

## **CHAPTER 15**

### **DISPUTE SETTLEMENT**

#### ARTICLE 15.1

##### ***Scope and Coverage***

Unless otherwise specified in this Agreement, this Chapter applies to any disputes concerning the interpretation or application of this Agreement.

#### ARTICLE 15.2

##### ***Choice of Forum***

1. Disputes regarding the same matter arising under this Agreement and under the WTO Agreement may be settled under this Chapter or under the WTO Dispute Settlement Understanding at the discretion of the complaining Party.<sup>16</sup> The forum thus selected shall be used to the exclusion of the other.

2. For the purposes of paragraph 1, dispute settlement procedures are deemed to be initiated, and thus the forum selected:

- (a) under the WTO Agreement, upon a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO; and
- (b) under this Agreement, upon a Party's request for arbitration pursuant to paragraph 1 of Article 15.6 (Establishment of the Arbitration Panel).

#### ARTICLE 15.3

##### ***Parties to a Dispute***

1. For the purposes of this Chapter, one or more EFTA States, MERCOSUR or one or more MERCOSUR States, may be parties to a dispute.

2. One or more EFTA States may initiate a dispute settlement proceeding against one or more MERCOSUR States. In case of a measure of MERCOSUR, one or more EFTA States may in addition initiate a dispute settlement proceeding against MERCOSUR. The fact that a measure of a MERCOSUR State is derived from or related to a measure of MERCOSUR shall not preclude a dispute settlement proceeding against the MERCOSUR State concerning its measure. A MERCOSUR State complained against

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<sup>16</sup> For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

may not invoke as a defence that the measure is an implementation of a MERCOSUR measure.

3. MERCOSUR may initiate a dispute settlement proceeding against one or more EFTA States whenever the measure at issue is a measure of one or more EFTA States that affects all MERCOSUR States.

4. One or more MERCOSUR States may initiate a dispute settlement proceeding against one or more EFTA States.

#### ARTICLE 15.4

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

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may begin and, upon request of a party to the dispute be terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential. These proceedings shall be without prejudice to the rights of the parties to the dispute in any other proceedings.

#### ARTICLE 15.5

##### ***Consultations***

1. The Parties shall at all times endeavour to settle any disputes referred to in Article 15.1 (Scope and Coverage) and shall make every attempt through cooperation and consultations to agree on the interpretation and application of this Agreement and to reach a mutually satisfactory solution of any matter raised in accordance with this Article.

2. A Party may request in writing bilateral consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting bilateral consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request.

3. Bilateral consultations shall commence within 30 days from the receipt of the request for consultations. Bilateral consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within ten days or does not enter into consultations within 30 days from the receipt of the request for bilateral consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 15.6 (Establishment of the Arbitration Panel).

4. If the parties to the dispute do not reach a mutually agreed solution through bilateral consultations in accordance with paragraph 3, within 45 days, or within 30 days for urgent matters, from the receipt of the request for such consultations, each party to the

dispute may request in writing consultations in the Joint Committee established under Article 14 (Joint Committee).

5. Consultations in the Joint Committee shall commence within 75 days, or within 50 days for urgent matters, from the receipt of the request for bilateral consultations. If the Party to which the request is made does not enter into consultations in the Joint Committee within these deadlines, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 15.6 (Establishment of the Arbitration Panel). Should it not be possible to hold the meeting of the Joint Committee within this period of time, the parties to the dispute may extend this term by consensus.

6. The parties to the dispute shall provide information to enable a complete examination of whether the measure is inconsistent with this Agreement and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.

7. Upon agreement of the parties to the dispute, the bilateral consultations and the consultations in the Joint Committee may be held in person or by any technological means available. If consultations are held in person, these should take place in the territory of the Party complained against, unless the parties to the dispute agree otherwise.

8. Consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.

9. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

#### ARTICLE 15.6

##### *Establishment of the Arbitration Panel*

1. If the consultations referred to in Article 15.5 (Consultations) fail to settle a dispute within 105 days, or 60 days in relation to urgent matters, including those on perishable goods, from the receipt of the request for bilateral consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration proceeding.

2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.

3. The arbitration panel shall be appointed pursuant to Article 15.7 (Composition of the Arbitration Panel). The date of establishment of the arbitration panel shall be the date on which the Chair has accepted appointment.

4. Unless the parties to the dispute agree otherwise within 20 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

“To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.6 (Establishment of the Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

5. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel should be established.

6. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

#### ARTICLE 15.7

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

1. The arbitration panel shall comprise three arbitrators appointed in accordance with paragraphs 2 to 4.

2. In the written request pursuant to paragraph 2 of Article 15.6 (Establishment of the Arbitration Panel), the complaining Party shall appoint one arbitrator. In addition, the complaining Party shall present a list of four individuals who are willing to serve as the third arbitrator.

3. Within 30 days from the receipt of the request, the Party complained against shall appoint a second arbitrator and present a second list of four individuals who are willing to serve as the third arbitrator. If the Party complained against fails to appoint the second arbitrator within these 30 days, the first arbitrator shall appoint the second arbitrator from the list established in paragraph 2 within 10 days.

4. Within 30 days from the appointment of the second arbitrator, the parties to the dispute shall jointly appoint a third arbitrator taking into account the individuals proposed in the lists presented pursuant to paragraphs 2 and 3. If the third arbitrator has not been appointed within 60 days from the appointment of the second arbitrator, the two appointed arbitrators shall appoint the third arbitrator jointly within 30 days. The third arbitrator shall not be a national or permanent resident of a State Party. The third arbitrator thus appointed shall be the Chair of the arbitration panel.

5. Arbitrators must have specialised knowledge and experience in law and international trade.

6. The arbitrators appointed to serve in an arbitration panel shall be independent, serve in their individual capacities, shall not take instructions from any organisation or government and shall not act as representatives nor be affiliated with the government or any governmental organisation of a Party. A person who has acted in any capacity in previous phases of the dispute settlement procedure or who does not have the necessary

independence with regard to the positions of the parties to the dispute shall not act as an arbitrator in an arbitration panel.

7. Any arbitrator may be challenged by any party to the dispute if circumstances give rise to justifiable doubts as to the arbitrator's objectivity, reliability, sound judgment or independence. If the other party to the dispute does not agree with the challenge or the challenged arbitrator does not withdraw within 15 days from the date when the evidence in support of the challenge was notified in writing to the other party to the dispute, the party to the dispute making the challenge may request that such matter be referred to the Chair of the arbitration panel whose decision shall be final. In case the challenged arbitrator is the Chair, the challenge shall be referred to the other two arbitrators.

8. Whenever possible, the arbitration panel referred to in Articles 15.13 (Implementation of the Arbitral Award) and 15.14 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the arbitral award.

9. If an arbitrator resigns, is removed or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The work of the arbitration panel shall be suspended pending appointment of the successor.

#### ARTICLE 15.8

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

1. Annex XIX (Rules of Procedure) shall apply with respect to the proceedings of the arbitration panel, unless the parties to the dispute agree otherwise.

2. The Joint Committee shall review and complete Annex XIX (Rules of Procedure) at its first meeting.

3. Where a procedural question arises that is not covered by this Agreement, an arbitration panel may, after consultation with the parties to the dispute, adopt an appropriate procedure that is consistent with this Agreement.

#### ARTICLE 15.9

##### ***Applicable Law***

The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement, in accordance with the rules of interpretation of public international law.

## ARTICLE 15.10

### ***Hearings***

1. The hearings of the arbitration panel shall be open to the public, unless the parties to the dispute agree otherwise. The hearings of the arbitration panel shall be partially or completely closed to the public for the discussion of information, which a party to the dispute has designated as confidential.
2. The location of any hearing of the arbitration panel, if it is held in person, shall be decided by mutual agreement of the parties to the dispute, failing which, it shall be decided by the arbitration panel.

