

## CHAPTER 17 : DISPUTE SETTLEMENT

### ARTICLE 17.1 : 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, consultations or other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

### ARTICLE 17.2 : SCOPE OF APPLICATION

1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with the obligations of this Agreement; or
- (b) the other Party has failed to carry out its obligations under this Agreement;

2. The rules, procedures and time frames set out in this Chapter may be waived, varied or modified by mutual agreement.

### ARTICLE 17.3: CHOICE OF FORUM

1. Where a dispute regarding any matter arises under this Agreement or under another free trade agreement to which both Parties are party, or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested either way the intervention of the Commission or a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others in respect of that matter, unless both Parties otherwise agree.

### ARTICLE 17.4: CONSULTATIONS

1. A Party may request in writing consultations with the other Party with respect to any matter referred to in Article 17.2 (Scope of Application).

2. The requesting Party shall deliver the request to the other Party<sup>17-1</sup>, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal and factual 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 or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

- (a) provide sufficient information to enable a full examination of how the matter at issue 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.

4. In the consultations under this Article, any consulting Party may request to the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter which is the subject of the consultations.

5. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in a place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

6. The consultation period shall not exceed forty-five (45) days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period. On disputes concerning perishable goods, the consultation period shall not exceed twenty (20) days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period.

#### ARTICLE 17.5: FREE TRADE COMMISSION

1. If the Parties cannot settle the dispute within the term established in Article 17.4 (Consultations), only the complaining Party may request in writing the intervention of the Commission.

2. The complaining Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 6.15 (Consultation and Dispute Settlement) or Article 7.11 (Country Coordinators on Technical Barriers to Trade).

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<sup>17-1</sup> Whenever a provision of this Chapter calls for the delivery of a written notice to another Party, the Party providing the notice shall also deliver a copy of the written notice to its own designated office.

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

4. 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 such technical advisors or create such working groups or expert groups as it deems necessary;
- (b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or
- (c) make recommendations.

5. The Commission may meet in person or through any other technological means available to the Parties that will allow them to carry out this stage of the proceedings.

6. If the Commission does not settle the dispute:

- (a) within twenty (20) days, counted from the date on which the Commission meeting is held according to paragraph 4; or
- (b) within ten (10) days for perishable goods, counted from the date on which the Commission meeting is held according to paragraph 4;

any Party may request the establishment of a Panel.

#### ARTICLE 17.6: REQUEST FOR A PANEL

1. Upon expiry of the consultation period, or the period for intervention of the Commission, if such intervention has been requested, either Party may send a written request to the other Party for the establishment of a Panel to consider the matter. The request must include an identification of the measure or other matter subject to the claim and the provisions of this Agreement considered pertinent, as well as any other relevant circumstances.

2. A Panel shall be established upon delivery of a request.

3. Unless otherwise agreed by the disputing Parties, the Panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

#### ARTICLE 17.7 : ROSTER

1. Within six (6) months of the date of entry into force of this Agreement, the Parties shall establish and subsequently maintain an indicative roster of up to ten (10) individuals, who are not nationals of the Parties and are willing and able to serve as panelists. The roster members shall be appointed by consensus between the Parties. The Parties may, by common agreement, change or include new panelists in the roster, whenever they consider it necessary.
2. The Parties may proceed to use the roster, even if it is incomplete, with the candidates already proposed and appointed by agreement under paragraph 1.

#### ARTICLE 17.8 : QUALIFICATIONS OF PANELISTS

1. Panelists shall:
  - (a) have expertise or experience in international trade law, 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, impartiality, 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 established by the Commission.
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to paragraph 4 of Article 17.4 (Consultations).

#### ARTICLE 17.9 : PANEL SELECTION

1. The Parties shall apply the following procedures in selecting a Panel:
  - (a) The Panel shall comprise three (3) members.
  - (b) Each Party shall appoint a panelist within fifteen (15) days of the delivery of the request for the establishment of the Panel. If a Party does not appoint a panelist within this period, the panelist will be selected by lot by the Director-General of the WTO, within a maximum of fifteen (15) days, from among the members of the indicative roster.

