

## CHAPTER 9 SETTLEMENT OF DISPUTES

### ARTICLE 9.1 Objective, Scope and Definitions

1. The objective of this Chapter is to provide the Parties with a dispute settlement mechanism that aims at achieving, where possible, mutually agreed solutions.
2. The provisions of this Chapter shall apply with respect to any dispute where the GCC Member States or Singapore considers that the other Party is in breach of a provision of this Agreement, except where otherwise expressly provided in this Agreement.
3. The dispute settlement procedures of this Chapter are without prejudice to a disputing Party's right to seek recourse in dispute settlement procedures in the WTO, provided that the Joint Committee has been informed at least thirty (30) days before invoking such procedures.
4. Where a disputing Party has instituted a dispute settlement proceeding under either this Chapter or the WTO Agreement, it shall decide on one forum to the exclusion of the other. For the purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel under Article 6 of Annex 2 to the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement.
5. For the purposes of this Chapter, unless the context otherwise expressly indicates:
  - (a) **advisor** means any person retained by any disputing Party to advise or assist that Party in connection with the arbitration panel proceeding;
  - (b) **arbitration panel** means an arbitration panel established pursuant to Article 9.4;
  - (c) **complaining party** means any Party that requests the establishment of an arbitration panel under Article 9.4;
  - (d) **representative of a disputing party** means an employee, or a natural or juridical person appointed by a government department or agency or of any other government entity of a Party; and
  - (e) **responding party** means any Party alleged to be in breach of this Agreement.

## **ARTICLE 9.2**

### **Consultations**

1. The Parties shall endeavour to resolve any dispute arising from this Agreement through good faith consultations, with the aim of reaching a mutually agreed solution.
2. Any one or more of the GCC Member States may request in writing, consultations with Singapore and vice versa (hereinafter referred to as “disputing Parties”), stating the reasons for the request, including identification of the measures at issue and the indication of the legal basis for the complaint. The Joint Committee shall be informed of such requests.

## **ARTICLE 9.3**

### **Good Offices, Conciliation or Mediation**

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the disputing Parties so agree.
2. Good offices, conciliation and mediation may be requested at any time by any disputing Party. They may commence at any time and be terminated at any time.
3. Proceedings involving good offices, conciliation or mediation, and in particular, positions taken by the disputing parties during these proceedings, shall be confidential, and without prejudice to the rights of any Party in any proceedings under this Chapter or in other proceedings.
4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.
5. Any disputing Party may inform the Joint Committee of the dispute and request the Joint Committee to act under this Article to amicably resolve the dispute. On receipt of such request, the Joint Committee shall act under this Article.
6. Where the dispute is resolved through good offices or conciliation by another person or body, the disputing Parties shall notify the Joint Committee of the outcome.

## **ARTICLE 9.4**

### **Establishment of Arbitration Panel**

1. A complaining Party may request in writing, to the Party complained

against, for the establishment of an arbitration panel if:

- (a) consultations under Article 9.2 are not held within thirty (30) days from the date of receipt of the request for such consultations;
- (b) the disputing Parties fail to resolve the dispute through consultations under Article 9.2 within sixty (60) days after the date of commencement of the consultations, unless the disputing Parties agree to continue the consultations; or
- (c) a disputing Party fails to comply with the mutually agreed solution within the agreed timeframe.

2. Any request for the establishment of an arbitration panel shall indicate whether consultations under Article 9.2 were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions, sufficient to present the problem clearly.

#### **ARTICLE 9.5**

##### **Composition of Arbitration Panel**

1. Unless the disputing Parties agree otherwise, an arbitration panel shall consist of three (3) members.

2. Each of the disputing Parties shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitration panel, separately appoint one arbitrator who may be a national of the disputing Parties.

3. Where the disputing Parties have appointed their respective arbitrators, the arbitrators shall, within fifteen (15) days of the appointment of the second of them, designate by common agreement, the third arbitrator. If any disputing Party disapproves the designated third arbitrator, it shall, within seven (7) days from the date of designation, notify its disapproval of the third arbitrator to the other disputing Party and to the two arbitrators.

4. Where no third arbitrator has been appointed within the periods specified in this Article, or where any Party has disapproved the designation of a third arbitrator under paragraph 3 of this Article, any disputing Party may, within forty-five (45) days of the period within which the appointment should be made, request the Director-General of the WTO to appoint the third arbitrator. This appointment shall be final.

5. The third arbitrator shall be appointed as the Chairperson of the arbitration panel. He or she shall not be a national of, nor have his or her usual place of residence in, nor be employed by, any of the disputing Parties. He or she shall also

not have dealt with the dispute in any capacity.

6. If any of the arbitrators resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and the successor arbitrator shall have all the powers and duties of the original arbitrator. The arbitration panel proceedings shall be suspended until a successor arbitrator is appointed.

7. Any person appointed as an arbitrator shall have specialised knowledge or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. The arbitrators shall be independent, serve in their individual capacities, not be affiliated with, or take instructions from, any organisation or government or have any conflict of interest. The arbitrators shall comply with the Code of Conduct for Members of Arbitration Panels set out in Annex 9.

8. The date of establishment of the arbitration panel shall be the date on which the Chairperson is appointed.

#### **ARTICLE 9.6**

##### **Suspension and Termination of Proceedings**

1. The arbitration panel may, at the written request of the disputing Parties, suspend its work at any time for a period not exceeding twelve (12) months. Once the period of twelve (12) months has been exceeded, the authority for the establishment of the arbitration panel will lapse.

