

## **CHAPTER FOURTEEN**

### **DISPUTE SETTLEMENT**

#### **SECTION A OBJECTIVE AND SCOPE**

##### **ARTICLE 14.1: OBJECTIVE**

The objective of this Chapter is to avoid and settle any dispute between the Parties concerning the good faith application of this Agreement and to arrive at, where possible, a mutually agreed solution.

##### **ARTICLE 14.2: SCOPE**

This Chapter applies to any dispute concerning the interpretation and application of the provisions of this Agreement unless otherwise provided.<sup>1</sup>

#### **SECTION B CONSULTATIONS**

##### **ARTICLE 14.3: CONSULTATIONS**

1. The Parties shall endeavour to resolve any dispute regarding the interpretation and application of the provisions referred to in Article 14.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party identifying any measure at issue and the provisions of the Agreement that it considers applicable. A copy of the request for consultations shall be delivered to the Trade Committee.
3. Consultations shall be held within 30 days of the date of the submission of the request and take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within 30 days of the date of the submission of the request, unless the Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal

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<sup>1</sup> For disputes relating to the Protocol on Cultural Cooperation all references in this Chapter to the Trade Committee shall be understood as referring to the Committee on Cultural Cooperation.

goods<sup>2</sup> shall be held within 15 days of the date of the submission of the request, and shall be deemed concluded within 15 days of the date of the submission of the request.

5. If consultations are not held within the time frames laid down in paragraph 3 or 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 14.4.

## **SECTION C**

### **DISPUTE SETTLEMENT PROCEDURES**

#### **SUB-SECTION A**

#### **ARBITRATION PROCEDURE**

##### **ARTICLE 14.4: INITIATION OF THE ARBITRATION PROCEDURE**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 14.3, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 14.2.

##### **ARTICLE 14.5: ESTABLISHMENT OF THE ARBITRATION PANEL**

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the Trade Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, either Party may request the chair of the Trade Committee, or the chair's delegate, to select all three members by lot from the list established under Article 14.18, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. The date of establishment of the arbitration panel shall be the date on which the three

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<sup>2</sup> Seasonal goods are goods whose imports, over a representative period, are not spread over the whole year but concentrated on specific times of the year as a result of seasonal factors.

arbitrators are selected.

#### ARTICLE 14.6: INTERIM PANEL REPORT

1. The arbitration panel shall issue to the Parties an interim report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes, within 90 days of the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.
2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 14 days of its issuance.
3. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2.
4. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The final arbitration panel ruling shall include a discussion of the arguments made at the interim review stage.

#### ARTICLE 14.7: ARBITRATION PANEL RULING

1. The arbitration panel shall issue its ruling to the Parties and to the Trade Committee within 120 days of the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to issue its ruling. Under no circumstances should the ruling be issued later than 150 days after the date of the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its ruling within 60 days of the date of its establishment. Under no circumstances should it take longer than 75 days after its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

### **SUB-SECTION B COMPLIANCE**

#### ARTICLE 14.8: COMPLIANCE WITH THE ARBITRATION PANEL RULING

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

#### ARTICLE 14.9: THE REASONABLE PERIOD OF TIME FOR COMPLIANCE

1. No later than 30 days after the issuance of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade Committee of the time it will require for compliance.
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified to the other Party and to the Trade Committee. The arbitration panel shall issue its ruling to the Parties and to the Trade Committee within 20 days of the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 shall apply. The time limit for issuing the ruling shall be 35 days from the date of the submission of the request referred to in paragraph 2.
4. The Party complained against will inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.
5. The reasonable period of time may be extended by mutual agreement of the Parties.

#### ARTICLE 14.10: REVIEW OF ANY MEASURE TAKEN TO COMPLY WITH THE ARBITRATION PANEL RULING

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. Where there is disagreement between the Parties as to the existence of a measure or consistency with the provisions referred to in Article 14.2 of any measure notified under paragraph 1, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions referred to in Article 14.2. The arbitration panel shall issue its ruling within 45 days of the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 shall apply. The time limit for issuing the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

#### ARTICLE 14.11: TEMPORARY REMEDIES IN CASE OF NON-COMPLIANCE

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under Article 14.10.1 is inconsistent with that Party's obligations under the provisions referred to in Article 14.2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 14.10 that no measure taken to comply exists or the measure notified under Article 14.10.1 is inconsistent with the provisions referred to in Article 14.2, the complaining Party shall be entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 14.2 at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of obligations that the complaining Party intends to suspend. The complaining Party may implement the suspension 10 days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 4.

3. In suspending obligations, the complaining Party may choose to increase its tariff rates to the level applied to other WTO Members on a volume of trade to be determined in such a way that the volume of trade multiplied by the increase of the tariff rates equals the value of the nullification or impairment caused by the violation.

4. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the 10 day period referred to in paragraph 2. The original arbitration panel shall issue its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has issued its ruling, and any suspension shall be consistent with the arbitration panel ruling.

5. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 14.5 shall apply. The period for issuing the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 4.

6. The suspension of obligations shall be temporary and apply only until any measure found to be inconsistent with the provisions referred to in Article 14.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 14.12, or until the Parties have agreed to settle the dispute.

#### ARTICLE 14.12: REVIEW OF ANY MEASURE TAKEN TO COMPLY AFTER THE SUSPENSION OF OBLIGATIONS

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for the termination of the suspension of obligations applied by the complaining

Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 14.2 within 30 days of the date of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the Party complained against and to the Trade Committee. The arbitration panel ruling shall be issued to the Parties and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 14.2, the suspension of obligations shall be terminated.

3. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 14.5 shall apply. The period for issuing the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

### **SUB-SECTION C COMMON PROVISIONS**

#### **ARTICLE 14.13: MUTUALLY AGREED SOLUTION**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade Committee of any such solution. Upon notification of the mutually agreed solution, the procedure shall be terminated.

#### **ARTICLE 14.14: RULES OF PROCEDURE**

1. Dispute settlement procedures under this Chapter shall be governed by Annex 14-B.
2. Any hearing of the arbitration panel shall be open to the public in accordance with Annex 14-B.

#### **ARTICLE 14.15: INFORMATION AND TECHNICAL ADVICE**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, as it deems appropriate for the arbitration panel proceeding. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to both Parties which may submit comments. Interested natural or legal persons of the Parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with Annex 14-B.

#### **ARTICLE 14.16: RULES OF INTERPRETATION**

Any arbitration panel shall interpret the provisions referred to in Article 14.2 in accordance with customary rules of interpretation of public international law, including those codified in

the *Vienna Convention on the Law of Treaties*. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as the “DSB”). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in the provisions referred to in Article 14.2.

#### ARTICLE 14.17: ARBITRATION PANEL DECISIONS AND RULINGS

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. In no case shall dissenting opinions of arbitrators be published.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations for natural or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The Trade Committee shall make the arbitration panel rulings publicly available in its entirety unless it decides not to do so.

### SECTION D GENERAL PROVISIONS

#### ARTICLE 14.18: LIST OF ARBITRATORS

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select five individuals who are not nationals of either Party and shall act as chairperson to the arbitration panel. The Trade Committee will ensure that the list is always maintained at this level.
2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of any Party, and shall comply with Annex 14-C.

#### ARTICLE 14.19: RELATION WITH WTO OBLIGATIONS

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.
2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Chapter or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two

forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of paragraph 2:

- (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

#### ARTICLE 14.20: TIME LIMITS

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by mutual agreement of the Parties.