

## **CHAPTER [...]: DISPUTE SETTLEMENT**

### **Section 1** **Objective and Scope**

#### **ARTICLE 1**

##### **Objective**

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

#### **ARTICLE 2**

##### **Scope of Application**

This Chapter shall apply with respect to the avoidance or settlement of any dispute between the Parties regarding the interpretation or application of the provisions of this Agreement, except as otherwise provided in this Agreement.

### **Section 2** **Consultations and mediation**

#### **ARTICLE 3**

##### **Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 2 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 to the other Party, copied to the Trade Committee, identifying the measure at issue and the provisions referred to in Article 2 that it considers applicable.
3. Consultations shall be held within 30 days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 45 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, in particular all information disclosed and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
4. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services shall be held within 15 days of the date of receipt of the request by the requested Party, and shall be deemed concluded within those 20 days unless both Parties agree to continue consultations.

5. If the Party to which the request is made does not respond to the request for consultations within 15 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 5.
6. During consultations each Party shall deliver sufficient factual information, so as to allow a full examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

#### ARTICLE 4

##### **Mediation Mechanism**

The Parties to the dispute may at any time agree to enter into a mediation procedure with respect to any measure adversely affecting trade or investment between the Parties pursuant to Annex III (Mediation Mechanism).

### **Section 3**

#### **Dispute Settlement Procedures**

##### **Sub-section 1: Arbitration Procedure**

#### ARTICLE 5

##### **Initiation of the Arbitration Procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3, the Party that sought consultations may request the establishment of an arbitration panel in accordance with this Article.
2. The request for the establishment of an arbitration panel shall be made in writing to the other Party and the Trade Committee. The complaining Party shall identify in its request the measure at issue, and it shall explain how such measure is inconsistent with the provisions referred to in Article 2 in a manner sufficient to present the legal basis for the complaint clearly.

#### **Article 6**

##### **Terms of Reference of Arbitration Panel**

Unless the Parties otherwise agree within ten (10) days after the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

“To examine, in the light of (the relevant provisions of this Agreement to be cited by the Parties), the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 5, to rule on the conformity of the measure in question with the provisions referred to in Article 2 of Chapter X (Dispute Settlement) and to make findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, in accordance with Articles 10 and 11 of Chapter X (Dispute Settlement)”.

## **ARTICLE 7**

### **Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three (3) arbitrators.
2. Within 10 days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties do not agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, each Party may appoint an arbitrator from the sub-list of that Party established under Article 23 within 10 days from the expiry of the timeframe established in paragraph 2. If any of the Parties fails to appoint the arbitrator, upon request of the other Party, the arbitrator shall be selected by lot by the chair of the Trade Committee, or the chair's delegate, from the sub-list of that Party contained in the list established under Article 23.
4. Unless the Parties reach an agreement concerning the chairperson of the arbitration panel within the timeframe established in paragraph 2, upon request of any of the Parties, the chair of the Trade Committee or the chair's delegate, shall select by lot the chairperson of the arbitration panel from the sub-list of chairpersons contained in the list established under Article 23.
5. The chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 or paragraph 4 by either Party.
6. The date of establishment of arbitration panel shall be the date on which the three selected arbitrators accepted their appointment according to the Rules of Procedure.
7. Should any of the lists provided for in Article 23 not be established or not contain sufficient names at the time a request is made pursuant to paragraph 3 or paragraph 4, the arbitrators shall be drawn by lot from the individuals who have been formally proposed by both of the Parties or by one of the Parties in case only one Party has made its proposal.

## **Article 8**

### **Dispute Settlement Proceedings of the Arbitration Panel**

1. The rules and procedures set out in this Article and in Annex I as well as the Code of Conduct for arbitrators and mediators set out in Annex II shall govern the dispute settlement procedures of an arbitration panel under this Chapter.
2. Unless the Parties agree otherwise, they shall meet the arbitration panel within 10 days after its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings and the remuneration and expenses of the arbitrators in accordance with Annex I. Arbitrators and representatives of the Parties to the dispute may take part in this meeting via telephone or video conference.
3. The venue for the hearing shall be decided by mutual consent of the Parties. If the Parties fail to agree on the venue for the proceedings the hearing shall be held in Brussels if the complaining Party is Viet Nam and in Ha Noi if the complaining Party is the European Union.

