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CHAPTER 28

DISPUTE SETTLEMENT

Section A: Dispute Settlement

Article 28.1: Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel pursuant to Article 28.7.1 (Establishment of a Panel);

consulting Party means a Party that requests consultations pursuant to Article 28.5.1 (Consultations) and the Party to which the request for consultations is made;

disputing Party means a complaining Party or a responding Party; Panel means a panel established pursuant to Article 28.7 (Establishment of a Panel);

perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

responding Party means a Party that has been complained against pursuant to Article 28.7.1 (Establishment of a Panel);

Rules of Procedure means the rules referred to in Article 28.12 (Rules of Procedure for Panels) and established in accordance with Article 27.2.1(e) (Functions of the Commission); and

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 28.13 (Third Party Participation).

Article 28.2: 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.

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Article 28.3: Scope

1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:
 - (a) with respect to the avoidance 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 another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; or
 - (c) wherever a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textiles and Apparel), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement) is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.
2. No later than 6 months after the effective date when Members of the WTO have the right to initiate non-violation nullification or impairment complaints under Article 64 of the TRIPS Agreement, the Parties shall consider whether to amend paragraph 1(c) to include Chapter 18 (Intellectual Property Rights).
3. An instrument entered into by two or more Parties in connection with the conclusion of the Agreement:
 - (a) does not constitute an instrument related to this Agreement within the meaning of Article 31(2)(b) of the *Vienna Convention on the Law of Treaties* done at Vienna on 23 May 1969 and shall not affect the rights and obligations under this Agreement of Parties not subject to a particular instrument; and
 - (b) may be subject to the dispute settlement procedures under this Chapter for any matter arising under that instrument if that instrument so provides.

Article 28.4: Choice of Forum

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

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2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 28.5: Consultations

1. Any Party may request in writing consultations with any other Party with respect to any matter described in Article 28.3 (Scope). In a request for consultations, the requesting Party shall set out the reasons for the request, including identification of the actual or proposed measure¹ or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request to all Parties through the Contact Points designated in accordance with Article 27.5 (Contact Points).

2. The Party to which a request for consultations is made shall, unless otherwise mutually agreed, reply to the request in writing within seven days after the date of its receipt. That Party shall circulate the reply to the other Parties and enter into consultations in good faith.

3. A Party other than the Party requesting consultations or the Party to which the request is made that considers it has a substantial interest in the matter may participate in the consultations by delivering a written notice to the other Parties within seven days of the date of delivery of the request for consultation. The Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties agree otherwise, they shall enter into consultations within a period of no more 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.

5. Consultations may be held in person or by any technological means available to the consulting Parties. If in person, consultations shall be held in the capital of the Party to which the request for consultations was made under paragraph 1, unless the consulting Parties otherwise agree.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:

¹ Parties shall, in the case of proposed measures, make every effort to make any request under this provision within 60 days of the publication of the proposed measure, without prejudice to the right to make such requests at any time

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- (a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation and application of this Agreement; and
- (b) any Party participating in the consultations shall treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

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

8. Consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

Article 28.6: Good Offices, Conciliation and Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution such as good offices, conciliation or mediation.

2. Proceedings involving good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate such proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel convened under Article 28.7 (Establishment of a Panel).

Article 28.7: Establishment of a Panel

1. A Party that requested consultations pursuant to paragraph 1 of Article 28.5 (Consultations) may request, by means of a written notification addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within:

- (a) 60 days after the date of receipt of the request for consultations under Article 28.5.1;
- (b) 30 days after the date of receipt of the request for consultations under Article 28.5.1 in a matter regarding perishable goods; or

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- (c) such other period as the consulting Parties may agree.
- 2. At the same time, the complaining Party shall circulate the request to all Parties through the contact points designated in accordance with Article 27.5 (Contact Points).
- 3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
- 4. A panel shall be established upon delivery of a request.
- 5. Unless otherwise agreed by the disputing Parties, the panel shall be composed in a manner consistent with the provisions of this Chapter and the Rules of Procedure.
- 6. Where a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine such complaints whenever feasible.
- 8. A panel may not be established to review a proposed measure.

