

## **CHAPTER 13 DISPUTE SETTLEMENT**

### **SECTION A OBJECTIVE AND SCOPE**

#### **Article 13.1 Definitions**

For the purposes of this Chapter and its annexes:

**"Code of Conduct"** means the Code of Conduct referred to in Article 13.16 (Rules of Procedure and Code of Conduct of the Panel) and set out in Annex 13B (Code of Conduct for Panellists);

**"Complaining Party"** means the Party that requests consultations under Article 13.6 (Consultations);

**"Matters of Urgency"** means those matters which concern goods that rapidly lose their quality, current condition, or commercial value, in a short period of time, including Perishable Goods;

**"Panel"** means a panel established under Article 13.8 (Establishment of a Panel) or reconvened under Articles 13.22 (Compliance Review) or 13.23 (Compensation and Suspension of Concessions or other Obligations), unless the context provides otherwise;

**"Responding Party"** means the Party to which a request for consultations is made under Article 13.6 (Consultations); and

**"Rules of Procedure"** means the Rules of Procedure referred to in Article 13.16 (Rules of Procedure and Code of Conduct of the Panel) and set out in Annex 13A (Rules of Procedure for the Panel).

#### **Article 13.2 Objective**

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.



### **Article 13.3 Cooperation**

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt, through cooperation, to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Agreement.

### **Article 13.4 Scope**

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation or application of the provisions of this Agreement (hereinafter referred to as "covered provisions") when a Party considers that:
  - (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
  - (b) the other Party has otherwise failed to carry out its obligations under this Agreement.
2. This Chapter applies subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

## **SECTION B CONSULTATIONS, GOOD OFFICES, CONCILIATION AND MEDIATION**

### **Article 13.5 Request for Information**

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Articles 13.6 (Consultations) or 13.7 (Good Offices, Conciliation or Mediation) respectively, a Party may request, in writing, any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 30 days after the date of receipt of the request.



### **Article 13.6**

#### **Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 13.4 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual and legal basis specifying the covered provisions that it considers applicable.
3. The Responding Party shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. The consultations shall be held within 30 days after the date of receipt of the request. The consultations shall be deemed to be concluded within 60 days after the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations on Matters of Urgency shall be held within 15 days after the date of receipt of the request. The consultations shall be deemed to be concluded within 30 days after the date of receipt of the request, unless the Parties agree otherwise.
5. During consultations, each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure affects the operation and application of this Agreement.
6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.
7. Consultations may be held in person or by any other means of communication, as the Parties may agree. Consultations, if held in person, shall take place in the territory of the Responding Party, unless the Parties agree otherwise.
8. If the Responding Party does not respond to the request for consultations within 10 days after the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or paragraph 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the Complaining Party may have recourse to Article 13.8 (Establishment of a Panel).



### **Article 13.7**

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

1. The Parties may at any time agree to enter into procedures for good offices, conciliation or mediation. They may begin and be terminated by either Party at any time.
2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.
3. If the Parties agree, procedures for good offices, conciliation or mediation may continue during the Panel proceedings, as set out in Section C (Panel Procedures).

### **SECTION C**

#### **PANEL PROCEDURES**

### **Article 13.8**

#### **Establishment of a Panel**

1. If the Parties fail to resolve the dispute through recourse to consultations as provided for in Article 13.6 (Consultations), the Complaining Party may request the establishment of a Panel.
2. The request for the establishment of a Panel shall be made by means of a written request delivered to the Responding Party and shall identify the measures at issue and indicate the legal basis specifying the relevant covered provisions, in a manner sufficient to present how such measures have breached those provisions.
3. When a request is made by the Complaining Party in accordance with paragraph 1, a Panel shall be established in accordance with Article 13.9 (Composition of a Panel).

