

## TITLE XII

### DISPUTE SETTLEMENT

#### CHAPTER 1

#### OBJECTIVES, SCOPE OF APPLICATION AND DEFINITIONS

#### ARTICLE 298

##### Objective

The objective of this Title is to prevent and settle any dispute between the Parties concerning the interpretation and application of this Agreement and to reach, whenever possible, a mutually satisfactory resolution on any issue that could affect its operation. In case a mutually agreed solution were not possible, the first objective of this Title will be in general to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of this Agreement.

## ARTICLE 299

### Scope of Application

1. Unless otherwise provided in this Agreement, the provisions of this Title shall apply with respect to any dispute concerning the interpretation and application of this Agreement, in particular when one of the Parties considers that a measure taken by another Party is or could be inconsistent with its obligations under this Agreement.
2. This Title shall not apply to disputes between signatory Andean Countries.

## ARTICLE 300

### Definitions

For the purposes of this Title, "party to the dispute" or "party to a dispute" and "parties to the dispute" or "parties to a dispute" means a Party or Parties to this Agreement that is party or are parties to a dispute settlement procedure under this Title.

## CHAPTER 2

### CONSULTATIONS

#### ARTICLE 301

##### Consultations

1. The Parties shall endeavour to settle any dispute regarding any matter established under Article 299 entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party may seek to initiate consultations through a written request to another Party, with copy to the Trade Committee, identifying any measure at issue and the legal basis for the complaint.
3. The requested Party shall reply to the request for consultations, with copy to the Trade Committee, within 10 days following the receipt of such request. In cases of urgency, that period of time shall be five days.
4. The parties to the dispute may agree not to engage in consultations pursuant to this Article and proceed directly to the arbitration panel procedure pursuant to Article 302. Such decision shall be notified in writing to the Trade Committee no later than five days prior to the request for the establishment of an arbitration panel.

5. Unless the consulting Parties agree otherwise, consultations shall be held and deemed concluded within 30 days following the date of the receipt of the request by the requested Party and shall take place, in the territory of the requested Party. Upon agreement of the parties to the dispute, the consultations may take place by any technological means available. The consultations and all information disclosed during the consultations shall be confidential.

6. In cases of urgency, including those related to perishable goods or that otherwise concern goods or services that rapidly lose their commercial value, such as certain seasonal goods or services, consultations shall begin within 15 days following the date of receipt of the request by the requested Party and shall be deemed concluded within those 15 days.

7. During consultations each consulting Party shall deliver sufficient factual information, so as to allow a complete examination of the manner in which the measure in force or proposed, or any other issue, could affect the operation and application of this Agreement.

8. During consultations under this Article, each consulting Party shall ensure the participation of personnel of its competent governmental authorities with the relevant knowledge on the issue subject of the consultations.

9. Unless otherwise agreed by the consulting Parties, when a dispute has been subject to consultations within a sub-committee established in this Agreement, such consultations may replace consultations under this Article, provided that the measure at issue and the legal basis of the complaint had been duly identified during such consultations. Unless otherwise agreed by the consulting Parties, consultations held within a sub-committee shall be deemed concluded within 30 days following the date of receipt of the request for consultations by the requested Party.

10. Within five days following the date of receipt of the request for consultations, a Party which is not a consulting Party, and that has an interest in the matter subject to consultations, may request in writing to the consulting Parties, with a copy to the Trade Committee, its participation in the consultations. Provided that none of the consulting Parties rejects such request, such Party may participate as a third party in accordance with the rules of procedure, established under Article 315 (hereinafter referred to as "Rules of Procedure").

## CHAPTER 3

### DISPUTE SETTLEMENT PROCEDURES

#### ARTICLE 302

##### Initiation of Arbitration Proceedings

1. The complaining Party may request the establishment of an arbitration panel if:
  - (a) the Party complained against does not reply to the request for consultations in accordance with Article 301, paragraph 3;
  - (b) consultations are not held within the period of time established in Article 301 paragraphs 5 or 6, as the case may be;
  - (c) the consulting Parties have failed to settle the dispute through consultations; or
  - (d) the parties to the dispute have agreed not to engage in consultations according to Article 301, paragraph 4.