Article 28.8: Terms of Reference

- 1. Unless the disputing Parties otherwise agree within 20 days from the date of delivery of the request for the establishment of the panel, the terms of reference shall be to:
 - (a) 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 28.7.1 (Establishment of a Panel); and
 - (b) make findings and determinations, and any requested recommendations, together with its reasons therefor, as provided for in Article 28.16.4 (Initial Report).
- 2. If, in its panel request, a complaining Party has claimed that a measure nullifies or impairs benefits in the sense of Article 28.3(c) (Scope), the terms of reference shall so indicate.

Article 28.9: Composition of Panels

- 1. The panel shall comprise three members.
- 2. Unless they otherwise agree, the disputing Parties shall apply the following procedures in selecting a panel:

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- (a) Within 20 days of the delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall appoint a panellist and notify each other of those appointments.
- (b) If the complaining Party or Parties fail to appoint a panellist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.
- (c) If the responding Party fails to appoint a panellist within the period set out in subparagraph (a), the panellist not yet appointed shall be chosen by the complaining Party or Parties:
 - (i) from the responding Party's list established under Article 28.10.11 (Qualification of Panellists and Roster Members); or
 - (ii) where the responding Party has not established a list under Article 28.10.11 (Qualification of Panellists and Roster Members), from the roster of panel chairs established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members); or
 - (iii) where no roster of panel chairs has been established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members), by random selection from a list of three candidates nominated by the complaining Party or Parties.

within 35 days of the delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel).

- (d) For appointment of the chair of the panel:
 - (i) the disputing Parties shall endeavour to agree on the appointment of a chair of the panel;
 - (ii) if the disputing Parties fail to appoint a chair pursuant to subparagraph (d)(i) by the time the second panellist has been appointed or within 35 days of the delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), whichever is longer, the two panellists appointed shall, by common agreement, appoint the third panelist from the roster established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members). The third panellist shall serve as chair.

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- (iii) If the two panellists do not agree to the third panellist under subparagraph (d)(ii) within 43 days of the delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), then the two panellists shall make the appointment with the agreement of the disputing Parties.
- (iv) If the two panellists fail to appoint the chair of the panel in accordance with subparagraph (d)(iii) within 55 days of the delivery of the request for the establishment of the panel, the disputing Parties shall select the third panellist by random selection from the roster established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members) within 60 days of the delivery of the request for the establishment of the panel.
- (ivbis) Notwithstanding paragraph 9.2(d)(iv), where the two panellists fail to appoint the chair of the panel in accordance with paragraph 9.2(d)(iii) within 55 days of the delivery of the request for the establishment of the panel, either disputing Party may elect to have the chair of the panel be appointed by an independent third party from the roster established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members), provided that the following conditions are met:
 - (A) Any costs associated with such appointment are borne by the electing Party;
 - (B) The request to the independent third party to appoint the chair of the panel shall be made jointly by the disputing Parties. Any subsequent communication between either disputing Party and the independent third party shall be copied to the other disputing Party. Neither disputing Party shall have any influence on the appointment process;
 - (C) Where the third party is unable or unwilling to complete the appointment as requested within 60 days of the delivery of the request for the establishment of the panel, then the chair of the panel shall be chosen within a further 5 days using the random selection process set out in paragraph 9.2(d)(iv).
- (v) If a roster has not been established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members), and subparagraphs 2(d)(i) – (iv) cannot apply, the complaining Party or Parties, on the one hand, and the responding Party, on the other hand, may nominate three candidates and the third panellist shall be randomly selected from those candidates that have been nominated within 60 days of the delivery of the

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request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel).

(*vbis*) Notwithstanding paragraph (9)(2)(d)(v), where a roster has not been established pursuant to Article 28.10.3 (Qualification of Panellists and Roster Members), and subparagraphs 2(d)(i) to (v) cannot apply, either disputing Party may, following the nomination of candidates pursuant to paragraph 9.2(d)(v), elect to have the chair of the Panel be appointed by an independent third party from those candidates that have been nominated, providing that the following conditions have been met:

- (A) Any costs associated with such appointment are borne by the electing Party;
- (B) The request to the independent third party to appoint the chair of the panel shall be made jointly by the disputing Parties. Any subsequent communication between either disputing Party and the independent third party shall be copied to the other disputing Party. Neither disputing Party shall have any influence on the appointment process;
- (C) Where the third party is unable or unwilling to complete the appointment as requested within 60 days of the delivery of the request for the establishment of the panel, then the chair of the panel shall be chosen within a further 5 days using the random selection process set out in paragraph 9.2(d)(v).