4. Any hearing of the arbitration panel shall be open to the public unless provided otherwise in Annex I.
5. In accordance with Annex I, the Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitration panel, including any comments on the descriptive part of the interim report, responses to questions by the arbitration panel and comments by a Party on those responses, shall be made available to the other Party.
6. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party in accordance with Annex I (*amicus curiae* submissions).
7. For its internal deliberations, the arbitration panel shall meet in closed session where only arbitrators take part. The arbitration panel may also permit its assistants to be present at its deliberations. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

## **ARTICLE 9**

### **Preliminary ruling on urgency**

If a Party so requests the arbitration panel shall give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

## **ARTICLE 10**

### **Panel report**

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, no later than 90 days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.
2. Any Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report within 14 days of its notification.
3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. Any Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report, within seven days of the notification of the interim report.

4. After considering any written requests, including comments, by the Parties on the interim report, the arbitration panel may modify its report and make any further examination that it considers appropriate. The findings of the final panel report shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the comments of the Parties.

## **ARTICLE 11**

### **Notification of the Final Report of the Arbitration Panel**

1. The arbitration panel shall notify its final report to the Parties and to the Trade Committee within 120 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. Under no circumstances should the final report be notified later than 150 days from the date of the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to notify its final report within 60 days from the date of its establishment. Under no circumstances should the final report be notified later than 75 days from the date of its establishment.

## **Sub-section 2: Compliance**

## **ARTICLE 12**

### **Compliance with the Arbitration Panel Report**

The Party complained against shall take any measure necessary to comply promptly and in good faith with the arbitration panel report.

## **ARTICLE 13**

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

1. If immediate compliance is not possible, the Parties shall endeavour to mutually agree on the period of time to comply with the arbitration panel report. In such a case, the Party complained against shall, no later than 30 days after the receipt of the notification of the arbitration panel report to the Parties, notify the complaining Party and the Trade Committee of the time it will require for compliance ("reasonable period of time").
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel report, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the Trade Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 20 days from the date of the submission of the request.

3. The Party complained against shall inform the complaining Party in writing of its progress to comply with the arbitration panel report at least 30 days before the expiry of the reasonable period of time.
4. The reasonable period of time may be extended by mutual agreement of the Parties.

#### **ARTICLE 14**

##### **Review of any Measure Taken to Comply with the Arbitration Panel Report**

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel report.
2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure taken to comply under paragraph 1 with the provisions referred to in Article 2, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and explain how such measure is inconsistent with the provisions referred to in Article 2, in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 45 days of the date of the submission of the request.

#### **ARTICLE 15**

##### **Temporary Remedies in Case of Non-compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel report before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under Article 14 paragraph 1 is inconsistent with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for temporary compensation.
2. If the complaining Party decides not to request an offer for temporary compensation under paragraph 1, or, in case such request is made, if no agreement on compensation is reached within 30 days after the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 14 that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of suspension of obligations. The complaining Party may implement the suspension at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.
3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the 10 day period

referred to in paragraph 2. The original arbitration panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4. The suspension of obligations and the compensation foreseen in this Article shall be temporary and shall not be applied after:
  - (a) the Parties have reached a mutually agreed solution pursuant to Article 19; or
  - (b) the Parties have agreed that the measure notified under Article 14 paragraph 1 brings the Party complained against into conformity with the provisions referred to in Article 2; or
  - (c) any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under Article 14 paragraph 2.

## **ARTICLE 16**

### **Review of any measure taken to comply after the adoption of temporary remedies for non-compliance**

1. The Party complained against shall notify the complaining Party and the Trade Committee of the measure it has taken to comply with the report of the arbitration panel following the suspension of concessions or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining party shall terminate the suspension of concessions within 30 days from the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days from its notification that it has complied with the report of the arbitration panel.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such a request shall be notified simultaneously to the other Party and to the Trade Committee. The ruling of the arbitration panel shall be notified to the Parties and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that the measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the ruling of the arbitration panel.