2. Request for the establishment of an arbitration panel shall be made in writing to the Party complained against and to the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and shall explain how that measure constitutes a violation of the provisions of this Agreement in a manner that clearly presents the legal grounds for the complaint.
3. A Party may not request the establishment of an arbitration panel to review a proposed measure.
4. Within 10 days following the date of the receipt of the request for the establishment of an arbitration panel, a Party which is not a party to the dispute and that has a substantial interest in it, may request in writing to the parties to the dispute, with copy to the Trade Committee, its participation in the arbitration procedure. Such Party may participate as a third party in accordance with the Rules of Procedure.

## ARTICLE 303

### Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 12 days following the date of receipt of the request for the establishment of an arbitration panel by the Party complained against, each party to the dispute may appoint an arbitrator from the candidates proposed by any of the Parties for the list established in accordance with Article 304. If any of the parties to the dispute fails to appoint its arbitrator, upon request of the other party to the dispute, the arbitrator shall be selected by lot by the chairperson of the Trade Committee or his/her delegate among the candidates proposed by that party to the dispute for the list of arbitrators.
  
3. Unless the parties to the dispute reach an agreement concerning the chairperson of the arbitration panel within the period of time established in paragraph 2, and upon request of any of the parties to the dispute, the Chair of the Trade Committee or his/her delegate, shall select by lot the chairperson of the arbitration panel among the candidates selected to that effect in the list of arbitrators.
  
4. The Chair of the Trade Committee, or his/her delegate, shall select the arbitrators by lot from the list pursuant to Article 304 within five days following the date of receipt of a request submitted according to with paragraphs 2 or 3, as the case may be.

5. Notwithstanding paragraphs 2 to 4, the parties to the dispute may select as arbitrators, by mutual consent and within 10 days following the date of receipt of the request by the Party complained against, persons who are not included in the list of arbitrators, but who meet the requirements established in Article 304 paragraph 3.

6. The date of establishment of the arbitration panel shall be the date on which all the designated arbitrators have confirmed their acceptance in accordance with the Rules of Procedure.

## ARTICLE 304

### List of Arbitrators

1. The Trade Committee shall establish at its first meeting a list of 25 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select by mutual agreement 10 individuals who are not nationals<sup>1</sup> of any of the Parties, and who shall act as chairperson of the arbitration panel.

2. The Trade Committee shall ensure that the list established in accordance with paragraph 1 is always complete. In any event, the list may be used in accordance with Article 303 even if it is not complete.

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<sup>1</sup> For the purposes of this Title "national" means a natural person that has the nationality of a Member State of the European Union or a signatory Andean Country or is a permanent resident of a Member State of the European Union or a signatory Andean Country.

3. The arbitrators shall have specialised knowledge or experience in law, international trade, or in the settlement of disputes under international trade agreements. They shall be independent, impartial, shall have neither a direct nor indirect relationship with any of the Parties, and shall not receive instructions from any Party or from any organisation. The arbitrators shall comply with the code of conduct established in accordance with this Title (hereinafter referred to as "Code of Conduct").

4. The Trade Committee shall establish, furthermore, additional lists of 12 individuals with sectorial experience on specific subjects covered by this Agreement. To that effect, each Party shall nominate three individuals to serve as arbitrators. The Parties, by mutual agreement, shall select three candidates to chair the arbitration panel who are not nationals of any of the Parties. Each party to the dispute may choose to designate its arbitrator among those proposed by any of the Parties for a sectorial list. When resorting to the selection procedure established in Article 303 paragraph 3, the Chair of the Trade Committee, or his/her delegate, may use a sectorial list upon agreement of the parties to the dispute.

## ARTICLE 305

### Objection, Removal and Substitution

1. Any party to the dispute may object an arbitrator in cases of a justifiable doubt with respect to her/his compliance with the Code of Conduct. The decision on the objection or removal of an arbitrator shall be adopted according to the Rules of Procedure.
2. If an arbitrator is not able to participate in the proceedings, resigns, or must be replaced, her/his replacement shall be chosen according to Article 303.

## ARTICLE 306

### Consolidation of Arbitration Proceedings

When more than one Party requests the establishment of an arbitration panel with respect to the same measure and based on the same legal grounds, whenever possible, a single arbitration panel shall be established to examine such requests.