Unless agreed otherwise by the disputing Parties, the chair of the panel shall not be a national of any of the disputing Parties or a third Party.

3. Except in the case of a dispute arising under Chapter 19 (Labour), 20 (Environment), or 26 (Transparency and Anti-corruption) each disputing Party shall endeavour to select panellists who have expertise or experience relevant to the subject matter of the dispute.

4. In addition to the requirements set out in Article 28.10.1 (Qualification of Panellists and Roster Members), in any dispute arising under Chapter 20 (Environment), panellists other than those selected from the Roster or appointed under paragraph 9.2(d)(i)-(iii) and (v) shall have expertise or experience in environmental law or practice.

5. In addition to the requirements set out in Article 28.10.1 (Qualification of Panellists), in any dispute arising under Chapter 19 (Labour), panellists other than those selected from the Roster or appointed under paragraph 9.2(d)(i)-(iii) and (v) shall have expertise or experience in labour law or practice.

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6. In addition to the requirements set out in Article 28.10.1 (Qualification of Panellists), in any dispute arising under section B of Chapter 26 (Transparency and Anti-corruption), panellists other than those selected from the Roster or appointed under paragraph 9.2(d)(i)-(iii) and (v) shall have expertise or experience in anti-corruption law or practice.
7. If a panellist selected under paragraph 9.2(c) or 9.2(d)(iv) is unable to serve on the panel, the disputing Parties shall meet within seven days of learning that the panellist is unavailable to select another panellist from among the remaining members of the list (in the case of paragraph 9.2(c)) or the roster (in the case of paragraph 9.2(d)(iv)).
8. If a panellist appointed under this Article resigns or becomes unable to serve on the panel, either during the course of the proceeding or at such time as the panel is reconvened pursuant to Article 28.19 (Non-Implementation – Compensation and Suspension of Benefits) or 28.20 (Compliance Review), a replacement panellist shall be appointed within 15 days in accordance with the selection procedures prescribed in paragraph 2 for the appointment of the original panellist and the replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, and all relevant 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.
9. If a disputing Party believes that a panellist is in violation of the code of conduct referred to in Article 28.10(1)(d) (Qualification of Panellists and Roster Members), the disputing Parties shall consult and, if they agree, that panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 28.10: Qualification of Panellists and Roster Members

Qualification of Panellists

1. All panellists 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 judgment;
 - (c) be independent of, and not be affiliated with or take instructions from, any Party; and
 - (d) comply with the code of conduct contained in the Rules of Procedure.

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2. An individual may not serve as a panellist for a dispute in which he or she has participated pursuant to Article 28.6 (Good Offices, Conciliation and Mediation).

Roster of Panel Chairs

3. Within 120 days of entry into force of this Agreement, those Parties for whom the agreement has come into force pursuant to Article 30.5.1(a) (Entry into Force) shall establish a roster of panel chairs.

4. If the Parties have been unable to establish a roster within the time specified in paragraph 3, the Commission shall convene immediately to appoint individuals to the roster. Taking into account the nominations made pursuant to paragraph 6 and the qualifications set out in paragraph 1, the Commission shall issue a joint decision establishing the roster within 180 days of the date of entry into force of this Agreement.

5. The roster shall consist of at least 15 individuals, unless the Parties agree otherwise.

6. Each Party may nominate up to two individuals for the roster, which may include up to one national of any Party.

7. The Parties shall appoint individuals to the roster by consensus. The roster may include up to one national of each Party.

8. Once established pursuant to paragraph 3 or if reconstituted following a review by the Parties, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. Members of the roster may be reappointed.

9. The Parties may appoint a replacement at any time if a roster member is no longer willing or available to serve.

10. Subject to paragraphs 6 and 7, acceding Parties may nominate up to two individuals for the roster at any time who, thereafter, may be included on the roster by consensus of the Parties.

Party Specific Indicative List

11. At any time after the date of entry into force of this Agreement, a Party may establish a list of individuals who are willing and able to serve as panellists.

12. This list may include individuals who are nationals of that Party or non-nationals. Each Party may appoint any number of individuals to the list and appoint additional individuals or replace the list member at any time.

13. A Party which establishes a list in accordance with paragraph 11 of this Article shall promptly make it available to the other Parties.

