CHAPTER 15

DISPUTE SETTLEMENT

Article 15.1: Definitions

For the purposes of this Chapter:

arbitral tribunal means an arbitral tribunal established pursuant to Article 15.7 (Request for an Arbitral Tribunal);

complaining Party means a Party that requests the establishment of an arbitral tribunal under Article 15.7 (Request for an Arbitral Tribunal);

consulted Party means a Party to which the request for consultations was made pursuant to Article 15.5 (Consultations);

consulting Party means a Party that request consultations pursuant to Article 15.5 (Consultations);

responding Party means a Party that has been complained against pursuant to Article 15.7 (Request for an Arbitral Tribunal); and

rules of procedure means the rules referred to in Article 15.10 (Function of Arbitral Tribunal) and established in accordance with Article 14.1.4 (Joint Commission).

Article 15.2: Cooperation

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 arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 15.3: Scope of Application

Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation, operation or application of this Agreement, or wherever a Party considers that:

(a) a measure of the other Party is or would be inconsistent with the obligations of this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 15.4: Choice of Forum

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

2. Once the complaining Party has requested the establishment of an arbitral tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others**.**

Article 15.5: Consultations

1. A Party may request in writing consultations with the other Party with respect to any actual or proposed measure or any other matter that it considers might affect the interpretation, operation or application of this Agreement.

2. The consulting Party shall deliver the request to the other Party, setting out the reasons for the request, actual or proposed measure or other matter at issue and an indication of the legal and factual basis for the complaint.

3. The consulted Party shall respond in writing to the request within seven days following the receipt of such request and shall enter into consultations within 30 days after the date of receipt of the request or 20 days after the date of receipt of the request in cases of urgent matters[1], with a view to reaching a mutually satisfactory solution.

4. Consultations may be held in person or by any technological means available to the Parties. If in person, consultations shall be held in the capital of the consulted Party, unless otherwise agreed.

5. In the consultations, each Party shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the interpretation, operation or application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. The consultations under this Article shall be without prejudice to the rights of either Party in any further proceedings.

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[1] For greater certainty, "urgent matters" means the matters which concern:
(a) perishable goods, including agricultural and fishery goods, that lose their quality or current condition in a short period of time;
(b) goods, other than perishable goods, that lose a substantial portion of their trade value after a certain date in the near future; or
(c) services that lose a substantial portion of their trade value after a certain date in the near future.

7. In consultations under this Article, a Party may request to the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 15.6: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to undertake, an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings established under this Article shall be confidential and without prejudice to the rights of the Parties in any other proceedings. They may begin, be suspended, be terminated at any time by either Party, or may continue while procedures of an arbitral tribunal are in progress.

3. Such alternative methods of dispute resolution shall be conducted according to procedures agreed by the Parties.

Article 15.7: Request for an Arbitral Tribunal

1. The complaining Party that requested consultations under Article 15.5 (Consultations) may request, by means of a written notification addressed to the responding Party, the establishment of an arbitral tribunal, if the Parties fail to resolve the matter within:

(a) 55 days after the date of receipt of the request for consultation; or

(b) 40 days after the date of receipt of the request for consultation in case of urgent matters.

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

3. The Parties shall not request the establishment of an arbitral tribunal on any matter relating to a proposed measure.

Article 15.8: Terms of Reference of Arbitral Tribunal

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal 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 arbitral tribunal pursuant to Article

15.7 (Request for an Arbitral Tribunal), to make findings and determinations on whether the measure is not in conformity with this Agreement together with the reasons therefore, and to issue a written award for the resolution of the dispute. If the Parties agree, the arbitral tribunal may make recommendations for the resolution of the dispute."

Article 15.9: Composition of Arbitral Tribunal

1. An arbitral tribunal shall comprise three arbitrators unless otherwise agreed by the Parties.

2. Unless the Parties agree otherwise, an individual shall not serve as an arbitrator involving the same dispute in which that person has participated under Article 15.6 (Good Offices, Conciliation and Mediation).

3. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint an arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal.

4. The chair shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be or have been employed by either Party, nor have dealt with the dispute in any capacity, unless otherwise agreed by the Parties.

5. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3.

6. If a Party has not appointed an arbitrator pursuant to paragraph 3 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 4, the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 3.

7. All arbitrators shall:

(a) have expertise or experience in law, international trade or other matters covered by this Agreement;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or receive instructions from, the government of either Party; and

(d) comply with the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes in the Understanding on Rules and

Procedures Governing the Settlement of Disputes as contained in Annex II of the WTO Agreement.

8. If an arbitrator appointed under this Article, becomes unable to act or resigns, a successor shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 3, 4, 5 and 6, which shall be applied, respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The arbitral tribunal shall suspend its work for a period beginning on the date the original arbitrator becomes unable to act or resigns. The arbitral tribunal shall resume its work on the date the successor is appointed.

Article 15.10: Function of Arbitral Tribunal

1. The function of an arbitral tribunal is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the Parties otherwise agree, the arbitral tribunal shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The arbitral tribunal shall consider this Agreement in accordance with the customary rules of treaty interpretation of public international law. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the Arbitral Tribunal shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the arbitral tribunal shall not add to or diminish the rights and obligations of the Parties under this Agreement.

Article 15.11: Proceedings of Arbitral Tribunal

1. The Parties have the right to, at least, one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions. The arbitral tribunal shall give the Parties the opportunity to attend any of the presentations, statements or rebuttals in the proceedings.

2. The arbitral tribunal shall meet in closed sessions.

3. The arbitral tribunal shall close the hearings to the public, unless the Parties agree otherwise.

4. Any information or written submissions presented by a Party to the arbitral tribunal, including responses to questions put by the arbitral tribunal or any comments before the award is made, shall be available to the other Party.

