

## **CHAPTER 18 DISPUTE SETTLEMENT**

### Article 18.1: Definitions

For the purposes of this Chapter, the following definitions shall apply:

**complaining Party** means a Party that requests the establishment of a panel under Article 18.7;

**consulting Party** means a Party that requests consultations under Article 18.5, and

**responding Party** means a Party that has been complained against under Article 18.7.

### Article 18.2: Cooperation

The Parties shall at all times endeavour 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 or application.

### Article 18.3: Scope

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties regarding the implementation, 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.

2. For greater certainty, this Chapter shall not apply to non-violation complaints and other situation complaints.

#### Article 18.4: Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the Parties are party, including the WTO agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the measure referred to in paragraph 1, that Party shall not initiate dispute settlement proceedings in another forum with respect to that measure, unless both Parties agree to select another forum.
3. For the purposes of paragraph 2:
  - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 18.7;
  - (b) dispute settlement proceedings under the WTO Agreements are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement, and
  - (c) dispute settlement proceedings under any other agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement panel in accordance with the relevant provisions of that agreement.

#### Article 18.5: Consultations

1. The consulting Party may request in writing consultations to the other Party with respect to any matter described in Article 18.3. The other Party shall accord due consideration to a request of consultations made by the consulting Party and shall accord adequate opportunity for such consultations.
2. The consulting Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter. The Party to which a request for consultations is made shall, unless the Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request. That Party shall deliver its reply to the consulting Party and enter into consultations in good faith.

3. Unless the Parties agree otherwise, they shall enter into consultations no later than:
  - (a) 15 days after the date of receipt of the request for matters concerning perishable goods, or
  - (b) 30 days after the date of receipt of the request for all other matters.
4. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the Parties agree otherwise.
5. The Parties shall make every effort to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:
  - (a) each Party shall provide sufficient information to enable a full examination of how the measure at issue might affect the operation or application of this Agreement, and
  - (b) a Party shall treat any information received during the consultations that is designated as confidential on the same basis as the Party providing the information.
6. Consultations shall be confidential and without prejudice to the rights of a Party in any other proceedings.

#### Article 18.6: Good Offices, Conciliation and Mediation

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

#### Article 18.7: Establishment of a Panel

1. A Party that requested consultations under Article 18.5 may request in writing to the responding Party the establishment of a panel, if the Parties fail to resolve the matter within:
  - (a) 60 days after the date of receipt of the request for consultations under Article 18.5;
  - (b) 30 days after the date of receipt of the request for consultations under Article 18.5 in cases of urgency, including those which concern perishable goods, or
  - (c) any other period as the Parties may agree.
2. A panel shall not be established to review a proposed measure.
3. The complaining Party shall include in the request to establish a panel:
  - (a) an identification of the measure at issue;
  - (b) the legal basis of the complaint, including any provision of this Agreement alleged to have been breached and any other relevant provision, and
  - (c) the factual basis for the complaint.
4. The date of the establishment of a panel shall be the date on which the chair is appointed.

#### Article 18.8: Terms of Reference

Unless the Parties agree otherwise within 20 days of the date of receipt of the request for the establishment of the panel, the terms of reference of the panel 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 a panel pursuant to Article 18.7, and to make findings and determinations, and any jointly requested recommendations, together with the reasons therefor, as provided for in Article 18.14.”

#### Article 18.9: Composition of Panels

1. A panel shall be composed of three panellists.

2. Each Party shall, within 30 days of the date of receipt of the request for the establishment of a panel, appoint one panellist who may be its national and propose up to three candidates to serve as the third panellist who shall be the chair of the panel. The third panellist shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall agree on and appoint the third panellist within 45 days of the date of receipt of the request for the establishment of a panel, taking into account the candidates proposed pursuant to paragraph 2.

4. If a Party has not appointed a panellist pursuant to paragraph 2 or if the Parties fail to agree on the appointment of the third panellist pursuant to paragraph 3, the panellist or panellists not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.

5. All panellists shall:

- (a) have expertise or experience in law, international trade or 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;
- (c) be independent of, and not be affiliated with or take instructions from, any Party, and
- (d) comply with the Code of Conduct to be established by the Joint Committee after the entry into force of this Agreement, pursuant to Article 20.3.1(g) (Functions of the Joint Committee).

6. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 18.6, unless the Parties agree otherwise.

