

## **CHAPTER 7**

### **DISPUTE SETTLEMENT**

#### **Article 7.1**

##### **Objective**

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes among the Parties concerning their rights and obligations under this Agreement.

#### **Article 7.2**

##### **Scope and Coverage**

1. Unless otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of any disputes between the Parties concerning the interpretation or application of this Agreement.
2. Unless otherwise provided in this Agreement or agreed between the disputing parties, the settlement of disputes between the Parties under this Chapter shall be governed by the Rules of Procedure to be adopted by the Joint Commission at its first meeting (Rules of Procedure).

#### **Article 7.3**

##### **Mutually Satisfactory Resolution**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter raised under this Chapter.
2. The disputing parties shall inform the other Parties of any mutually agreed resolution of a matter raised under this Chapter.

#### **Article 7.4**

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

1. If a dispute regarding the same matter arises under this Agreement and under another international trade agreement to which the disputing parties are parties, the complaining Party may select the forum in which to settle the dispute.
2. Once a complaining Party has requested the establishment of, or referred a matter to, an arbitration panel or other tribunal under this Agreement, or another agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other *fora*.

**Article 7.5**  
**Good Offices, Conciliation and Mediation**

1. Parties are encouraged to, and may at any time agree to, voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.
2. Proceedings that involve good offices, conciliation or mediation, including positions taken by the disputing parties during these proceedings, shall be confidential and without prejudice to the rights of any Party in any other proceedings.
3. A Party participating in proceedings under this Article may suspend or terminate those proceedings at any time.
4. If the disputing parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 7.7 (Establishment of an Arbitration Panel).

**Article 7.6**  
**Consultations**

1. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply no later than 10 days after receipt of the request.
2. Any request for consultations made pursuant to paragraph 1 shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.
3. A Party other than a disputing party that considers it has a substantial trade interest, or another substantial interest relevant under the Agreement, in the consultations shall be entitled, on delivery of a written notice to the disputing parties no later than seven days after the notification of the request for consultations, to participate in the consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.
4. Consultations shall commence no later than 30 days after receipt of the request for consultations. Consultations on urgent matters shall commence no later than 15 days after receipt of the request for consultations.
5. Each disputing party shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement and treat as confidential any information which has been designated as confidential by the Party submitting the information.

6. In consultations under this Article, a disputing party may request that another disputing party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

7. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

8. Consultations may be held in person or by any technological means decided by mutual agreement of the disputing parties. If the consultations are held in person, they shall take place in a location decided by mutual agreement of the disputing parties, failing which, they shall be held in the capital of the Party to which the request for consultations was made.

### **Article 7.7 Establishment of an Arbitration Panel**

1. A Party that requested consultations under paragraph 1 of Article 7.6 (Consultations) may request the establishment of an arbitration panel by means of a written request to the responding Party, if:

- (a) the consultations fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, of receipt of the request for consultations by the responding Party; or
- (b) the Party to which the request is made does not reply within 10 days, or does not enter into consultations within 30 days, of receipt of the request for consultations, or within 15 days for urgent matters.

2. The Party requesting the establishment of an arbitration panel shall at the same time notify the other Parties in writing of the request.

3. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal basis of the complaint.

4. The date of establishment of the arbitration panel shall be the date on which its chair is appointed.

5. Unless the disputing parties agree otherwise no later than 20 days after receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

- (a) to examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel;

- (b) to make findings of law and fact, together with any reasons therefore, as provided for in this Chapter. The panel may make recommendations for the implementation of the ruling by the responding Party; and
- (c) issue a report, in accordance with Article 7.15 (Arbitration Panel Reports).

6. Where more than one Party requests the establishment of an arbitration panel relating to the same matter, or where the request involves more than one responding Party and those responding Parties agree, a single arbitration panel should be established to examine complaints relating to the same matter, whenever feasible.

### **Article 7.8** **Arbitration Panel Composition**

1. The arbitration panel shall comprise three members. Each disputing party shall appoint one arbitrator and notify the other disputing party no later than 30 days after receipt of the request to establish an arbitration panel. The disputing parties shall agree on the appointment of the third arbitrator, who shall chair the arbitration panel, no later than 45 days after receipt of the request to establish an arbitration panel.

2. All arbitrators shall be chosen on the basis of their qualifications as provided in Article 7.9 (Qualifications of Arbitrators) as well as their objectivity, reliability and sound judgment.

3. In the appointment of arbitrators, the importance of achieving diversity shall be duly considered.

4. If all the arbitrators have not been appointed within 45 days of receipt of the request to establish an arbitration panel, a disputing party may request the Secretary-General of the Permanent Court of Arbitration (PCA) to make the necessary appointments within 30 days from the date the Secretary-General of the PCA receives that request.

5. In exercising its functions under this Agreement, the Secretary-General of the PCA may require from any disputing party and the arbitrators the information it deems necessary and it shall give the disputing parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers suitable.

