

## **CHAPTER 31**

### **DISPUTE SETTLEMENT**

#### **Section A: Dispute Settlement**

##### **Article 31.1: Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

##### **Article 31.2: Scope**

Unless otherwise provided for in this Agreement, the dispute settlement provisions of this Chapter apply:

- (a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement;
- (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement; or
- (c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 13 (Government Procurement), Chapter 15 (Cross-Border Trade in Services), or Chapter 20 (Intellectual Property Rights), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

##### **Article 31.3: Choice of Forum**

1. If a dispute regarding a matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel under this Chapter or a panel or tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

#### **Article 31.4: Consultations**

1. A Party may request consultations with another Party with respect to a matter described in Article 31.2 (Scope).

2. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. The requesting Party shall deliver the request concurrently to the other Parties through their respective Sections of the Secretariat, including a copy to its Section.

4. A third Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing through their respective Sections of the Secretariat, including a copy to its Section, no later than seven days after the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. Unless the consulting Parties decide otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of delivery of the request for a matter concerning perishable goods;<sup>1</sup> or

(b) 30 days after the date of delivery of the request for all other matters.

6. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article or other consultative provisions of this Agreement. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure or other matter at issue might affect the operation or application of this Agreement;

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<sup>1</sup> For the purposes of this Chapter, perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

- (b) a Party that participates in the consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and
- (c) the consulting Parties shall seek to avoid a resolution that adversely affects the interests of another Party under this Agreement.

7. Consultations may be held in person or by a technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties decide otherwise.

8. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

9. Consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

#### **Article 31.5: Commission, Good Offices, Conciliation, and Mediation**

1. If the consulting Parties fail to resolve a matter pursuant to Article 31.4 (Consultations) within:

- (a) 30 days of delivery of the request for consultations;
- (b) 45 days of delivery of the request if another Party has subsequently requested or has participated in consultations regarding the same matter;
- (c) 15 days of delivery of the request for consultations in a matter regarding perishable goods; or
- (d) another period as they may decide,

a consulting Party may request in writing a meeting of the Commission.

2. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Parties and to its Section of the Secretariat.

3. Unless it decides otherwise, the Commission<sup>2</sup> shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute.

4. The Commission may:

- (a) call on technical advisers or create working groups or expert groups as it deems necessary;
- (b) have recourse to good offices, conciliation, mediation, or other dispute resolution procedures; or
- (c) make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

6. Parties may decide at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

7. Proceedings that involve good offices, conciliation, or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding.

8. Parties participating in proceedings under this Article may suspend or terminate those proceedings.

9. If the disputing Parties decide, good offices, conciliation, or mediation may continue while a dispute proceeds for resolution before a panel established under Article 31.6 (Establishment of a Panel).

#### **Article 31.6: Establishment of a Panel**

1. If the Commission has convened pursuant to Article 31.5 (Commission, Good Offices, Conciliation, and Mediation), and the matter has not been resolved within:

- (a) 30 days thereafter;

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<sup>2</sup> For the purposes of this Article, the Commission shall be composed of, and decisions taken by the Commission representatives of the consulting Parties.

- (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, if proceedings have been consolidated pursuant to Article 31.5.5 (Commission, Good Offices, Conciliation, and Mediation); or
- (c) another period as the consulting Parties may decide,

a consulting Party may request the establishment of a panel by means of a written notice delivered to the responding Party through its Section of the Secretariat.

2. The complaining Party shall circulate the written notice concurrently to the other Parties through their respective Sections of the Secretariat.

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly.

4. On delivery of the request, the Commission shall establish a panel.

5. A third Party that considers it has a substantial interest in the matter is entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section. The third Party shall deliver the notice no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

6. Unless the disputing Parties decide otherwise, the panel shall be established and perform its functions in a manner consistent with this Chapter and the Rules of Procedure.

7. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

#### **Article 31.7: Terms of Reference**

1. Unless the disputing Parties decide otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

- (a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel); and
- (b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report).

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs a benefit within the meaning of Article 31.2 (Scope), the terms of reference shall so indicate.

3. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of a measure found not to conform with an obligation of this Agreement or to have caused nullification or impairment in the sense of Article 31.2(c) (Scope), the terms of reference shall so indicate.