7. If a panellist appointed under this Article becomes unable to act, resigns or needs to be replaced because that panellist does not comply with the Code of Conduct to be established by the Joint Committee after the entry into force of this Agreement, a successor shall be appointed within 15 days in accordance with paragraphs 2, 3 and 4. The successor shall have all the powers and duties of the original panellist. The work of the panel shall be suspended until the successor is appointed, and all the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

#### Article 18.10: Functions of Panels

1. The panels shall make an objective assessment of the matter before it, which includes:
  - (a) the facts of the case;
  - (b) the applicability of, and conformity with, this Agreement that are relevant to the matter before the panel, and
  - (c) whether the measure of the responding Party is inconsistent with its obligations under this Agreement or whether the responding Party has otherwise failed to carry out its obligations under this Agreement, as appropriate.
2. The panel shall make the findings, determinations and recommendations as are called for in its Terms of Reference and necessary for the resolution of the dispute.
3. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.
4. A panel established under this Chapter shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel may also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.
5. The findings, determinations and, if applicable, any recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.
6. Unless the Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure referred to in Article 18.11.9.

#### Article 18.11: Proceedings of Panels

1. The panels shall meet in closed session. The meetings of the panels with the Parties shall be closed to the public. The panels shall hold their hearings in closed session.
2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The panels established under this Chapter shall, after consulting the Parties, set out their respective timeframes, including precise deadlines for submissions by the Parties, in accordance with the Rules of Procedure referred to in paragraph 9.
4. The Parties shall have the opportunity to provide at least one written submission to set out the facts, arguments and counter-arguments, and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the panels, including any comments on the interim report and responses to questions put by the panels, shall be made available to the other Party.
5. After notifying the Parties, and subject to such terms and conditions as the Parties may agree, if any, within 10 days, the panels may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The panels shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.
6. The deliberations of the panels and the documents submitted to them shall be kept confidential. The Parties shall be present only when invited by the panels to appear before them. There shall be no *ex parte* communications with the panels concerning matters under consideration by them.
7. Notwithstanding paragraph 6, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, the information and written submissions submitted by the other Party to the panel which that other Party has designated as confidential. If a Party has provided information or written submissions designated to be confidential, that Party shall, within 28 days of a request of the other Party, provide a non-confidential summary of the information or written submissions.
8. Before the panel presents its final report, if the Parties agree, the panel may at any stage of the proceedings propose the Parties that the dispute be settled amicably.
9. The Joint Committee shall adopt the Rules of Procedure which provide for the details of the rules and procedures of the panels established under this Chapter, upon the entry into force of this Agreement. Unless the Parties agree otherwise, the panel shall follow the Rules of Procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the Rules of Procedure adopted by the Joint Committee.

#### Article 18.12: Suspension and Termination of Proceedings

1. If the Parties so agree, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months from the date of such agreement. In the event of a suspension of the work of the panel, the relevant time frames set out in this Chapter and in the Rules of Procedure shall be extended by the same amount of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of the Parties. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse and the dispute settlement procedure shall be terminated unless the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings of the panel by jointly notifying the chair of the panel at any time before the issuance of the report to the Parties.

#### Article 18.13: Reports

1. The interim and final reports of the panel shall be drafted without the presence of the Parties. The panel shall base its reports on the relevant provisions of this Agreement and the submissions and arguments of the Parties and may take into account any other relevant information provided to it.
2. Opinions expressed in the reports by the panellists shall be anonymous. Subject to the agreement between the Parties, the reports shall include any separate opinions on matters not unanimously agreed, not disclosing which panellists are associated with majority or minority opinions.

#### Article 18.14: Interim Report

1. The panel shall present an interim report to the Parties within 90 days of its establishment. In exceptional cases, if the panel considers that it cannot present the interim report within that timeframe, it shall inform the Parties in writing of the reasons for the delay with an estimate date on which the panel will issue its report. A delay shall not exceed an additional period of 30 days unless the Parties agree otherwise.
2. The interim report shall contain:
  - (a) a descriptive section summarising the development of the panel procedure, including a summary of the arguments of the Parties;
  - (b) its findings on the facts of the case and on the applicability of this Agreement;



- (c) its determination on whether the measure is consistent or not with this Agreement or whether a Party has otherwise failed to carry out its obligations in this Agreement;
  - (d) if the Parties have jointly requested them, its recommendations for the resolution of the dispute, and
  - (e) its reasons for the findings and determinations.
3. A Party may submit written comments to the panel on its interim report within 15 days of the date of the presentation of the interim report.
4. After considering any written comments by the Parties on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

#### Article 18.15: Final Report

1. The panel shall present a final report to the Parties, no later than 120 days of the date of its establishment. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline, unless the Parties agree otherwise
2. The final report may include a discussion of any written comments made by the Parties on the interim report. The final report shall provide the content of Article 18.14.
3. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the Parties may make available the final report to the public unless the Parties otherwise agree.
4. The final report shall be binding on the Parties.

