

## **CHAPTER 14 DISPUTE SETTLEMENT**

### **Article 14.1 Scope and Coverage**

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement, wherever a Party considers that:

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

2. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by state or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such measures as may be required to ensure its observance within its territory.

3. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

4. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement of both Parties.

### **Article 14.2 Definition**

For the purposes of this Chapter, **award** shall, unless the context otherwise requires, mean findings, recommendations or rulings, as the case may be, and shall exclude payment of monetary compensation by the Party concerned.

### **Article 14.3 Choice of Forum**

1. Where a dispute regarding any matter arises under this Agreement and under another agreement to which the Parties are party, the complaining Party may select the forum in which to settle that matter from among the forums prescribed under the relevant agreements.

2. The complaining Party shall notify the other Party in writing of its intention to select a particular forum before doing so.
3. Once the complaining Party has selected a particular forum for settling a matter, that forum shall be used to the exclusion of other fora in respect of that matter.
4. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal.

#### **Article 14.4 Consultations**

1. Either Party may request for consultations with the other Party concerning the interpretation, implementation or application of this Agreement in accordance with paragraph 1 of Article 14.1 (Scope and Coverage).
2. A request for consultations shall be in writing setting out the reasons for the request including identification of the measure at issue and an indication of the legal basis for the complaint. The Party to which the request is made shall reply to the request in writing within ten days after the date of its receipt, and shall enter into consultations within a period of no more than thirty days after the receipt of the request.
3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
  - (a) provide sufficient information as may be reasonably available at the stage of consultations to enable a full examination of how the measure might affect the operation of the Agreement; and
  - (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

#### **Article 14.5 Referral to the Joint Committee**

1. If the Parties fail to resolve a matter within sixty days of the delivery of a request for consultations under Article 14.4 (Consultations), either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.
2. The Joint Committee shall promptly meet and endeavour to reach a mutually satisfactory resolution of the dispute.

**Article 14.6**  
**Good Offices, Conciliation and Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.
2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal established under Article 14.7 (Establishment of Arbitral Tribunals).
3. All proceedings involving good offices, mediation and conciliation and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Parties in any further proceedings under the provisions of this Chapter.

**Article 14.7**  
**Request for Establishment of Arbitral Tribunal**

1. The complaining Party may request in writing for the establishment of an arbitral tribunal if:
  - (a) the Party complained against does not enter into consultations within thirty days after the date of its receipt of the request for consultations under Article 14.4 (Consultations) or there is no referral to the Joint Committee under Article 14.5 (Referral to the Joint Committee); or
  - (b) the Parties fail to resolve a dispute sixty days after the date of receipt of the request for consultations.
2. The request to establish an arbitral tribunal shall identify:
  - (a) the specific measures at issue; and
  - (b) the legal and factual basis of the complaint including the provisions of this Agreement alleged to have been breached.

**Article 14.8**  
**Terms of Reference**

Unless the Parties otherwise agree within twenty days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 14.7 (Request for Establishment of Arbitral Tribunal), to make findings of

law and fact and determinations on whether the measure is not in conformity with the Agreement and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral tribunal may make recommendations for resolution of the dispute.”

#### **Article 14.9**

##### **Establishment and Composition of Arbitral Tribunals**

1. Unless the Parties otherwise agree, an arbitral tribunal shall consist of three arbitrators. The complaining Party and the Party complained against shall each appoint one arbitrator within thirty days of the receipt of the request to establish an arbitral tribunal.

2. The parties to the dispute shall endeavour to agree on the third arbitrator within thirty days after the date of appointment of the second arbitrator. The third arbitrator shall serve as the chair. If the parties to the dispute are unable to agree on the chair within the aforesaid thirty days, the chair shall be jointly appointed, by the arbitrators who have been appointed under paragraph 1, within a further period of thirty days. If the third arbitrator has not been appointed within thirty days by the arbitrators appointed under paragraph 1, the parties to the dispute shall consult each other in order to jointly appoint the chair within a further period of thirty days.

3. The date of establishment of the arbitral tribunal shall be the date on which the chair of the Arbitral Tribunal is appointed.

4. All arbitrators 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; and
- (c) be independent of, and not be affiliated with or take instructions from, any Party to the dispute.

5. The chair of the Arbitral Tribunal shall:

- (a) not be a national of a Party;
- (b) not have his or her usual place of residence in the territory of a Party;
- (c) not be employed by either Party; and
- (d) not have dealt with the matter in any capacity.

6. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in accordance with the appointment procedure provided for in this Article, which shall be applied, respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitral panel shall be suspended until the successor arbitrator is appointed.