2. The disputing Parties may agree to terminate the proceedings of an arbitration panel at any time before the issuance of the award by jointly notifying the Chairperson of the arbitration panel.

#### **ARTICLE 9.7**

##### **Amicable Resolution**

1. Before the arbitration panel issues its draft award, it may, at any stage of the proceedings, propose to the disputing Parties that the dispute be settled amicably.

2. The disputing Parties shall notify the Joint Committee when a dispute which has been referred to an arbitration panel is resolved amicably.

#### **ARTICLE 9.8**

##### **Compliance with Award**

1. The arbitration panel award is final and binding from the date of its

notification to the disputing parties.

2. The arbitration panel shall make its award based on the provision of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law. The award cannot add to or diminish the rights and obligations provided in this Agreement.

3. The arbitration panel's decision on the length of time required to implement the award will be final. The award must be complied with within this time. Where no time is prescribed for implementing the award, the award must be complied with within ninety (90) days of the date of the notification of the award.

4. The disputing Parties may agree on a different period of time for the award to be complied with. In the absence of such agreement, where an award has not been complied with, either of the disputing Parties may request the arbitration panel to prescribe another period of time within which the award must be complied with.

5. Before the expiry of the deadline for implementation determined under paragraph 3 of this Article, the responding Party will notify the complaining Party and the Joint Committee of the action it has taken in order to comply with the arbitration award.

6. Where there is disagreement between the disputing Parties as to the conformity with the award of the action taken by the responding Party as notified in paragraph 5 of this Article with the award, the matter will be referred to the original arbitration panel.

#### **ARTICLE 9.9**

##### **Non-compliance, Compensation and Suspension of Benefits**

1. If the responding Party does not notify any action in order to comply with the arbitration panel award before the expiry of the implementation deadline as required under paragraph 3 of Article 9.8, or otherwise fails to comply with the award in accordance with this Agreement, it shall, if so requested by the complaining party, and no later than after the expiry of a reasonable period of time, enter into negotiations with the complaining Party to develop mutually acceptable compensation.

2. If no agreement is reached between the disputing Parties within twenty (20) days after the expiry of the reasonable period of time, the complaining party may refer the matter to the original arbitration panel to determine whether the responding Party has failed to comply with the arbitration panel award and, if so, to determine the appropriate level of any suspension of the application to the responding Party of benefits or other obligations under this Agreement.

3. The suspension of benefits may commence thirty (30) days following the

end of the period awarded under paragraph 3 of Article 9.8 or after an arbitration panel has found that the measure taken to comply is not in conformity with the Agreement. The complaining party shall notify the responding Party of the benefits it intends to suspend fifteen (15) days before the date on which the suspension is due to enter into force.

4. The complaining Party will first seek to suspend benefits or other equivalent obligations in the same sector or sectors affected. If the complaining party considers that it is not practical or effective to suspend benefits or obligations in the same sector or sectors affected, it may suspend them in other sectors under this Agreement, indicating the reasons to justify its decision.

5. The responding Party may request the original arbitration panel to rule on whether the level of suspension of benefits notified by the complaining party is equivalent to the nullification and impairment suffered as a result of the breach and/or whether the proposed suspension is in accordance with paragraph 2 of this Article. The original arbitration panel will issue its ruling within thirty (30) days from the arbitration panel's re-establishment. If a member of the original arbitration panel is unavailable, the procedures laid down under Article 9.5 will apply for the selection of a replacement arbitrator. The period for issuing the arbitration ruling in this instance remains thirty (30) days from the date of the re-establishment of the arbitration panel.

6. Where the original arbitration panel is requested to rule on the conformity with the Agreement of an implementing measure adopted after the suspension of benefits under paragraph 4 of this Article, the procedures and deadlines established under Annex 10 shall apply.

7. The suspension of benefits will be a temporary measure and is not intended to replace the agreed objective of full compliance. Benefits will only be suspended until the measure found to be in breach of the Agreement has been withdrawn or amended so as to bring it into conformity with the Agreement, or when the disputing parties have reached an agreement on the resolution of the dispute. The responding Party shall notify the complaining party and the Joint Committee of the measures it has taken to comply.

8. Where the disputing Parties disagree on the conformity with this Agreement of any implementing measure adopted after the suspension of benefits, the responding party may request the original arbitration panel to rule on this issue. If the arbitration panel rules that the implementing measure is not in conformity with this Agreement, the arbitration panel will determine whether the complaining Party may resume the suspension of benefits at the same or a different level.

#### **ARTICLE 9.10**

##### **Temporary Remedies for Non-compliance**

1. If, prior to the deadline for implementation determined under paragraph 2

of Article 9.9, the responding Party considers that it will require further time to comply with the arbitration panel ruling, it will inform the complaining Party of the extra period of time it requires, whilst presenting an offer of market-opening compensation for this additional period of time until it comes into compliance with the ruling.

2. If there is no agreement to the responding Party's request for an extension to the time required for implementation, or on market-opening compensation, the complaining Party may suspend benefits under this Agreement. Article 9.9 shall apply in this case *mutatis mutandis*.

#### **ARTICLE 9.11**

##### **Rules of Procedure**

1. The Rules of Procedure set out at Annex 10 shall apply to the procedures established in this Chapter. These Rules and any timeframes specified in this Chapter may be amended by the Joint Committee

2. The disputing Parties may agree to vary these Rules to facilitate the resolution of their dispute.