the Party complained against to comply with the final report. In the application of this provision, the difference in the development levels of the disputing Parties will be taken into consideration.

## **Section B Domestic Proceedings and Settlement of Private Commercial Disputes**

### **Article 15.17 Interpretation of the Agreement before Judicial and Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceedings of a Party that the other Party considers as meriting its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission does not agree upon an interpretation or response, a Party may submit its own views to the judicial or administrative proceeding in accordance with the rules of that forum.

### **Article 15.18 Private Rights**

No Party may provide for a right of action under its domestic law against the other Party on the grounds that a measure of the other Party is inconsistent with this Agreement.

### **Article 15.19 Alternative Dispute Resolution**

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area established by this Agreement.

2. For this purpose, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. The Commission may establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use, and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area established by this Agreement.

## **ANNEX 15.02**

### **Nullification or Impairment**

1. If any Party considers that any benefit it could have reasonably expected to accrue to it under any provision of:

- (a) Part Two (Trade in Goods);
- (b) Part Three (Trade Barriers); or
- (c) Chapter Eleven (Cross-border Trade in Services);

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. With respect to any measure subject to an exception in accordance with Article 16.02 (General Exceptions), a Party may not invoke:

- (a) paragraph 1 (a) or (b), to the extent that the benefit arises from any cross-border trade in services provisions of Part Two (Trade in Goods), or of Part Three (Trade Barriers); or
- (b) paragraph 1 (c).

3. To determine the elements of nullification or impairment, the Parties may take into account the principles set out in the jurisprudence of paragraph 1 (b) of Article XXIII of GATT 1994.