## ARTICLE 307

### Arbitration Panel Ruling

1. Arbitration panels shall notify their ruling to the parties to the dispute and to the Trade Committee within 120 days from the date of their establishment. When an arbitration panel considers that such deadline cannot be met, the chairperson of the arbitration panel must notify the parties to the dispute and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel will notify its ruling. Under no circumstances should the ruling be notified later than 150 days from the date of the establishment of the arbitration panel.
2. In cases of urgency, including those related to perishable goods or that otherwise concern goods or services that rapidly lose their commercial value such as certain seasonal goods or services, the arbitration panel shall issue a ruling on whether it deems the case to be urgent within 10 days following its establishment. The arbitration panel shall notify its ruling within 60 days from the date of its establishment, and under no circumstances later than 75 days from that date.

## ARTICLE 308

### Implementation of the Arbitration Ruling

1. The Party complained against shall take all necessary measures to comply with the ruling of the arbitration panel without delay.

2. Within a period of 30 days from the date of receipt of the ruling, the Party complained against shall notify the complaining Party of the following:

- (a) the specific measures which it considers necessary to comply with the ruling;
- (b) the reasonable period to do so; and
- (c) a concrete offer for temporary compensation pending full implementation of the specific measure that it considers necessary to comply with the ruling.

3. In case of discrepancies between the parties to the dispute on the content of such notification, the complaining Party may request the arbitration panel that issued the ruling to establish if the measures proposed pursuant to subparagraph 2(a) are consistent with this Agreement, if the time period to comply with the ruling is reasonable and/or whether the offer for compensation is manifestly disproportionate. The ruling shall be issued within 45 days following the submission of the request.

4. In case the original arbitration panel, or any of its members, cannot meet, the proceedings established in Article 303 shall apply. The time limit to notify the ruling shall be 45 days from the date on which the new arbitration panel has been established.

5. The reasonable period referred to in subparagraph 2(b) may be extended by mutual agreement of the parties to the dispute.

## ARTICLE 309

### Review of Any Measure Adopted to Comply with the Arbitration Ruling

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure adopted to put an end to the non-compliance of its obligations under this Agreement before the expiration of the reasonable period established according to Article 308, subparagraph 2(b), and paragraphs 3 or 5.
2. If the measures notified by the Party complained against in accordance with paragraph 1 are not similar to those previously notified by that Party under Article 308, subparagraph 2(a), or when the complaining Party has had recourse to arbitration under Article 308 paragraph 3 and such measures notified under paragraph 1 are not similar to those which the arbitration panel found consistent with this Agreement, and in case of disagreement between the parties to the dispute as to the existence of the notified measures or their compatibility with the Agreement, the complaining Party may request in writing to the original arbitration panel to decide on the matter. Such request shall identify the specific measures at issue and shall explain to what extent it is inconsistent with this Agreement. The arbitration panel shall notify its ruling within 30 days from the date of the request.
3. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be issued within 30 days from the date of establishment of the new arbitration panel.

## ARTICLE 310

### Temporary Remedies in Case of Non-Compliance

1. If the Party complained against does not notify the adoption of any measure to comply with the ruling of the arbitration panel before the expiry of the reasonable period, or if the arbitration panel decides according to Article 309 paragraph 2 that a notified measure is inconsistent with this Agreement, the complaining Party may:

- (a) request the Party complained against a compensation for non-compliance, either the continuation of the temporary compensation or a different compensation, or
- (b) notify the Party complained against and the Trade Committee its intention to suspend concessions resulting from any provision referred to in Article 299 to a level equivalent to the nullification or impairment caused by the violation.

2. If following a period of 20 days after the expiry of the reasonable period, or following the decision by the arbitration panel that the measure notified under Article 311 paragraph 2 is inconsistent with this Agreement, the parties to the dispute are unable to reach an agreement about compensation under subparagraph 1(a), the complaining Party may notify the Party complained against and the Trade Committee of its intention to suspend benefits under any provision referred to in Article 299 in a level equivalent to the nullification or impairment caused by the violation.