### **Article 13.9**

#### **Composition of a Panel**

1. Unless the Parties agree otherwise, a Panel shall consist of three panellists.



2. Unless the Parties agree otherwise, the panellists shall neither be nationals of the Parties to the dispute nor have their permanent place of residence in the territory of a Party to the dispute.
3. Within 20 days after the establishment of a Panel, each Party shall appoint a panellist. The Parties shall, by mutual agreement, within 40 days after the establishment of a Panel, appoint the third panellist who shall serve as the chairperson of the Panel.
4. The Parties shall exchange a list of up to five nominees for the appointment of the chairperson within 10 days from the date of receipt of the written notification requesting the establishment of a Panel.
5. If any of the three panellists have not been appointed within the time period established in paragraph 3, on request of either Party, the panellist will be appointed by draw of lot from the list of the nominees exchanged under paragraph 4. Where more than one panellist, including a chairperson is to be selected by draw of lot, the chairperson shall be appointed first. The selection by draw of lot for the chairperson or any other panellist shall be conducted by the Parties.
6. If a Party fails to submit its list of five nominees within the time period established in paragraph 4, the appointment of panellist under paragraph 5 shall be by draw of lot from the list submitted by the other Party.
7. The date of composition of the Panel shall be the date on which the last of the three selected panellists has notified to the Parties the acceptance of their appointment.
8. If a Panel is reconvened under Article 13.22 (Compliance Review), or Article 13.23 (Compensation and Suspension of Concessions or other Obligations), the Panel shall, to the extent possible, have the same panellists as the original Panel. If this is not possible, any successor panellist shall be appointed in accordance with this Article and shall have all the powers and duties of the original panellist.

#### **Article 13.10**

##### **Qualifications of Panellists**

1. Each panellist shall:
  - (a) have demonstrated expertise or experience in law, international trade, and other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;



- (b) be independent of, and not be affiliated with or take instructions from, either Party;
  - (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute;
  - (d) comply with the Code of Conduct; and
  - (e) be chosen strictly on the basis of objectivity, reliability, and sound judgment.
2. The chairperson shall also have experience in dispute settlement procedures.
  3. Persons who provided good offices, conciliation or mediation to the Parties, pursuant to Article 13.7 (Good Offices, Conciliation or Mediation) in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panellists in that matter.

#### **Article 13.11** **Replacement of Panellists**

If any of the panellists of the original Panel becomes unable to act, withdraws or needs to be replaced because that panellist does not comply with the requirements of the Code of Conduct, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist, and the successor panellist shall have the powers and duties of the original panellist. The work of the Panel shall be suspended until the appointment of the successor panellist.

#### **Article 13.12** **Functions of a Panel**

1. Unless the Parties agree otherwise, the Panel:
  - (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity of the measure at issue with the covered provisions, and make findings and determinations as are called for in its terms of reference;
  - (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and



- (c) may consult with the Parties and provide adequate opportunities for the development of a mutually agreed solution.
- 2. A Panel shall make its findings by consensus. If a Panel is unable to reach consensus, it may make its findings by majority vote. A Panel shall not disclose the panellists associated with majority or minority opinions.
- 3. No finding, determination or recommendation of a Panel can add to or diminish the rights and obligations of the Parties under this Agreement.

### **Article 13.13**

#### **Terms of Reference**

- 1. Unless the Parties agree otherwise, within 15 days after the date of establishment of the Panel, the terms of reference of the Panel shall be:  
“to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the Panel, to make findings on the conformity of the measure at issue with the relevant covered provisions as well as recommendations, if any, on the means to resolve the dispute, if jointly requested by the Parties and to deliver a report in accordance with Articles 13.18 (Interim Report) and 13.19 (Final Report)”.
- 2. If the Parties agree on terms of reference other than those referred to in paragraph 1, they shall notify the agreed terms of reference to the Panel no later than 5 days after their agreement.

### **Article 13.14**

#### **Decision on Matters of Urgency**

- 1. If a Party so requests, the Panel shall decide, within 15 days after its composition, whether the dispute concerns Matters of Urgency.
- 2. In cases of Matters of Urgency, the applicable time periods set out in Articles 13.18 (Interim Report) and 13.19 (Final Report) shall be half of the time prescribed therein.

### **Article 13.15**

#### **Rules of Interpretation**

- 1. The Panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.



2. When appropriate, the Panel may also take into account relevant interpretations in reports of prior panels established under this Chapter and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

#### **Article 13.16**

##### **Rules of Procedure and Code of Conduct of the Panel**

1. The proceedings provided for in this Chapter shall be conducted in accordance with Annex 13A (Rules of Procedure for the Panel) and Annex 13B (Code of Conduct for Panellists), unless the Parties agree otherwise.
2. The Panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the Chapter and Rules of Procedure.