5. The arbitral tribunal shall aim to make its award by consensus provided that where an arbitral tribunal is unable to reach on consensus, it may take its decision by majority vote.

6. On request of a Party, or on its own initiative, provided that both Parties so agree, and subject to such terms and conditions as the Parties may agree, the arbitral tribunal may seek information or technical advice from any relevant person or body to obtain their opinion or advice on certain aspects of the matter. The arbitral tribunal shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

7. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

8. Notwithstanding paragraph 7, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions presented by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 28 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

9. Each Party shall bear the cost of its appointed arbitrator and its own expenses. The Parties shall bear the cost of the chair of an arbitral tribunal and other expenses associated with the conduct of the proceedings in equal shares.

Article 15.12: Suspension or Termination of Proceedings

1. The Parties may agree, at any time, to suspend the work of the arbitral tribunal for a period that shall not exceed 12 months from the date of such agreement. In the event of such a suspension, the Parties shall extend the time-frames set out in Article 15.13.3 (Award of the Arbitral Tribunal) and 15.13.5 (Award of the Arbitral Tribunal) and Article 15.15.7 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations) by the amount of time that the work was suspended. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority of the arbitral tribunal shall lapse, unless the Parties agree otherwise.

2. The Parties may agree to terminate the arbitral proceedings at any time, through a joint written notification to the chair of the arbitral tribunal before the issuance of the award to the Parties.

Article 15.13: Award of the Arbitral Tribunal

1. The award of the arbitral tribunal shall be final and binding for the Parties.

2. The award of the arbitral tribunal shall be drafted without the presence of the Parties. The arbitral tribunal shall base its award on the relevant provisions of this Agreement and the

submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitral tribunal.

3. The arbitral tribunal shall, within 120 days, or within 90 days in cases of urgent matters, after the date of its establishment, submit to the Parties its award. If the arbitral tribunal considers it cannot release its award within the aforementioned 120 or 90 days period, it shall inform the Parties in writing of the reasons for the delay, with an estimate of the period within which it will issue its award, that shall not exceed 30 days.

4. The award shall contain both the descriptive part summarising the submissions and arguments of the Parties and the findings and determinations of the arbitral tribunal. If the Parties agree, the arbitral tribunal may make recommendations for resolution of the dispute in its award. The findings and determinations of the arbitral tribunal and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

5. The award of the arbitral tribunal shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information.

Article 15.14: Implementation of the Award

1. The responding Party shall immediately comply with the award of the arbitral tribunal, or if this is not practicable, within a reasonable period of time.

2. The responding Party shall notify the other Party in writing of any action it proposes to take to implement the award of the arbitral tribunal within 30 days after the date of the receipt of the award by the Parties.

3. The Parties shall mutually determine the reasonable period of time referred to in paragraph 1. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the arbitration award referred to in Article 15.13 (Award of the Arbitral Tribunal), either Party may refer the matter to the arbitral tribunal, which shall determine the reasonable period of time.

4. If the responding Party considers that immediate compliance or compliance within a reasonable period of time with the award of the arbitral tribunal is impracticable, or if the complaining Party considers that an action proposed or subsequently taken by the responding Party against does not implement the award of the arbitral tribunal**,** the Parties shall immediately enter into consultations with a view to developing a mutually acceptable solution, such as compensation or any alternative arrangement, and agreeing on a reasonable period of time to implement any such resolution.

5. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to the full implementation of the award.

6. Where there is disagreement between the Parties as to whether the responding Party has eliminated the non-conformity as determined in the award of the arbitral tribunal within the reasonable period of time as determined pursuant to paragraph 3 and 4, either Party may refer the matter to an arbitral tribunal as provided for in Article 15.15.7 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations).

Article 15.15: Non-Implementation – Compensation and Suspension of Concessions or other Obligations

1. If the responding Party fails to implement the means to resolve the dispute or does not comply with the award of the arbitral tribunal within the reasonable period of time agreed by the Parties or established by the arbitral tribunal, the responding Party shall enter into negotiations with the complaining Party with a view to establishing a mutually acceptable compensation. The Parties shall initiate negotiations within 10 days following the date of the receipt of the written request for negotiations.

2. If there is no agreement on compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the responding Party of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the award of the arbitral tribunal. The suspension shall only be applied until the non-conformity is fully eliminated, or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) in which the award of the arbitral tribunal referred to in Article 15.13 (Award of the Arbitral Tribunal) has found a failure to comply with the obligations under this Agreement; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the non-conformity.

6. If the responding Party considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2, 3, 4 or 5 have not been met, it may refer the matter to the arbitral tribunal.

7. The arbitrators of the original arbitral tribunal, where possible, shall compose the arbitral tribunal that is established for the purposes of this Article or Article 15.14 (Implementation of the Award). If it is not possible, the Parties shall appoint the arbitrators to the arbitral tribunal that is established for the purposes of this Article or Article 15.14 (Implementation of the Award) in pursuant to Article 15.9 (Composition of Arbitral Tribunal). The arbitral tribunal established under this Article or Article 15.14 (Implementation of the Award) shall issue its award within 60 days after the date when the matter is referred to it. When the arbitral tribunal considers that it cannot issue its award within the aforementioned 60 days period, it may extend that period for a maximum of 30 days with the consent of the Parties. The arbitral tribunal shall make available the award to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information. This award shall be final and binding upon the Parties.

Article 15.16: Application and Modification of Rules and Procedures

Any time period or other rules and procedures for arbitral tribunal provided for in this Chapter may be modified by mutual consent of the Parties.