3. If the Party complained against does not implement the temporary compensation established under Article 308 within a reasonable period of time<sup>2</sup>, the complaining Party may notify the Party complained against and the Trade Committee of its intention to suspend benefits under any provision referred to in Article 299 in a level equivalent to the temporary compensation pending the implementation of the temporary compensation or the adoption of a compliance measure by the Party complained against, whichever occurs first.
4. When the complaining Party notifies its intention to suspend benefits under paragraphs 2 or 3, such Party may apply the suspension of benefits 10 days after the notification, unless the Party complained against requests arbitration under paragraph 5.
5. If the Party complained against considers that the level of suspension notified is not equivalent to the nullification or impairment caused by the violation, it may request in writing to the original arbitration panel to decide 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 set out in paragraph 4. The original arbitration panel shall notify its ruling on the level of suspension of benefits to the parties to the dispute and to the Trade Committee within 30 days of the date when that arbitration panel has received the request. The benefits shall not be suspended until the original arbitration panel has notified its ruling to the parties to the dispute and any suspension shall comply with such ruling.

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<sup>2</sup> For greater certainty, the Party complained against has not implemented the temporary compensation within a reasonable period of time only in the event that the Party complained against does not initiate its internal procedure conducive to the implementation of the compensation within a reasonable period of time, or when such internal procedures result in a decision contrary to the implementation of the temporary compensation.

6. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be issued within 45 days from the date of establishment of the new arbitration panel.

7. The compensation or the suspension of benefits under this Article shall be temporary and shall not waive the obligation of the Party complained against of its obligation to comply with the ruling. Such remedies shall apply only until any measure declared inconsistent with this Agreement has been withdrawn or modified so as to comply with the provisions of this Agreement, or the parties to the dispute have reached a mutually agreed solution.

## ARTICLE 311

### Review of Any Measure Adopted After the Suspension of Benefits or Compensation for Non-compliance

1. The Party complained against may notify at any time to the complaining Party and the Trade Committee any measure that it has adopted to comply with the ruling of the arbitration panel and of its request to the complaining Party to terminate the suspension of benefits, or its intention to terminate the application of compensation for non-compliance, as the case may be. Except in the case provided for in paragraph 2, the suspension of benefits shall terminate 30 days following such notification.

2. If the parties to the dispute are unable to reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days from the date of the notification provided for under paragraph 1, any of such parties may submit a written request to the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the Party complained against and the Trade Committee. The arbitration ruling shall be notified to the parties to the dispute and the Trade Committee within 45 days from the date of such request. If the arbitration panel decides that the compliance measure is compatible with the provisions of this Agreement, the suspension of benefits shall be terminated.

3. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be notified within 45 days from the date of establishment of a new arbitration panel.

4. If, following the 30-day period referred to in paragraph 2, none of the parties to the dispute has requested the original arbitration panel to decide on the consistency of the measure notified under paragraph 1, and the complaining Party has not complied with its obligation of terminating the suspension of benefits, the Party complained against may suspend benefits at a level equivalent to that applied by the complaining Party, while such Party continues to suspend benefits.

## ARTICLE 312

### Request for Clarification of a Ruling

1. Within 10 days following the notification of the ruling, a party to the dispute may submit a request in writing to the arbitration panel, with copy to the other party to the dispute and the Trade Committee, for clarification of certain specific aspects of any determination or recommendation in the ruling that such party considers ambiguous, including those related to compliance. The other party to the dispute may submit comments on such request to the arbitration panel, with copy to the Party who submitted the original request for clarification. The arbitration panel shall respond to such request within 10 days following its receipt.
2. The submission of a request under paragraph 1 shall not affect the periods referred to in Article 308.

## ARTICLE 313

### Suspension and Termination of Arbitration Proceedings

1. The parties to the dispute may agree, at any time, to suspend the work of the arbitration panel during a period that shall not exceed 12 months from the date of such agreement. The parties to the dispute shall notify such agreement in writing to the chairperson of the arbitration panel, with copy to the Trade Committee. In the event of such suspension, the time limits set out in Article 307 shall be extended by the amount of time during which the work has been suspended.

2. In any case, if the work of the arbitration panel has been suspended for more than 12 months, the authority of the arbitration panel shall lapse, unless the parties to the dispute agree otherwise. If the authority of the arbitration panel lapses, nothing in this Article shall prevent a Party from initiating another arbitration proceeding on the same matter.

3. The parties to a dispute may agree to terminate arbitration proceedings at any time, through a joint written notification to the chairperson of the arbitration panel, with copy to the Trade Committee.

## CHAPTER 4

### GENERAL PROVISIONS

#### ARTICLE 314

##### Mutually Agreed Solution

The parties to the dispute may reach a mutually agreed solution to a dispute under this Title at any time. The parties to the dispute shall jointly notify the Trade Committee of any such solution. Upon notification of the mutually agreed solution, the procedure shall be terminated.