#### **Article 13.17**

##### **Receipt of Information**

1. Upon the request of a Party, or on its own initiative, the Panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any such request by the Panel.
2. At the request of a Party, a Panel may seek information or technical advice from any known source that it deems appropriate, provided that the Parties agree, and subject to any terms and conditions agreed by the Parties.
3. Any information obtained by the Panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

#### **Article 13.18**

##### **Interim Report**

1. The Panel shall deliver an interim report to the Parties within 90 days after the date of composition of the Panel. When the Panel considers that this deadline cannot be met, the chairperson of the Panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the Panel plans to deliver its interim report.



2. The interim report shall include a descriptive part and the Panel's findings and conclusions.
3. Each Party may submit to the Panel written comments and a written request to review precise aspects of the interim report within 10 days after the date of issuance of the interim report. A Party may comment on the other Party's request within 7 days after the delivery of the request.
4. After considering any written comments and requests by each Party on the interim report, the Panel may modify the interim report and make any further examination it considers appropriate.
5. The interim report shall not be made public.

#### **Article 13.19**

##### **Final Report**

1. The Panel shall deliver its final report to the Parties within 120 days after the date of composition of the Panel.
2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The Panel may, if jointly requested by the Parties, suggest ways in which the final report could be implemented.
3. A Party may release a copy of the final report to the public. The release shall be subject to the protection of confidential information in accordance with the Rules of Procedure.
4. The final report shall be binding on the Parties.

#### **Article 13.20**

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

1. Where the Panel finds that the Responding Party has acted inconsistently with a covered provision, or that the Responding Party has otherwise failed to carry out its obligations under this Agreement, the Responding Party shall take any measure necessary to comply promptly and in good faith with the findings and conclusions in the final report.
2. If immediate compliance is not possible, the Responding Party shall, no later than 30 days after the delivery of the final report, notify the Complaining Party of the length of the reasonable period of time necessary for compliance with the final report, and the Parties shall



endeavour to agree on the reasonable period of time required for compliance with the final report.

#### **Article 13.21**

##### **Reasonable Period of Time for Compliance**

1. If the Parties have not agreed on the length of the reasonable period of time, the Complaining Party may, no later than 30 days after the date of receipt of the notification made by the Responding Party in accordance with paragraph 2 of Article 13.20 (Implementation of the Final Report), request, in writing, that the original Panel determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Responding Party.
2. The original Panel shall deliver its decision to the Parties within 30 days after the date of submission of the request.
3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

#### **Article 13.22**

##### **Compliance Review**

1. The Responding Party shall deliver a written notification of its progress in complying with the final report to the Complaining Party at least 1 month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.
2. The Responding Party shall, no later than the expiry of the reasonable period of time, deliver a notification to the Complaining Party of any measure that it has taken to comply with the final report.
3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the Complaining Party may request, in writing, that the original Panel decide on the matter. Such request shall be notified simultaneously to the Responding Party.
4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the Responding Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.



5. The Panel shall deliver its decision to the Parties within 60 days after the date of delivery of the request.

#### **Article 13.23**

##### **Compensation and Suspension of Concessions or other Obligations**

1. The Responding Party shall, on request of the Complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory agreement or any necessary compensation if:
  - (a) the Responding Party fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time;
  - (b) the Responding Party notifies the Complaining Party in writing that it is not possible to comply with the final report within the reasonable period of time; or
  - (c) the original Panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the Responding Party is inconsistent with the covered provisions.
2. The Complaining Party may notify the Responding Party, in writing, that it intends to suspend concessions or other obligations under this Agreement, if:
  - (a) the Parties fail to reach a mutually satisfactory agreement or to agree on compensation within 30 days after the date of receipt of the request made in accordance with paragraph 1; or
  - (b) the Parties agreed on a mutually satisfactory agreement or compensation under paragraph 1 but the Complaining Party considers that the Responding Party has failed to observe the terms of the mutually satisfactory agreement or compensation.
3. The notification referred to in paragraph 2 shall specify the level of intended suspension of benefits or other obligations.
4. The Complaining Party may begin the suspension of benefits or other obligations, referred to in paragraph 2, 30 days after the date the Complaining Party had served notice to the Responding Party, unless the Responding Party made a request under paragraph 8.
5. The suspension of benefits or other obligations shall be:
  - (a) at a level equivalent to the nullification or impairment that is



caused by the failure of the Responding Party to comply with the final report; and