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Article 28.11: Functions of Panels

1. The function of a panel is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.
2. Unless otherwise agreed by the disputing Parties, the panel shall perform its functions and conduct its proceedings in a manner consistent with the provisions of this Chapter and the Rules of Procedure.
3. The panel shall consider this Agreement in accordance with applicable rules of interpretation under international law as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties (1969)*. In addition, with respect to any obligation of any WTO agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.
4. A panel shall take its decisions by consensus; provided that where a panel is unable to reach consensus it may take its decisions by majority vote.

Article 28.12: Rules of Procedure for Panels

1. The Rules of Procedure, as established under this Agreement in accordance with Article 27.2.1(e), shall ensure:
 - (a) a right to at least one hearing before the panel at which each disputing Party may present views orally;
 - (b) that, subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;
 - (c) an opportunity for each disputing Party to provide an initial and a rebuttal written submission;
 - (d) that, subject to paragraph (f), each disputing Party shall make its best efforts to release to the public any written submission, written version of an oral statement, and written response to a request or question from the panel, as soon as possible after they are filed and, if not already released, will release all such documents by the time the final panel report is issued;

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- (e) that the panel shall consider requests from non-governmental entities located in the territory of any disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;
- (f) the protection of confidential information;
- (g) that written submissions and oral arguments shall be made in English, unless the disputing Parties agree otherwise; and
- (h) that unless otherwise agreed by the disputing Parties, hearings shall be held in the capital of the responding Party.

Article 28.13: Third Party Participation

A Party that is not a disputing Party and that considers it has an interest in the matter before the panel shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, to make written submissions, to present views orally to the panel, and to receive written submissions of the disputing Parties. Such delivery shall occur no later than 10 days after the date of circulation of the request for the establishment of the panel pursuant to Article 28.7.2 (Establishment of a Panel).

Article 28.14: Role of Experts

At the request of a disputing Party or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as the disputing Parties may agree. The disputing Parties shall have an opportunity to comment on any information or advice so obtained.

Article 28.15: Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties so request. In the event of such a suspension, all relevant 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. If the work of the panel has been suspended for more than 12 consecutive months, the authority for establishment of the panel shall lapse unless the disputing Parties agree otherwise.

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2. The panel shall terminate its proceedings where the disputing Parties jointly request it to do so.

Article 28.16: Initial Report

1. The report of the panel shall be drafted without the presence of any Party.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any third Parties, and on any information or advice put before it pursuant to Article 28.14 (Role of Experts). At the joint request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present to the disputing Parties an initial report within 150 days after the last panellist is appointed. In cases of urgency, including those related to perishable goods, the panel shall endeavour to do so within 120 days after the last panellist is appointed.

4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the panel as to whether:

(i) the measure at issue is inconsistent with the obligations under this Agreement;

(ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

(iii) a disputing Party's measure is causing nullification or impairment in the sense of Article 28.3(c) (Scope);

(c) any other determination requested in the terms of reference;

(d) recommendations, if the disputing Parties have jointly requested them, for resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers it cannot release its initial report within 150 days, or within 120 days in cases of urgency, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties

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otherwise agree.

6. Panellists may furnish separate opinions on matters not unanimously agreed.
7. A disputing Party may submit written comments to the panel on its initial report within 15 days of the presentation of the report or within such other period as the disputing Parties may agree.
8. After considering any written comments by the disputing Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

Article 28.17: Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.
2. No panel may, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

Article 28.18: Implementation of Final Report

1. The Parties recognize the importance of prompt compliance with determinations made by panels under Article 28.17 (Final Report) in achieving the aim of the dispute settlement procedures of this chapter, which is to secure a positive solution to disputes
2. If in its final report the panel determines that:
 - (a) a measure at issue is inconsistent with a Party's obligations under this Agreement;
 - (b) a Party has otherwise failed to carry out its obligations under this Agreement; or
 - (c) a Party's measure is causing nullification or impairment in the sense of Article 28.3(c) (Scope);

the responding Party shall, whenever possible, eliminate the non-conformity or the nullification or impairment.

3. Unless the disputing Parties decide otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to comply immediately.

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4. The disputing Parties shall endeavour to agree on the reasonable period of time. Where the disputing Parties fail to agree on the reasonable period of time within 45 days of the presentation of the panel's report under Article 28.17.1 (Final Report), any disputing Party may, within 60 days of the presentation of the panel's report under Article 28.17.1 (Final Report), refer the matter to the panel chair to determine the reasonable period of time through arbitration.
5. The panel chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the panel's final report to the disputing Parties under Article 28.17.1 (Final Report). However, that time may be shorter or longer, depending upon the particular circumstances.
6. The panel chair shall determine the reasonable period of time within 90 days of the date of referral to the panel chair pursuant to subparagraph 4.
7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 to 6 of this article for the determination of the reasonable period of time.