#### Article 18.16: Compliance of the Final Report

1. If the panel determines that the measure at issue is inconsistent with a Party's obligations in this Agreement or the respondent Party has otherwise failed to carry out its obligations in this Agreement, the respondent Party shall eliminate the non-conformity.

2. If immediate compliance of the final report is not practicable, the respondent Party shall, no later than 20 days after delivery of the final report, notify the complaining Party of the intended length of the reasonable period of time necessary for compliance with the final report.

#### Article 18.17: Reasonable Period of Time for Compliance

1. The Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report. If the Parties fail to agree on the reasonable period of time within 20 days after the date of receipt of the notification pursuant to Article 18.16.2, the complaining Party may request in writing to the panel to determine the reasonable period of time. Such request shall be notified simultaneously to the other Party.

2. The panel shall deliver its decision to the Parties on the above referenced reasonable period of time within 20 days of the date of submission of the request.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

#### Article 18.18: Non-Implementation – Compensation and Suspension of Benefits

1. Where the responding Party considers it has complied with the obligation under Article 18.16.1, 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 sufficient to allow the complaining Party to assess the measure, as well as the date the measure comes into effect, and the text of the measure, if any.

2. If:

- (a) following the expiry of the reasonable period of time established in accordance with Article 18.17, there is disagreement between the Parties as to whether the responding Party has eliminated the non-conformity, or
- (b) the responding Party has notified the complaining Party that it does not intend to, or that it is impracticable to, eliminate the non-conformity,

the responding Party shall, upon request of the complaining Party, enter into consultations with the complaining Party no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation.

3. If the Parties fail to agree on compensation within 30 days after the date of receipt of the request for compensation referred to in paragraph 2, or have agreed on compensation but the responding Party has failed to observe the terms and conditions of that agreement, the complaining Party may provide written notice to the responding Party that it intends to suspend benefits equivalent to the level of the nullification or impairment caused by the non-conformity.

4. The notice referred to in paragraph 3 shall specify the level of benefits that the Party intends to suspend and indicate the relevant sector or sectors in which the complaining Party intends to suspend such benefits. The complaining Party may begin suspending benefits 30 days after the date on which it provides notice under paragraph 3 or the date the panel issues its determination under paragraph 9, whichever is later.

5. In considering what benefits to suspend, the complaining Party shall apply the following principles:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that in which the panel has determined non-conformity to exist, and
- (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in a different sector or sectors. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different sector or sectors is based.

6. The level of benefits that the complaining Party intends to suspend shall not exceed the level equivalent to the nullification or impairment caused by the non-conformity.

7. The compensation and suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full implementation through elimination of the non-conformity. The suspension shall only be applied until such time as the non-conformity is fully eliminated or until a mutually satisfactory solution is reached.

8. If the responding Party considers that:

- (a) it has observed the terms and conditions of the compensation agreement;
- (b) the level of benefits intended to be suspended is not equivalent to the level of nullification or impairment caused by the non-conformity;

- (c) the complaining Party has failed to follow the principles set out in paragraph 5, or
- (d) it has eliminated the non-conformity that the panel has determined to exist,

it may, no later than 30 days after the date of the written notice provided by the complaining Party under paragraph 3, request in writing that the original panel be reconvened to consider the matter. The responding Party shall simultaneously deliver its request to the complaining Party.

9. If a request is made pursuant to paragraph 8, the original panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the Parties no later than 60 days after it reconvenes, or if the original panel cannot be reconvened with its original panellists, after the date on which the last panellist is appointed.

10. In the event the panel determines that the level of benefits the complaining Party intends to suspend is not equivalent to the level of nullification or impairment caused by the non-conformity, it shall determine the level of benefits it considers to be of equivalent level of nullification or impairment. 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 5, the complaining Party shall apply them consistently with that paragraph.

11. Unless the panel has determined that the responding Party has eliminated the non-conformity, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 10 or, if the panel has not determined the level, the level the complaining Party has intended to suspend under paragraph 4.

#### Article 18.19: Compliance Review

1. Without prejudice to the procedures in Article 18.18, if a responding Party considers that it has eliminated the non-conformity found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. If the panel determines that the responding Party has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits suspended under Article 18.18.

#### Article 18.20: Remuneration and Expenses

1. Each Party shall bear the cost of its appointed panellist at its own expenses. The cost of the chair of a panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.
2. Each Party shall bear its own expenses and legal costs derived from the participation in the panel proceedings.

#### Article 18.21: Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time.
2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel procedure shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution immediately or within the agreed time period, as applicable.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

#### Article 18.22: Time Periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following the act to which they refer.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.