**Article 7.9**  
**Qualifications of Arbitrators**

1. All arbitrators shall:
  - (a) have relevant expertise or experience in one or more of the following areas: law, international trade, environmental matters, other matters covered by this Agreement or the resolution of disputes arising under international agreements; and
  - (b) be independent and impartial, including serving in their individual capacities and not be affiliated with, or take instructions from, any disputing party or third party or have dealt with the case in any capacity.
2. At least one arbitrator shall have relevant expertise or experience in environmental matters and at least one in international trade, unless the disputing parties agree such expertise or experience is not necessary in light of the scope of the dispute.
3. Unless the disputing parties agree otherwise, the chair of the arbitration panel shall not be a national of any disputing party or third party and shall not have their usual place of residence in any disputing party.

**Article 7.10**  
**Conduct, Challenge and Replacement of Arbitrators**

1. A prospective arbitrator shall disclose in writing to the disputing parties any information which may give rise to justifiable doubts as to their impartiality or independence. For the duration of their appointment, an arbitrator shall disclose such information as soon as they become aware of them.
2. All arbitrators shall comply with the standards of conduct in the Rules of Procedure.
3. An arbitrator may be challenged as provided for in the Rules of Procedure if circumstances give rise to justifiable doubts as to their compliance with this Chapter or the Rules of Procedure.
4. Where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 7.8 (Arbitration Panel Composition).

**Article 7.11**  
**Third Party Participation**

1. A Party which is not a disputing party and which considers it has an interest in the matter before the arbitration panel shall be entitled, on delivery of a written notice to the disputing parties, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the disputing parties, attend hearings and make oral statements.
2. The Party referred to in paragraph 1 shall provide written notice no later than 10 days after the notification of the request for the establishment of the arbitration panel under Article 7.7 (Establishment of an Arbitration Panel).

**Article 7.12**  
**Functions of the Arbitration Panel**

1. The function of an arbitration panel 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 and recommendations as are called for in its terms of reference provided for in paragraph 5 of Article 7.7 (Establishment of an Arbitration Panel).
2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in light of the relevant provisions of this Agreement considered in accordance with the rules of interpretation of public international law. The arbitration panel may also consider relevant interpretations in WTO panel and appellate reports.
3. The arbitration panel shall take its decisions by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose, including in its initial and final reports, which members are associated with majority or minority opinions.
4. An arbitration panel shall give the disputing parties adequate opportunity to develop a mutually satisfactory solution at any stage of the proceedings prior to release of the final report.

**Article 7.13**  
**Procedures of the Arbitration Panel**

1. Unless otherwise provided in this Agreement or agreed between the disputing parties, the procedures of the arbitration panel shall be governed by the Rules of Procedure.
2. Hearings may be held in person or by any technological means decided by mutual agreement of the disputing parties. The location of any hearing of the

arbitration panel, if it is held in person, shall be decided by mutual agreement of the disputing parties, failing which, it shall be held in the capital of the responding Party.

3. The hearings of the arbitration panel shall be open to the public, unless the disputing parties decide otherwise or the arbitration panel decides to close the hearing for the duration of any discussion of confidential information.

4. The Parties shall treat as confidential the information submitted to the arbitration panel which has been designated as such by the Party submitting the information.

#### **Article 7.14 Right to Seek Information**

1. Upon the request of a disputing party or on its own initiative, the arbitration panel may seek any information it deems appropriate from any relevant source. The arbitration panel may also seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the disputing parties, where applicable.

2. The disputing parties shall have an opportunity to comment on any information or advice obtained under this Article.

#### **Article 7.15 Arbitration Panel Reports**

1. The arbitration panel shall submit an initial report containing its findings and rulings to the disputing parties no later than 90 days after the date of establishment of the arbitration panel.

2. In exceptional cases, if the arbitration panel considers that it cannot release its initial report within the time-period specified in paragraph 1, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing parties agree otherwise.

3. The initial report shall contain:

- (a) findings of law and fact;
- (b) the determination of the arbitration panel as to whether:
  - (i) the measure at issue is inconsistent with obligations in this Agreement; or
  - (ii) a Party has otherwise failed to carry out its obligations in this Agreement;

- (c) any other determination requested in the terms of reference;
  - (d) recommendations for the implementation of the ruling, if any; and
  - (e) the reasons for the findings and determinations.
4. A disputing party may submit written comments to the arbitration panel no later than 14 days after receipt of the initial report.
5. After considering any written comments by the disputing parties on the initial report, the arbitration panel may modify its report and make any further examination it considers appropriate. The findings of the final report shall include a discussion of the arguments made by the disputing parties at the interim review stage.
6. The arbitration panel shall submit to the disputing parties a final report no later than 30 days after the submission of the initial report.
7. The final report, as well as any report under Article 7.17 (Implementation of the Final Report), shall be communicated to the Parties. Subject to the protection of any confidential information, final reports issued under this Chapter shall be made public.
8. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the disputing parties.