Article 28.19: Non-Implementation – Compensation and Suspension of Benefits

1. The responding Party shall, if so requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties within 15 days of receipt of such request, with a view to developing mutually acceptable compensation, in circumstances where:
 - a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity or the nullification or impairment; or
 - b) following the expiry of the reasonable period of time established in accordance with Article 28.18 (Implementation of Final Report), there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment;
2. A complaining Party may suspend benefits in accordance with paragraph *2bis* if that complaining Party and the responding Party have:
 - (a) been unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
 - (b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

2bis. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it

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intends to suspend the application to the responding Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.² The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. Compensation and the suspension of benefits and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation, and suspension of benefits and the payment of a monetary assessment shall only be applied until such time as the responding Party has eliminated the non-conformity or the nullification or impairment, or a mutually satisfactory solution is reached.

4. In considering what benefits to suspend pursuant to paragraph 2, the complaining Party shall apply the following principles and procedures:

- (a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined non-conformity or nullification or impairment to exist;
- (b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter and that the circumstances are serious enough, it may suspend benefits in a different subject matter. The communication pursuant to paragraph 2 in which it announces such a decision shall indicate the reasons on which it is based; and
- (c) in applying the principles set out in subparagraphs (a) and (b), the complaining Party shall take into account:
 - (i) the trade in the good, the supply of the service or other subject matter in which the panel has found the non-conformity or nullification or impairment, and the importance of such trade to that Party;
 - (ii) that goods, all financial services covered under Chapter 11 (Financial Services), services other than such financial services and each section in Chapter 18 (Intellectual Property), are each distinct subject matters; and

² For greater certainty, the phrase “the level of benefits that the Party proposes to suspend” refers to the level of concessions under this Agreement the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, or nullification or impairment in the sense of Article 28.3(c) (Scope), determined to exist by the panel in its final report issued under Article 28.17.1 (Final Report).

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- (iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

- (a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or
- (b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist;

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The responding Party 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 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). 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.

6. Unless the panel has determined that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2*bis*. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its award the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panellist's award.

7. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the p is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The disputing Parties shall consult, beginning no later than ten days after the responding Party, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

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8. If a monetary assessment is to be paid to the complaining Party, then it shall be paid in U.S. currency, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties in equal, quarterly installments beginning 60 days after the responding Party gives notice that it intends to pay an assessment. Where the circumstances warrant, the disputing Parties may decide that an assessment shall be paid into a fund designated by the disputing Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting carrying out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly installment, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits for a maximum of 12 months from the date on which it has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party seeking an extension shall make a written request no later than 30 days before the expiration of the 12 month period. The disputing Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraph 6, if:

- (a) the responding Party fails to make a payment or fails to make the payment under paragraph 13 after electing to do so;
- (b) the responding Party fails to provide the plan as required under paragraph 9; or
- (c) the monetary assessment period, including any extension, has elapsed and the responding Party has not yet eliminated the non-conformity or the nullification or impairment.

13. If the responding Party notified the complaining Party under paragraph 7 regarding the possible use of a fund and the disputing Parties have not agreed on the use of a fund within 3 months of the date of the responding Party's notice, and this time period has not been extended by agreement of the disputing Parties, the responding Party may elect to make the monetary assessment payment equal to 50 per cent of the amount determined under paragraph 5. If this election is made the payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. currency, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5 at the end of the election period.

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14. The complaining Party shall accord sympathetic consideration to the notice by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

Article 28.20: Compliance Review

1. Without prejudice to the procedures in Article 28.19 (Non-Implementation – Compensation and Suspension of Benefits), if the responding Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing written notice to the complaining Party or Parties. The panel shall issue its report on the matter within 90 days after the responding Party provides notice.

2. If the panel decides that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits suspended under Article 28.19 (Non-Implementation – Compensation and Suspension of Benefits).

Section B: Domestic Proceedings and Private Commercial Dispute Settlement

Article 28.21: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 28.22: 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.

2. To this end, 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. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.