

## **CHAPTER 15**

### **DISPUTE SETTLEMENT**

#### **ARTICLE 15.1: SCOPE AND COVERAGE**

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.
2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement.
3. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by regional 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.
4. Arbitral tribunals shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

#### **ARTICLE 15.2: DEFINITION**

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

#### **ARTICLE 15.3: CONSULTATIONS**

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.
2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement, may, with a view to achieving satisfactory settlement of the matter, make representations to the other Party, which shall give consideration to the representations made to it.
3. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis of the complaint.

4. If a request for consultation is made pursuant to this Article, the Party to which the request is made shall reply to the request within 10 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

5. 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 15.4: GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 15.5.

3. All proceedings under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter.

#### ARTICLE 15.5: APPOINTMENT OF ARBITRAL TRIBUNALS

If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal under this Article. The request shall include a statement of the claim and the grounds on which it is based.

#### ARTICLE 15.6: COMPOSITION OF ARBITRAL TRIBUNALS

1. The arbitral tribunal referred to in Article 15.5 shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request under Article 15.5. If a Party fails to appoint an arbitrator within such period, then the Arbitrator appointed by the other Party shall act as the sole arbitrator of the Tribunal.

2. Once the Parties have appointed their respective arbitrators, the Parties shall endeavour to agree on a third arbitrator who shall serve as chair. If the Parties are unable to agree on the chair of the arbitral tribunal within 30 days after the date on which the second arbitrator has been appointed, the chair shall be appointed in the presence of both Parties by a draw of lot from a list comprising four nominees of each Party. If a Party fails to submit its list of four nominees within 10 days of the other Party submitting its

list, the chair shall be appointed by a draw of lot from the list already submitted by the other Party.

3. Any person appointed as a member or chair of the arbitral tribunal shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence. Except in the case of a sole arbitrator appointed in accordance with paragraph 1, the chair shall not be a national of either Party and shall not have his or her usual place of residence in the territory of, nor be employed by, either Party, nor have dealt with the case in any capacity.

4. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

#### ARTICLE 15.7: FUNCTIONS OF ARBITRAL TRIBUNALS

1. The function of an arbitral tribunal 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. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

4. Apart from the matters set out in Article 15.8, 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 15.8: PROCEEDINGS OF ARBITRAL TRIBUNALS

1. An arbitral tribunal shall meet in closed session. 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 deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing

statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. 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.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its submission.

6. Formal rebuttals shall be made at a 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.

7. 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.

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

9. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Moreover, 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.

10. At the request of a Party to the arbitral proceeding or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the arbitral proceedings so agree and subject to such terms and conditions as such Parties may agree.

11. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the 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.

12. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its formation. When the arbitral tribunal considers that it cannot release its final report within 60 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

report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

#### ARTICLE 15.9: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

#### ARTICLE 15.10: TIME FRAMES

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 15.11: IMPLEMENTATION

1. The Party concerned shall comply with the arbitral tribunal's 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 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the 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 by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 60 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.

#### ARTICLE 15.12: COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the award of the arbitral tribunal under paragraph 2 of Article 15.11 within 20 days of the report of that arbitral tribunal being provided to the Parties, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually acceptable compensation or solution.
2. If no mutually acceptable compensation or solution has been reached within 20 days after the request of the complaining Party to enter into negotiations on compensatory adjustment, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original arbitral tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 15.5.
3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.
4. In considering what benefits to suspend under paragraph 2:
  - (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
  - (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.
5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's award has done so, or a mutually acceptable compensation or solution is reached.
6. With respect to paragraph 5, any dispute between the Parties on whether a particular measure found by the arbitral tribunal to be inconsistent with this Agreement has been removed or brought into conformity with the arbitral tribunal's award shall be referred to the same tribunal for a final decision. The complaining Party shall refer the matter to the arbitral tribunal together with its submissions and the other Party shall respond within 15 days thereafter so that the arbitral tribunal can give its final decision within 15 days of the latter Party's response.

#### ARTICLE 15.13: EXPENSES

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. 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.