### **Sub-section 3: Common Provisions**

#### **ARTICLE 17**

##### **Replacement of Arbitrators**

If in an arbitration proceeding under this Chapter, the original arbitration panel, or some of its members, are unable to participate, withdraw, or need to be replaced because he or she does not comply with the requirements under the Code of Conduct, the procedure set out in Article 7 shall apply. The time limit for the notification of the reports and rulings, as the case may be, shall be extended by 20 days.

#### **ARTICLE 18**

##### **Suspension and termination of Arbitration and Compliance Procedures**

1. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months and shall resume its work before the end of this period at the written request of both Parties. The Parties shall inform the Trade Committee, accordingly. The arbitration panel may also resume its work at the end of this suspension period at the written request of any Party. The requesting Party shall inform the Trade Committee and the other Party, accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the agreed suspension period, the authority of the arbitration panel shall lapse and the procedure shall be terminated. In the event of a suspension, the time-frames set out in relevant provisions of this Chapter shall be extended by the amount of time that the work was suspended. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in another proceeding subject to Article 24.
2. The Parties may agree to terminate the procedure of the arbitration panel by jointly notifying the chairperson of the arbitration panel and the Trade Committee at any time before the issuance of the final report of the arbitration panel.



## **ARTICLE 19**

### **Mutually Agreed Solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

## **ARTICLE 20**

### **Information and technical advice**

At the request of a Party, or upon its own initiative, the arbitration panel may request any information it deems appropriate for the arbitration panel proceeding from any source, including the Parties involved in the dispute. The arbitration panel also has the right to seek the opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained under this Article must be disclosed and submitted to the Parties for their comments within the time-frame set by the arbitration panel.

## **ARTICLE 21**

### **Rules of interpretation**

The arbitration panel shall interpret the provisions referred to in Article 2 in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. The arbitration panel shall also take into account relevant interpretations in reports of panels and the Appellate body adopted by the WTO Dispute Settlement Body (hereinafter referred to as the “DSB”). The reports and rulings of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided in the provisions referred to in this Agreement.

## **ARTICLE 22**

### **Decisions and Rulings of the Arbitration Panel**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be disclosed.
2. The reports and rulings of the arbitration panel shall be unconditionally accepted by the Parties. They shall not create any rights or obligations to natural or legal persons. The reports and rulings shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 2 and the basic rationale behind any findings and conclusions that they make. The Trade Committee shall make the reports and rulings of the arbitration panel publicly available in its entirety within 10 days of its issuance, unless it decides not to do so in order to protect the confidentiality of confidential information.

## **Section 4**

### **General Provisions**

#### **ARTICLE 23**

##### **List of arbitrators**

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists:

(a) one sub-list for Vietnam;

(b) one sub list for the EU;

(c) one sub-list of individuals who are not nationals of either Party and do not have permanent residence in either Party and who shall act as chairperson to the arbitration panel.

Each sub-list shall include at least five individuals. The Trade Committee will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct under Annex II to this Agreement.
3. The Trade Committee may establish an additional list of 10 individuals with knowledge and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such an additional list shall be used to compose the arbitration panel in accordance with the procedure set out in Article 7.

#### **ARTICLE 24**

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

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action, or in any other international agreement to which both Parties are parties.
2. By way of derogation from paragraph 1, a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under this Agreement and under the WTO Agreement or in any other international agreement to which both Parties are parties in the relevant *fora*. Once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.
3. For the purposes of this Article,
  - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (DSU);

- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 5 paragraph 1;
  - (c) dispute settlement proceedings under any other international agreement are deemed to be initiated in accordance with that agreement.
4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

## **ARTICLE 25**

### **Time limits**

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their reports and rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.
2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time limit referred to in this Chapter, stating the reasons for the proposal.

## **ARTICLE 26**

### **Review and Modification**

The Trade Committee may decide to modify the annexes of this Chapter.<sup>1</sup>

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<sup>1</sup> The Annexes to this Chapter are:

ANNEX I: RULES OF PROCEDURE

ANNEX II: CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

ANNEX III: MEDIATION MECHANISM