- (b) restricted to benefits accruing to the Responding Party under this Agreement.
6. In considering what benefits to suspend, in accordance with paragraph 2, the Complaining Party shall apply the following principles:
- (a) the Complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the Panel has found to be inconsistent with this Agreement or have caused nullification or impairment;<sup>1</sup>
  - (b) the Complaining Party may suspend benefit in other sectors, if it considers that it is not practicable or effective to suspend benefits or other obligations in the same sector.
7. The suspension of benefits or other obligations shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions which has been found in the final report has been removed, or until the Parties have reached a mutually agreed solution or agreed on any necessary compensation.
8. If the Responding Party considers that the suspension of benefits or other obligations does not comply with paragraphs 5 and 6 or that it has complied with the terms and conditions of the mutually satisfactory agreement or compensation agreed pursuant to paragraph 2, that Party may request, in writing, the original Panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the Complaining Party. The original Panel shall notify the Parties of its decision on the matter no later than 30 days after the receipt of the request from the Responding Party. Benefits or other obligations shall not be suspended until the original Panel has delivered its decision. The suspension of benefits or other obligations shall be consistent with this decision.

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<sup>1</sup> For the purposes of this paragraph, "sector" means: (i) with respect to goods, all goods; (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors.



#### **Article 13.24**

##### **Compliance Review after Compensation and Suspension of Concessions or other Obligations**

1. Upon the notification by the Responding Party to the Complaining Party of the measure taken to comply with the final report:
  - (a) in a situation where the right to suspend benefits or other obligations has been exercised by the Complaining Party in accordance with Article 13.23 (Compensation and Suspension of Concessions or other Obligations), the Complaining Party shall terminate the suspension of benefits or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or
  - (b) in a situation where necessary compensation has been agreed, the Responding Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.
2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the Complaining Party shall request, in writing, that the original Panel examine the matter. That request shall be notified simultaneously to the Responding Party. The decision of the Panel shall be notified to the Parties no later than 45 days after the date of submission of the request. If the Panel decides that the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions, the suspension of benefits or other obligations, or the application of the compensation, shall be terminated no later than 15 days after the date of the decision. If the Panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the Panel.

#### **Article 13.25**

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

If both Parties so request, the Panel shall suspend its work for a period agreed by the Parties not exceeding 12 consecutive months. In the event of a suspension of the work of the Panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the Panel was suspended. The Panel shall resume its work before the end of the



suspension period at the written request of both Parties. If the work of the Panel has been suspended for more than 12 consecutive months, the authority of the Panel shall lapse and the dispute settlement proceeding shall be terminated. The Panel shall terminate its proceedings if the Parties request it to do so.

## **SECTION D GENERAL PROVISIONS**

### **Article 13.26 Choice of Forum**

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international agreements to which both Parties are party, including the WTO agreements.
2. When a dispute arises with regard to the alleged inconsistency of a particular measure with a covered provision under this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO agreements, the Complaining Party may select the forum in which to settle the dispute.
3. The Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of, or referred the matter to, a Panel or tribunal, pursuant to Article 13.8 (Establishment of a Panel) or under the relevant provisions of the other international agreement.
4. Once the Complaining Party has selected the forum in which to settle the dispute, that forum shall be used to the exclusion of all other fora<sup>2</sup>.

### **Article 13.27 Costs**

1. Unless the Parties agree otherwise, the costs of the Panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties, in accordance with the Rules of Procedure.

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<sup>2</sup> For greater certainty, the exclusion of other fora includes the exclusion of consultations in those fora.



2. Each Party shall bear its own expenses and legal costs in the Panel proceedings.

#### **Article 13.28**

##### **Mutually Agreed Solution**

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 13.4 (Scope).
2. If a mutually agreed solution is reached during the Panel proceedings, the Parties shall jointly notify that solution to the chairperson of the Panel. Upon such notification, the Panel proceedings shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than the expiry of the agreed time period, the Responding Party shall inform the Complaining Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

#### **Article 13.29**

##### **Time Periods**

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

#### **Article 13.30**

##### **Annexes**

The Joint Committee may modify Annex 13A (Rules of Procedure for the Panel) and Annex 13B (Code of Conduct for Panellists).

#### **Article 13.31**

##### **Working Language**

All proceedings under this Chapter and documents submitted to the Panel or Parties shall be in the English language.



**Article 13.32**  
**Contact Points**

1. Each Party shall designate a contact point within 30 days from the date of entry into force of this Agreement to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.