- (c) The Parties shall endeavour to agree on a third panelist who shall serve as the chairperson of the Panel within fifteen (15) days of the appointment of the second panelist. If the Parties cannot reach an agreement during this period, the two appointed panelists shall endeavour to unanimously select a third panelist to serve as chairperson within the following fifteen (15) days. If the panelists cannot agree, the chairperson shall be selected by lot by the Director-General of the WTO from among the members of the indicative roster, within a maximum of fifteen (15) days.
- (d) For purposes of sub-paragraphs (b) and (c), in the event that the Director-General of the WTO is a national of either Party, the Deputy Director-General of the WTO or the officer next in seniority who is not a national of either Party shall be requested to make the necessary selections.
- (e) Each Party shall endeavour to appoint panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.

2. If a Party believes that a panelist is in violation of the Code of Conduct, both Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

#### ARTICLE 17.10 : RULES OF PROCEDURE

1. The Commission shall establish Model Rules of Procedure, which shall ensure:
  - (a) a right to at least one hearing before the Panel;
  - (b) an opportunity for each Party to provide initial and rebuttal written submissions; and
  - (c) the protection of confidential information.
2. Unless the Parties otherwise agree, the Panel shall conduct its proceedings in accordance with the Model Rules of Procedure.
3. The Commission may modify the Model Rules of Procedure.
4. Unless the Parties otherwise agree within twenty (20) days from the date of the delivery of the request for the establishment of the Panel, the Terms of Reference shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the panel request and to make findings, determinations and recommendations, as provided in Article 17.12 (Initial Report).”

5. If a Party wishes the Panel to make findings as to the degree of adverse trade effects on either Party of any measure found not to conform with the obligations of the Agreement, the terms of reference shall so indicate.

6. The location of the proceedings of the Panel shall be decided by mutual agreement of the Parties, failing which, it shall alternate between the capitals of the Parties in alphabetical order.

#### ARTICLE 17.11 : ROLE OF EXPERTS

1. On request of a Party, or on its own initiative, unless both Parties disapprove it, the Panel may seek information and technical advice from any person or body that it deems appropriate. The requirements established in Article 17.8 (Qualifications of Panelists) shall also be applicable to the selection of experts, as appropriate.

2. Before the Panel may request information or technical advice, appropriate procedures must be established in consultation with the Parties. The Panel shall provide the Parties with:

- (a) prior notification and time to make observations before the Panel regarding requests for information and technical advice pursuant to paragraph 1; and
- (b) a copy of any information or technical advice submitted in answer to a request made pursuant to paragraph 1, and the time to submit comments.

3. When the Panel takes into consideration such information or technical advice in the preparation of its report, it shall also take into account any comments or observations submitted by the Parties on the information or technical advice.

#### ARTICLE 17.12 : INITIAL REPORT

1. Unless the Parties otherwise agree, the Panel shall base its report on the relevant provisions of the Agreement, the submissions and arguments of the Parties, and on any information before it pursuant to Article 17.11 (Role of Experts).

2. Unless the Parties otherwise agree, the Panel shall, within one hundred and twenty (120) days, and within eighty (80) days in the case of

perishable goods, after the last panelist is selected, present to the Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 17.10.5 (Rules of Procedure), together with reasons;
- (b) its determination as to whether the measure at issue is inconsistent with this Agreement or any other determination requested in the terms of reference; and
- (c) its recommendations, if any, for resolution of the dispute.

3. A Party may submit written comments to the Panel on its initial report within fourteen (14) days of presentation of the report or within such other period as the Parties may agree. A copy of the comments submitted shall be provided to the other Party.

4. After considering any such written comments on the initial report, the Panel, on its own initiative or on the request of either Party, may request or receive the views of a Party, reconsider its report, and make any further examination it considers appropriate.

#### ARTICLE 17.13 : FINAL REPORT

1. The Panel shall present a final report to the Parties, containing the elements listed in Article 17.12.2 (Initial Report), and including any separate opinions on matters not unanimously agreed, within forty-five (45) days of presentation of the initial report, unless the Parties otherwise agree.

2. The Parties shall release the final report to the public within fifteen (15) days thereafter, subject to the protection of confidential information.

3. Findings, determinations and recommendations of a Panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

#### ARTICLE 17.14 : REQUEST FOR CLARIFICATION OF THE FINAL REPORT

1. Within ten (10) days of the presentation of the final report by the Panel, either Party may submit a written request to the Panel for clarification of its final report. Any clarification by the Panel shall not affect its findings, determinations and recommendations.