#### **Article 14.10**

##### **Proceedings of Arbitral Tribunal**

1. The Arbitral Tribunal shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the two countries with the venue of the first sitting to be decided by a draw of lot in the presence of the Parties.

3. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the draft report and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

4. The arbitral tribunal should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. The arbitral tribunal shall aim to make its decisions, including its report, by consensus, provided that where an arbitral tribunal is unable to reach consensus it may take its decision by majority vote.

6. At the request of a Party to the arbitral proceeding or on its own initiative, and subject to such terms and conditions as the Parties may agree, the arbitral tribunal may seek information and technical advice from any expert to obtain their opinion or advice on certain aspects of the matter. The arbitral tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

7. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

8. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

9. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission, followed by the Party against which the complaint has been brought.

10. Formal rebuttals shall be made at the second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its submission first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

11. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

12. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

13. In the interests of full transparency, the presentations, submissions, rebuttals and statements referred to in this Article shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

#### **Article 14.11**

##### **Functions of Arbitral Tribunals**

1. The function of an arbitral tribunal established pursuant to Article 14.9 (Establishment and Composition of Arbitral Tribunals) is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that the Party in default bring the measure into conformity with that provision.

2. The award of the arbitral tribunal shall be set out in a report released to the Parties, including the reasons for the award. An arbitral tribunal may make its award upon the default of a Party.

3. Apart from the matters set out in Article 14.10 (Proceedings of Arbitral Tribunal), the arbitral tribunal shall regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations, unless the Parties agree otherwise in writing.

**Article 14.12**  
**Suspension or Termination of Proceedings**

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding twelve months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than twelve months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.
3. Before the arbitral tribunal presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

**Article 14.13**  
**Time Frame**

All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the Parties, or by application by either Party to the arbitral tribunal which is seized of the matter.

**Article 14.14**  
**Initial Report**

1. The reports of the arbitral tribunal shall be drafted without the presence of the Parties and shall be based on the submissions and statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.
2. Unless the disputing Parties otherwise agree, the arbitral tribunal shall, within ninety days after the last arbitrator is selected, issue to the disputing Parties an initial report.
3. The initial report shall contain:
  - (a) findings of fact; and
  - (b) the determination as to whether a disputing Party has not conformed with its obligations under this Agreement.
4. In exceptional cases, if the arbitral tribunal considers it cannot issue its initial report within ninety days, 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 thirty days unless the disputing Parties otherwise agree.

5. A disputing Party may submit written comments to the arbitral tribunal on its initial report within fifteen days of issuance of the report or within such other period as the disputing Parties may agree.

#### **Article 14.15 Final Report**

1. The arbitral tribunal shall issue its final report, within sixty days after the date of issuance of the initial report. When the arbitral tribunal considers that it cannot issue its final report within sixty days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its final report.

2. The final report of the arbitral tribunal shall be available to the public within fifteen days after the date of issuance, subject to the requirement to protect confidential information.

3. The final report of the arbitral tribunal shall be final and binding on the Parties.

#### **Article 14.16 Implementation**

1. The Party complained against shall promptly comply with the award of the arbitral tribunal. Where it is not practicable to comply immediately, the Party complained against shall comply with the award within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within forty five days of the release of the arbitral tribunal's final report, either Party to the dispute may refer the matter to the arbitral tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the award of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible resorting to the original arbitral tribunal<sup>1</sup>. The arbitral tribunal shall provide its report to the Parties within sixty days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

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<sup>1</sup> Consultations under Article 14.4 (Consultations) are not required for these procedures.



#### **Article 14.17**

##### **Non-Implementation: Compensation and Suspension of Benefits**

1. If the Party complained against fails to bring the measure found to be inconsistent with the Agreement into compliance with the award of the arbitral tribunal within the reasonable period of time that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.
2. If there is no satisfactory agreement on compensation within twenty days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may give thirty days advance notice of its intention to suspend the benefits or other obligations under this Agreement. Such notification may only be given twenty days after the date of receipt of the request mentioned in paragraph 1.
3. The suspension of benefits shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.
4. In considering what benefits to suspend under paragraph 2:
  - (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement; and
  - (b) the complaining Party may suspend benefits or other obligations in other sectors if it considers that it is not practicable or effective to suspend in the same sector.
5. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.
6. Upon request of the Party complained against, Parties shall enter into consultation to discuss matters relating to:
  - (a) elimination of the non-conformity in accordance with the findings of the arbitral tribunal; or
  - (b) the level of concessions or other obligations suspended by the complaining Party pursuant to this Article.

#### **Article 14.18**

##### **Expenses**

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. Unless the Parties otherwise agree, the costs of the chair

of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.