## ARTICLE 15.11

### ***Interim Reports and Arbitral Award***

1. The arbitration panel should submit an interim report containing its findings and rulings to the parties to the dispute no later than 90 days from the date of establishment of the arbitration panel. A party to the dispute may submit written comments to the arbitration panel within 14 days from the receipt of the interim report. The arbitration panel should present to the parties to the dispute an arbitral award within 30 days from the receipt of the interim report.
2. The arbitral award, as well as any ruling under Articles 15.13 (Implementation of the Arbitral Award) and 15.14 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The award, as well as the rulings, shall be made public, unless the parties to the dispute decide otherwise.
3. The arbitral award, as well as any ruling of the arbitration panel under this Chapter shall be final and binding upon the parties to the dispute.
4. Decisions of the arbitration panel shall be taken by a majority of the arbitrators if consensus cannot be reached. The arbitration panel shall not disclose any minority opinions.

## ARTICLE 15.12

### ***Suspension or Termination of Arbitration Panel Proceedings***

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.
2. The complaining Party may withdraw its complaint at any time before the interim report has been issued. Such withdrawal shall be without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time, unless the parties to the dispute agree otherwise.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chair of that arbitration panel.

#### ARTICLE 15.13

##### ***Implementation of the Arbitral Award***

1. The Party complained against shall promptly comply with the ruling in the arbitral award. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the issuance of the arbitral award, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 60 days from the receipt of that request.

2. The Party complained against shall, within the time period established in accordance with paragraph 1, notify the other party to the dispute of the measure adopted in order to comply with the ruling in the arbitral award, as well as provide a description of how the measure ensures compliance in a manner that allows the other party to the dispute to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling in the arbitral award or to the consistency of that measure with the ruling in the arbitral award, such disagreement shall be decided by the same arbitration panel upon request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 15.14 (Compensation and Suspension of Benefits). Such request shall identify the specific measure at issue and explain how such measure does not comply with the arbitral award in a manner to present the legal basis for the complaint. The ruling of the arbitration panel should be rendered within 90 days from the receipt of that request.

#### ARTICLE 15.14

##### ***Compensation and Suspension of Benefits***

1. If the Party complained against does not comply with an arbitral award of the arbitration panel referred to in Article 15.13 (Implementation of the Arbitral Award), or notifies the complaining Party that it does not intend to comply with the ruling in the arbitral award, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20 days from the receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to the benefits affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party

that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors indicating the reasons that justify its decision.

3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to the benefits affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. Within 10 days from the date of the request for the arbitration panel referred to in this paragraph, the complaining Party shall present a document indicating the methodology it has used to calculate the level of the suspension of benefits. The ruling of the arbitration panel should be given within 45 days from the receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the arbitral award of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel should be given within 30 days from the receipt of that request.

#### ARTICLE 15.15

##### *Time Periods*

1. Any time period mentioned in this Chapter may be extended by mutual agreement of the parties to the dispute or by the arbitration panel upon request of a Party to the dispute.

2. When an arbitration panel considers that it cannot comply with a timeframe imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.



#### ARTICLE 15.16

##### *Costs*

The costs of arbitration shall be borne by the parties to the dispute in equal shares. Each party to the dispute shall bear its own legal and other costs incurred in relation to the arbitration. The arbitration panel may decide that the costs be distributed differently taking into account the particular circumstances of the case.

#### ARTICLE 15.17

##### *Confidentiality*

1. The Parties shall treat as confidential the information which has been designated as confidential by a Party submitting the information to the arbitration panel.
2. Written submissions of a party to the dispute shall not be published by the other party to the dispute or by the arbitration panel without explicit consent of the party to the dispute that presented the submission.
3. A party to the dispute shall, upon request of another party to the dispute, provide a non-confidential summary of the information contained in its written submission that may be disclosed to the public.