

## **Chapter XIII: Dispute Settlement**

### **Article XIII.01 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.

### **Article XIII.02 Scope of Coverage**

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

- (a) to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; or
- (b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex XIII.01.

### **Article XIII.03 WTO Dispute Settlement**

1. Disputes regarding any matter arising under both this Agreement, and the WTO Agreement or any agreement negotiated according to it, or any successor agreement, may be settled in either forum at the discretion of the complaining Party.

2. Once dispute settlement procedures have been initiated under Article XIII.07 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel, such as under Article 6 (Establishment of Panels) of the Dispute Settlement Understanding (DSU).

### **Article XIII.04 Perishable Goods**

1. In the disputes related to perishable goods, the Parties and the panel referred to in Article XIII.07 shall do everything to accelerate the procedure to the maximum extent possible. For this purpose, the Parties shall try to reduce by mutual agreement the time frames established in this Chapter.

2. In cases of urgency, including those which concern perishable goods, consultations shall commence as soon as possible and no later than fifteen (15) days from the date of delivery of the request.

### **Article XIII.05          Consultations**

1. A Party may request in writing, consultations with the other Party regarding any actual or proposed measure, or any other matter that it considers might affect the operation of this Agreement in terms of Article XIII.02.

2. The Parties shall employ their best endeavours to arrive at a mutually satisfactory resolution in any matter through consultations under this Article. To this end, the Parties shall:

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

### **Article XIII.06          Alternative Methods of Dispute Resolution**

At any time, the Parties may agree to have recourse to alternative methods of dispute resolution, including good offices, conciliation or mediation.

### **Article XIII.07          Establishment of a Panel**

1. Unless the Parties agree to have recourse to alternative methods of dispute resolution, the Parties agree to establish a panel to examine any matter they fail to resolve through consultations pursuant to Article XIII.05.

2. The complaining Party may request in writing the establishment of a panel if the Parties fail to resolve a matter pursuant to Article XIII.05 within:

- (a) thirty (30) days after the delivery date of the request for consultations; or
- (b) fifteen (15) days after the delivery date of the request for consultations for matters referred to in paragraph 2 of Article XIII.04.

3. The complaining Party shall state in the request, the measure or other matter complained of, and shall indicate the provisions of this Agreement that it considers relevant; and shall deliver the request to the other Party.

4. The Parties may consolidate two (2) or more proceedings regarding other matters that they determine are appropriate to be considered jointly.

5. The arbitration proceedings shall be considered invoked upon the delivery of the request for the establishment of the panel to the Party complained against and the Parties shall take all necessary action in accordance with Article XIII.10 for the establishment of the panel.

6. 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 XIII.08 Roster**

1. No later than three (3) months after the entry into force of this Agreement, the Parties shall establish and maintain a roster of up to twenty (20) individuals, at least ten (10) of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by consensus by the Parties for terms of three (3) years. Unless either of the Parties disagrees, a roster member shall be considered re-appointed for a further period of three (3) years.
2. Roster members 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 to be established by the Joint Council.

### **Article XIII.09 Qualifications of Panelists**

1. All panelists shall meet the qualifications set forth in paragraph 2 of Article XIII.08.
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article XIII.06

### **Article XIII.10 Panel Selection**

1. The panel shall be comprised of three (3) members.
2. The disputing Parties shall endeavour to agree on the chair of the panel and on the other two (2) panelists within fifteen (15) days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, within five (5) days the Party chosen by lot shall select the chair, if not the other Party shall designate one. The designated chair shall not be a citizen of the Parties.
3. Within fifteen (15) days of selection of the chair, each Party shall select a panelist who must not be a citizen of that Party.
4. If a Party fails to select its panelist within such period, the Parties shall choose by lot the panelist from among the roster members who are not citizens of that other Party.
5. All efforts shall be made to select panelists from the roster. The Parties may, by consent, select individuals not listed on the roster.

6. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing 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 XIII.11 Rules of Procedure**

1. The Joint Council shall establish by the date of entry into force of this Agreement, Model Rules of Procedure, in accordance with the following principles:

- (a) the procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide initial and rebuttal written submissions; and
- (b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel, shall be confidential.

2. Unless otherwise agreed by the Parties, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. 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 of the panel, shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to its consideration by the complaining Party (in terms of the request for establishment of the panel) and to make findings, determinations and recommendations as provided in paragraph 2 of Article XIII.13 and Article XIII.14".

4. If the complaining Party argues that a matter has nullified or impaired benefits as stated in the Annex XIII.01, the terms of reference statement shall so indicate.

5. If a Party requires the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of this Agreement or to have caused nullification or impairment in the sense of the Annex XIII.01, the terms of reference shall so indicate.

### **Article XIII.12 Role of Experts**

On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it considers appropriate.