**Article 7.16**  
**Suspension or Termination of Arbitration Panel Proceedings**

1. Where the disputing parties agree, an arbitration panel shall suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the disputing parties agree otherwise.
2. Suspended panel proceedings shall resume on request of any disputing party.
3. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.
4. The disputing parties may agree at any time to terminate the proceedings of an arbitration panel established under this Chapter by jointly notifying in writing the chair of that arbitration panel.



**Article 7.17**  
**Implementation of the Final Report**

1. The responding Party shall promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the disputing parties shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days of the issuance of the final report, either disputing party may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall be given no later than 45 days after receipt of that request.

2. The responding Party shall notify the complaining Party and the Joint Commission of the measure adopted in order to comply with the ruling in the final report, including the date the measure comes into effect, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the complaining Party to assess the measure.

3. In case of disagreement between the disputing parties as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of either disputing party. A copy of this request shall be communicated to the other Parties. The Party making the request shall at the same time notify the other Parties in writing of the request. The ruling of the arbitration panel shall be rendered no later than 90 days after receipt of that request.

**Article 7.18**  
**Non-Implementation of the Final Report**

1. If the responding Party notifies the complaining Party that it does not intend to comply with the ruling in the final report, or if it fails to comply within the reasonable period of time pursuant to paragraph 1 of Article 7.17 (Implementation of the Final Report), subject to any compliance proceedings brought under paragraph 3 of Article 7.17 (Implementation of the Final Report), the responding Party shall, if so requested by the complaining Party, enter into consultations no later than 30 days after receipt of that request with a view to agreeing on mutually acceptable compensation.

2. Compensation referred to in paragraph 1 shall foster the contribution of international trade in addressing climate and other serious environmental challenges. Such compensation is voluntary and shall be consistent with this Agreement and other international agreements to which the disputing parties are parties.

3. If no agreement has been reached on mutually acceptable compensation within 90 days from the date of receipt of the request, the representatives of the responding Party shall not be permitted to chair the Joint Commission or any subsidiary body established under this Agreement. The complaining Party may

suspend its cooperation activities under Article 6.6 (Cooperation and Implementation of the Agreement) with the responding Party.

4. As long as the measure found to be inconsistent with this Agreement remains in force, in the absence of compensation pursuant to paragraph 1, and provided that the disputing parties have not resolved the dispute otherwise:

- (a) the implementation of the ruling in the final report, including any measures taken pursuant to paragraph 3, shall be put on the agenda of any regular or special meeting of the Joint Commission; and
- (b) the responding Party shall submit every three months a report to the Joint Commission informing it of its intentions with respect to the implementation of the ruling in the final report. The report, together with statements, if any, by the other Parties in relation to the matter, and a summary by the complaining Party of the measures taken under paragraph 3, shall be made public. Any Party may refer to such documents in any *fora* and on any platform it deems appropriate.

5. The Joint Commission shall decide on further measures aimed at ensuring effective compliance with panel reports and any criteria for their application. A complaining Party may apply any such measure in the context of a particular dispute after application of the measures provided for in paragraphs 3 and 4.

6. Compensation pursuant to paragraph 1 and the measures provided for in paragraphs 3 and 4 shall be temporary and shall only be applied until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the disputing parties have resolved the dispute otherwise. Full implementation of the ruling in the final report or a mutually satisfactory resolution of the dispute are preferred to the measures provided for in this Article.

#### **Article 7.19 Time Periods**

1. Any time period mentioned in this Chapter may be extended by mutual agreement of the disputing parties or, on request of a Party, by the arbitration panel.

2. All time periods laid down in this Chapter shall be calculated from the day following the act or fact to which they refer. If the last day of such period is an official holiday or a non-working day in the Party to which the communication is addressed, the period is extended to the next working day. The disputing parties shall inform each other of their respective official holidays and non-working days when commencing the arbitration.

**Article 7.20**  
**Notifications and Contact Points**

1. Unless otherwise agreed by the disputing parties, a request, notice, written submission or other document shall be considered received when it has been delivered to the designated contact points referred to in paragraph 3 by a means of communication that provides a record of receipt thereof, including registered post, courier or electronic transmission. In case the delivery was not made electronically, a copy of the written communication shall be provided simultaneously in electronic format to the designated contact points referred to in paragraph 3.
  
2. A disputing party shall transmit its written communications at the same time to the arbitration panel, the other disputing party or parties and, where relevant, third parties.
  
3. Each Party shall designate a contact point for the effective implementation and operation of this Chapter and the Rules of Procedure. Each Party shall notify the other Parties in writing of its designated contact point, including electronic mail addresses, within 60 days of the date of entry into force of this Agreement for that Party. Each Party shall promptly notify the other Parties of any change to the contact point or its contact details.