

## CHAPTER 12

### DISPUTE SETTLEMENT

#### ARTICLE 12.1

##### *Scope and Coverage*

1. Unless otherwise specified in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of any disputes concerning the interpretation or application of this Agreement.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either *forum* at the discretion of the complaining Party.<sup>13</sup> The *forum* thus selected shall be used to the exclusion of the other.
3. For the purposes of paragraph 2, dispute settlement procedures under the WTO Agreement are deemed to be selected by 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, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 12.4.
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify in writing all other Parties of its intention.

#### ARTICLE 12.2

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

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and 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 shall be confidential and without prejudice to the Parties' rights in any further proceedings.

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<sup>13</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.

## ARTICLE 12.3

### *Consultations*

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Article.
2. A Party may request in writing consultations with another Party if it considers that a measure or other matter is inconsistent with this Agreement, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The Party requesting 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 to the request within 10 days from the date of receipt.
3. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the date of receipt of the request for consultations. If the Party to which the request is made does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for 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 12.4.
4. A Party that considers to have a substantial trade interest in the matter may participate in the consultations on delivery of written notice to the other Parties within seven days of the date of receipt of the request for consultations. The Party shall include in its notice an explanation of its substantial trade interest in the matter.
5. The parties to the dispute shall provide sufficient information to enable a full examination of how the measure or other matter 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.
6. Consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.
7. Consultations may be held in person or by any technological means that the parties to the dispute decide. If the consultations are held in person, these should take place in the capital of the Party complained against, unless the parties to the dispute agree otherwise.
8. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

## ARTICLE 12.4

### *Establishment of an Arbitration Panel*

1. If the consultations referred to in Article 12.3 fail to settle a dispute within 50 days, or 20 days in relation to urgent matters, including those on perishable goods, from the date of the receipt of the request for 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 process.
2. The request for the establishment of an arbitration panel shall identify the specific measure or other matter at issue and provide a brief summary of the legal and factual basis of the complaint.
3. The arbitration panel shall consist of three members who shall be appointed in accordance with the “Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration”, as effective from 20 October 1992 (hereinafter referred to as “the Optional Rules”) *mutatis mutandis*. The date of establishment of the arbitration panel shall be the date on which the chairperson is appointed.
4. Unless the parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel 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 arbitration panel pursuant to Article 12.4 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 to examine complaints relating to the same matter.
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 12.5

### *Procedures of the Arbitration Panel*

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the panel shall be governed by the Optional Rules, *mutatis mutandis*.<sup>14</sup>
2. 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 interpreted in accordance with rules of interpretation of public international law.
3. The parties to the dispute shall decide on the language of the dispute. If there is no agreement it shall be decided by the arbitration panel. The hearings of the arbitration panel shall be open to the public, unless the parties to the dispute decide otherwise or the arbitral panel decides to close the hearing for the duration of any discussion of confidential information.
4. 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 held in The Hague, The Netherlands.
5. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.
6. A Party's written submissions, written versions of oral statements and responses to questions put by an arbitration panel, shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute.
7. The Parties shall treat as confidential the information submitted to the arbitration panel which has been designated as confidential by the Party submitting the information.
8. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose which members are associated with majority or minority opinions.
9. The costs of arbitration shall be borne by the parties to the dispute in equal shares.
10. Each Party's individual costs, including administration costs and other costs related to the preparation and the carrying out of the proceedings, shall be borne by each Party.

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<sup>14</sup> The following Articles shall not apply: Article 3 (Notice of Arbitration); Article 26 (Interim Measures of Protection); Article 35 (Interpretation of the Award); Article 36 (Correction of the Award); Article 37 (Additional Award) and Article 41 (Deposit of Costs).

11. The arbitration panel shall establish its working schedule allowing the parties to the dispute adequate time to comply with all steps of the proceedings. The working schedule shall establish precise dates and time periods for the submission of all relevant communications, submissions and other documents as well as for any hearings. The arbitration panel may modify its working schedule and promptly notify the parties to the dispute of any such modifications.

12. Notifications shall be submitted as expeditiously as possible to the addressee through diplomatic channels. A copy should be submitted simultaneously to any relevant offices designated and notified by the parties to the dispute.

13. The arbitration panel may rule on its own jurisdiction.

#### ARTICLE 12.6

##### ***Panel Reports***

1. The arbitration panel shall normally submit an initial report containing its findings and rulings to the parties to the dispute not 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 on its initial report within 14 days from the date of receipt of the report. The arbitration panel shall normally present to the parties to the dispute a final report within 30 days from the date of receipt of the initial report.

2. The final report, as well as any report under Articles 12.8 and 12.9, shall be communicated to the parties to the dispute. The reports referred to in this paragraph shall be made public, unless the parties to the dispute decide otherwise.

3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

#### ARTICLE 12.7

##### ***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. A complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

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 chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

#### ARTICLE 12.8

##### *Implementation of the Final Report*

1. The Party complained against shall promptly comply with the ruling in the final report. 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 30 days from the date of the issuance of the final report, 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 shall normally be given within 40 days from the date of receipt of that request.

2. The Party complained against shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow 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 final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 12.9. The ruling of the arbitration panel shall normally be rendered within 60 days from the date of receipt of the request.

#### ARTICLE 12.9

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

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 12.8, or notifies the complaining Party that it does not intend to comply with the final report 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 receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure or matter 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 or matter 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.

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 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 those affected by the measure or matter found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 45 days from 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 or matter 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 final report 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 shall be given within 30 days from receipt of that request.

#### ARTICLE 12.10

##### *Other Provisions*

1. Whenever possible, the arbitration panel referred to in Articles 12.8 and 12.9 shall comprise the same arbitrators who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrator.

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the parties to the dispute.

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