### **Article XIII.13 Initial Report**

1. Unless the Parties otherwise agree, the panel shall issue its initial report on the basis of the submissions and arguments presented by the Parties and on any information before it pursuant to Article XIII.12.

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

- (a) findings of fact, including any findings pursuant to a request under paragraph 5 of Article XIII.11;
  - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement, or is cause for nullification or impairment in the sense of the Annex XIII.01 or any other decision requested in the terms of reference statement; and
  - (c) the preliminary decision, including any recommendations.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
4. A Party may submit written comments to the panel on its initial report within fourteen (14) days of presentation of the report. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:
- (a) make any further examination that it considers appropriate; and
  - (b) reconsider its initial report.

#### **Article XIII.14 Final Report**

1. Unless the Parties otherwise agree, the panel shall present to the Parties a final report, agreed to by the majority, including any separate opinions on matters not unanimously agreed, within thirty (30) days of the presentation of the initial report.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with the majority or minority opinions.
3. Unless the Parties agree otherwise, the final report of the panel shall be published fifteen (15) days after it is transmitted to the Parties.

#### **Article XIII.15 Implementation of Final Report**

1. The final report of the panel shall be binding on the Parties in the terms and within the time limits ordered by the panel. The period of time to implement the final report shall not exceed six (6) months from the date of notification of the final report to the Parties, unless another period of time for implementation is agreed upon by the Parties.
2. When the final report of the panel declares that the measure is incompatible with this Agreement, the Party complained against shall abstain from implementing the measure or shall eliminate it.
3. When the final report of the panel states that the measure causes nullification or impairment in the sense of Annex XIII.01, it shall determine the level of nullification or impairment and may suggest mutually satisfactory adjustments for the Parties.

#### **Article XIII.16 Suspension of Benefits**

1. Where the Party complained against fails to implement the recommendation or rulings of a panel, or where there is a disagreement between the Parties as to the existence or consistency with this Agreement of the measures taken to comply with the recommendations or rulings of a panel, the Parties shall have recourse to the Joint Council for the settlement of the dispute.

2. In such a case, the Joint Council shall meet, on the request of a Party, within fifteen (15) days from the expiration of the time frame to implement the final report. In special circumstances the time frame may be adjusted by mutual agreement between the Parties.

3. The Joint Council may engage the assistance of expert advisors with regard to Article XIII.12 in the settlement of disputes between the Parties regarding the implementation of a panel ruling or report.

4. If the Joint Council is unable to resolve the dispute regarding implementation according to paragraph 2, within the next ten (10) days, the panel shall be reconvened to determine whether the Party complained against has effectively implemented the final report.

5. The suspension of benefits or other obligations are temporary measures available in the event that the recommendation and rulings in the final report are not implemented within the stipulated period of time of Article XIII.15.1.

6. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the panel determines:

- (a) that a measure is incompatible with the obligations of this Agreement and the Party complained against does not comply with the final report within the time frame established by the panel;
- (b) that a measure causes nullification or impairment in the sense of Annex XIII.01 and the Parties do not arrive at a mutually satisfactory agreement of the dispute in the time frame that the panel has established.

7. The suspension of benefits shall last until the Party complained against complies with the panel's final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be.

8. In considering the suspension of the benefits consistent with paragraph 6:

- (a) the complaining Party shall first seek to suspend benefits in the same sector or sectors affected by the measure or by any other measure that the panel has found to be inconsistent with the obligations of this Agreement, or to have caused nullification or impairment in the sense of Annex XIII.01; and
- (b) where the complaining Party considers it is not feasible or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

9. At any time after the suspension of benefits, upon the written request of any disputing Party, delivered to the other Party, the Parties shall establish a panel to determine whether the final report has been implemented or not, or whether the level of benefits suspended by a Party pursuant to paragraph 6 is

manifestly excessive. To the extent possible, the panel will be constituted by the same panelists that presided over the initial dispute.

10. The panel proceedings for the purposes of paragraph 9 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its final decision within the sixty (60) days after the last panelist is selected, or such other period as the Parties may agree.

#### **Article XIII.17            Judicial or Administrative Proceedings**

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

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

3. If the Joint Council is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

#### **Article XIII.18            Private Rights**

Neither Party shall provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

#### **Article XIII.19            Alternative Dispute Resolution**

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

2. To this end, each Party shall provide appropriate procedures to ensure the observance of agreements to arbitrate and for the recognition and enforcement of arbitration 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.

4. The Joint Council shall facilitate the establishment of an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the settlement of private international commercial disputes. The Committee shall report and provide recommendations to the Joint Council on general issues referred to it by the Joint Council regarding the availability, use and efficiency of arbitration and other procedures for the settlement of such disputes in the free trade area.