### **Article 31.8: Roster and Qualifications of Panelists**

1. The Parties shall establish by the date of entry into force of this Agreement and maintain a roster of up to 30 individuals who are willing to serve as panelists. The roster shall be appointed by consensus and remain in effect for a minimum of three years or until the Parties constitute a new roster. Members of the roster may be reappointed.

2. Each roster member and panelist shall:

- (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct established by the Commission.

3. For a dispute arising under Chapter 23 (Labor) and Chapter 24 (Environment), each disputing Party shall select a panelist in accordance with the following requirements, in addition to those set out in paragraph 1:

- (a) in a dispute arising under Chapter 23 (Labor), panelists other than the chair shall have expertise or experience in labor law or practice; and
- (b) in a dispute arising under Chapter 24 (Environment), panelists other than the chair shall have expertise or experience in environmental law or practice.

4. In disputes regarding specialized areas of law not set out in paragraph 3, the disputing Parties should select panelists to ensure that the necessary expertise is available on the panel.

5. An individual shall not serve as a panelist in the same dispute in which the individual has participated pursuant to Articles 31.4 (Consultations) or Article 31.5 (Commission, Good Offices, Conciliation, and Mediation).

### **Article 31.9: Panel Composition**

1. If there are two disputing Parties, the following procedures shall apply:
  - (a) The panel shall comprise five members.
  - (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to decide on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
  - (c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
  - (d) If a disputing Party fails to select its panelists within that period, those panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.
2. If there are more than two disputing Parties, the following procedures apply:
  - (a) The panel shall comprise five members.
  - (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel and, if the disputing Parties are unable to decide on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of that Party or those Parties.
  - (c) Within 15 days of selection of the chair, the responding Party shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party and the complaining Parties shall select two panelists who are citizens of the responding Party.
  - (d) If a disputing Party fails to select a panelist within that period, that panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).
3. A panelist shall normally be selected from the roster. A disputing Party may exercise a peremptory challenge against an individual not on the roster who is proposed as a panelist by a

disputing Party within 15 days after the individual has been proposed, unless no qualified and available individual on the roster possesses necessary specialized expertise, including as required by Article 31.8.3 (Roster and Qualifications of Panelists), in which case a disputing Party may not exercise a peremptory challenge but may raise concerns that the panelist does not meet the requirements of Article 31.8.2 (Roster and Qualifications of Panelists).

4. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult and if they concur the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article 31.10: Replacement of Panelists**

1. If a panelist resigns, is removed, or becomes unable to serve, the time frames applicable to that panel's proceeding shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended.

2. If a panelist resigns, is removed, or becomes unable to serve on the panel, a replacement panelist shall be appointed within 15 days in accordance with the same method used to select the panelist in accordance with Article 31.9 (Panel Composition).

3. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult. If they concur on removing the panelist, they shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article 31.11: Rules of Procedure for Panels**

The Rules of Procedure, established under this Agreement in accordance with Article 30.2 (Functions of the Commission), shall ensure that:

- (a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;
- (b) subject to subparagraph (f), a hearing before the panel shall be open to the public, unless the disputing Parties decide otherwise;
- (c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;
- (d) subject to subparagraph (f), each disputing Party's written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, are public as soon as possible after the documents are filed;



- (e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;
- (f) confidential information is protected;
- (g) written submissions and oral arguments shall be made in one of the languages of the Parties, unless the disputing Parties decide otherwise; and
- (h) unless the disputing Parties decide otherwise, hearings shall be held in the capital of the responding Party.

#### **Article 31.12: Electronic Document Filing**

The disputing Parties shall file all documents relating to a dispute, including written submissions, written versions of oral statements, and written responses to panel questions, by electronic means through their respective Sections of the Secretariat.

#### **Article 31.13: Function of Panels**

1. A panel's function is to make an objective assessment of the matter before it and to present a report that contains:

- (a) findings of fact;
- (b) determinations as to whether:
  - (i) the measure at issue is inconsistent with obligations in this Agreement,
  - (ii) a Party has otherwise failed to carry out its obligations in this Agreement,
  - (iii) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope), or
  - (iv) any other determination requested in the terms of reference;
- (c) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and
- (d) the reasons for the findings and determinations.

2. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.
3. Unless the disputing Parties decide otherwise, the panel shall perform its functions and conduct its proceeding in a manner consistent with this Chapter and the Rules of Procedure.
4. The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969.
5. A panel shall take its decision by consensus, except that, if a panel is unable to reach consensus, it may take its decision by majority vote.
6. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information or advice put before it under Article 31.15 (Role of Experts).
7. The panel shall draft its reports without the presence of any Party.
8. Panelists may present separate views on matters not unanimously agreed and shall not disclose the identity of which panelists are associated with majority or minority views.

#### **Article 31.14: Third Party Participation**

A Party that is not a disputing Party shall, on delivery of a written notice to the disputing Parties through their respective Sections of the Secretariat, including a copy to its Section, be entitled to attend any hearing, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of delivery of the request for the establishment of the panel under Article 31.6 (Establishment of a Panel).

#### **Article 31.15: Role of Experts**

At the request of a disputing Party, or on its own initiative, a panel may seek information or technical advice from a person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions decided on by the disputing Parties. The disputing Parties shall have an opportunity to comment on information or advice obtained under this Article.

### **Article 31.16: Suspension or Termination of Proceedings**

1. The panel may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties decide otherwise.
2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

### **Article 31.17: Panel Report**

1. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panelist. In cases of urgency related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panelist.
2. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 1, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties decide otherwise.
3. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may decide.
4. After considering those comments, the panel, on its own initiative or on the request of a disputing Party, may:
  - (a) request the views of a Party;
  - (b) reconsider its report; or
  - (c) make a further examination that it considers appropriate.
5. The panel shall present a final report including any separate opinions on matters not unanimously agreed to the disputing Parties no later than 30 days after presentation of the initial report, unless the disputing Parties decide otherwise.
6. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall make the final report available to the public.

### **Article 31.18: Implementation of Final Report**

1. Within 45 days from receipt of a final report that contains findings that:
  - (a) the measure at issue is inconsistent with a Party's obligations in this Agreement;
  - (b) a Party has otherwise failed to carry out its obligations in this Agreement; or
  - (c) the measure at issue is causing nullification or impairment within the meaning of Article 31.2 (Scope),

the disputing Parties shall endeavor to agree on the resolution of the dispute.

2. Resolution of the dispute can comprise elimination of the non-conformity or the nullification or impairment, if possible, the provision of mutually acceptable compensation, or another remedy the disputing Parties may agree.

### **Article 31.19: Non-Implementation – Suspension of Benefits**

1. If the disputing Parties are unable to agree on a resolution to the dispute under Article 31.18 (Implementation of Final Report) within 45 days from receipt of the final report, the complaining Party may suspend the application to the responding Party of benefits of equivalent effect to the non-conformity or the nullification or impairment until the disputing Parties agree on a resolution to the dispute.
2. In considering what benefits to suspend pursuant to paragraph 1:
  - (a) a complaining Party should first seek to suspend benefits in the same sector as that affected by the measure or other matter that was the subject of the dispute; and
  - (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector, may suspend benefits in other sectors unless otherwise provided for elsewhere in this Agreement.
3. If the responding Party considers that:
  - (a) the level of benefits proposed to be suspended is manifestly excessive; or
  - (b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel considers that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall provide its views as to the level of benefits it considers to be of equivalent effect.

4. If the panel's views are that the responding Party has not eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3.

## **Section B: Domestic Proceedings and Private Commercial Dispute Settlement**

### **Article 31.20: Referrals of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that a Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit an agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

### **Article 31.21: Private Rights**

No Party shall provide for a right of action under its law against another Party on the ground that a measure of that other Party is inconsistent with this Agreement.

### **Article 31.22: Alternative Dispute Resolution**

1. Each Party shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards and settlement agreements in those disputes, and to facilitate and encourage mediation procedures.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on June 10 1958, or the *Inter-American Convention on International Commercial Arbitration*, done at Panama on January 30, 1975.

4. The Commission shall establish and maintain an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall, to the extent possible, encourage, facilitate, and promote through education, the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties in the free trade area. The Committee shall report and provide recommendations to the Commission on general issues respecting the availability, use, and effectiveness of arbitration, mediation, online dispute settlement resolution, and other dispute resolution procedures for the prevention and resolution of those disputes in the free trade area.