2. The Panel shall respond to the request within no more than twenty (20) days, counted from the presentation of the request. The request for clarification will not postpone the deadline for compliance with the

adopted decision, unless the Panel decides otherwise or if the circumstances so require.

#### ARTICLE 17.15 : SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties may agree to suspend the work of the Panel at any time for a period not exceeding twelve (12) months from the date of such agreement. In any event, if the work of the Panel has been suspended for more than twelve (12) months, the authority for establishment of the Panel shall lapse unless the Parties agree otherwise. If the authority of the Panel has lapsed and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from instituting new proceedings relating to the same matter.

2. The Parties may agree to terminate the proceedings before a Panel at any time by jointly notifying the chairperson of the Panel to this effect.

#### ARTICLE 17.16 : IMPLEMENTATION OF THE REPORT

1. On receipt of the final report of the Panel, the Parties shall agree on the resolution of the dispute, which shall normally comply with the determinations and recommendations, if any, of the Panel.

2. If the Panel determines that a Party has not conformed to its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity, unless otherwise agreed by the Parties.

3. Nothing in this Article shall prevent the Parties from, at any time, agreeing to resolve the dispute in a manner that departs from any findings, determinations or recommendations of the panel.

#### ARTICLE 17.17 : NON-IMPLEMENTATION–SUSPENSION OF BENEFITS

1. If a Panel has made a determination of the type described in Article 17.13 (Final Report) and the Parties are unable to reach agreement on a resolution pursuant to Article 17.16 (Implementation of the Report) within thirty (30) days of receiving the final report, or such other period as the disputing Parties agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation. This compensation shall be paid from the moment the Parties agree to it until the Party complained against complies, unless otherwise agreed by the Parties.

2. If the disputing Parties:

- (a) are unable to agree on compensation within thirty (30) days after the period for developing such compensation has begun, or
- (b) have agreed on compensation or on a resolution pursuant to Article 17.16 (Implementation of the Report), and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

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 Party proposes to suspend<sup>17-2</sup>. The complaining Party may begin suspending benefits thirty (30) days after the date on which it provides written notice under this paragraph, or seven (7) days after the Panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

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

it may, within thirty (30) days after the complaining Party provides notice under paragraph 2, request that the original Panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The Panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the disputing Parties within sixty (60) days after it reconvenes. Where the original Panel cannot hear the matter for any reason, a new Panel shall be appointed pursuant to the procedures set out in Article 17.9 (Panel Selection). If the Panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the Panel has determined under paragraph 3 or, if the Panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the Panel has determined that the Party complained against has eliminated the non-conformity.

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<sup>17-2</sup> For greater certainty, the phrase **the level of benefits that the Party proposes to suspend** refers to the level of concessions under the Agreement the suspension of which a complaining Party considers will have an effect equivalent to that of the disputed measure, and shall be restricted to benefits granted to the Party complained against under this Agreement.

5. If the Panel decides that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits such Party has suspended under paragraph 3.

6. In considering what benefits to suspend pursuant to paragraph 2:

- (a) a 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 Panel has found to be inconsistent with the obligations of this Agreement; and
- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

7. The suspension of benefits shall be temporary and shall only be applied until such time as:

- (a) the Party eliminates the non-conformity that the Panel has found; or
- (b) a mutually satisfactory solution is reached.

#### ARTICLE 17.18 : COMPLIANCE REVIEW

1. In those cases where suspension of benefits have been applied, and the Party complained against considers that:

- (a) has eliminated the non-conformity that the Panel has found; or
- (b) has complied with any mutually satisfactory solution reached; or
- (c) the level of benefits suspended is manifestly excessive

it may refer the matter to the Panel by providing written notice to the complaining Party. The Panel shall issue its report on the matter within thirty (30) days, and within fifteen (15) days in the case of perishable goods, after the Party complained against provides notice.

2. If the Panel decides that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits suspended under Article 17.17 (Non-Implementation—Suspension of Benefits).

3. If the Panel determines that the level of benefits suspended by the complaining Party is manifestly excessive, it shall determine the level of

benefits that it considers to be of equivalent effect, with which the complaining Party shall comply.

ARTICLE 17.19 : FIVE-YEAR REVIEW

The Commission shall review the operation and effectiveness of Articles 17.16 (Implementation of the Report) and 17.17 (Non-Implementation—Suspension of Benefits) every five (5) years, unless otherwise agreed by the Parties.