## ARTICLE 315

### Rules of Procedure and Code of Conduct

1. Dispute settlement procedures under this Title shall be governed by the Rules of Procedure adopted by the Trade Committee at its first meeting following the entry into force of this Agreement. The Trade Committee shall also adopt at such meeting the Code of Conduct for arbitrators.
2. Any hearing of the arbitration panel shall be open to the public according to the Rules of Procedure, unless otherwise agreed by the parties to the dispute.

## ARTICLE 316

### Information and Technical Advice

1. At the request of a party to the dispute or ex officio, the arbitration panel may obtain any information it deems appropriate, from any source, including the parties to the dispute. The arbitration panel also has the right to seek relevant opinions from experts as it deems appropriate. Any information obtained in this manner shall be delivered to each party to the dispute for their comments.

2. The arbitration panel may also allow interested non-governmental persons established in the territory of a party to the dispute, to provide *amicus curiae* briefs in accordance with the Rules of Procedure.

## ARTICLE 317

### Rules of Interpretation

Any arbitration panel shall interpret the provisions referred to in Article 299 in accordance with the customary rules of interpretation of public international law included in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Arbitration panel rulings cannot increase or diminish the rights and obligations contained in the provisions referred to in Article 299.

## ARTICLE 318

### Arbitration Panel Decisions and Rulings

1. The arbitration panel shall endeavour to adopt any decision by consensus. Nevertheless, when a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. However, in no case shall the dissenting opinions of arbitrators be published.

2. Any ruling of the arbitration panel shall be binding for the parties to the dispute and shall not create any rights or obligations for natural or juridical persons. The ruling shall establish factual decisions, the applicability of the relevant provisions of this Agreement, determinations about whether the Party concerned has complied or not with its obligations therefrom, and the basic rationale behind its decisions and conclusions.
3. The arbitration panel may, upon request of any party to the dispute, issue recommendations as to the implementation of the ruling.
4. Arbitration panel rulings shall be public, unless the parties to the dispute agree otherwise.

## ARTICLE 319

### Relation with WTO Rights and Choice of Forum

1. The provisions contained in this Title are without prejudice to the rights and obligations of the Parties pursuant to the WTO Agreement, including dispute settlement actions.

2. The disputes related to the same measure arising from this Agreement and by virtue of the WTO Agreement may be settled under this Title or under the DSU at the discretion of the complaining Party. Nevertheless, when a Party has requested the establishment of a panel under Article 6 of the DSU or an arbitration panel pursuant to Article 303, that Party may not initiate another proceeding on the same matter in the other forum, except when the competent body in the forum chosen has not taken a decision on the substance of the matter due to procedural or jurisdictional reasons.
3. The Parties understand that two or more disputes concern the same matter when they involve the same parties to the dispute, refer to the same measure and deal with the same substantive violation.
4. No provision in this Title shall prevent a Party from applying a suspension of benefits authorized by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to prevent a Party from suspending benefits in accordance with this Title.

## ARTICLE 320

### Time Limits

1. Any time limit established in this Title, including the time limits for the arbitration panels to notify their rulings, shall be counted from the first day following the act or fact to which they refer.

2. Any time limit referred to in this Title may be extended by mutual agreement of the parties to the dispute.

## ARTICLE 321

### Modification of the Rules of Procedure and Code of Conduct

The Trade Committee may modify the Rules of Procedure and the Code of Conduct.

## ARTICLE 322

### Mediation Mechanism

Pursuant to Annex XIV (Mediation Mechanism for Non-tariff Measures) any Party may request another Party to enter into a mediation procedure with respect to any non-tariff measure of the requested Party related to any matter falling under Title III (Trade in Goods) which the requesting Party considers adversely affects trade.

## ARTICLE 323

### Good Offices, Conciliation and Mediation

1. Notwithstanding Article 322, the Parties may at any time agree to undertake, as an alternative method of dispute resolution, good offices, conciliation or mediation.
2. The alternative methods of dispute resolution referred to in paragraph 1 shall be conducted according to procedures agreed to by the Parties involved.
3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by any of the Parties involved.
4. Proceedings under this Article are confidential and without prejudice to the rights of the Parties involved in any other proceedings.