

## CHAPTER 21

### DISPUTE SETTLEMENT

#### SECTION A

##### OBJECTIVE, DEFINITIONS AND SCOPE

###### ARTICLE 21.1

###### Objective

The objective of this Chapter is to establish an effective and efficient mechanism to:

- (a) avoid and settle disputes between the Parties regarding the interpretation and application of this Agreement with a view to reaching, if possible, a mutually agreed solution; and
- (b) preserve the balance of concessions accorded by this Agreement, when applicable.

###### ARTICLE 21.2

###### Definitions

For the purposes of this Chapter and Annexes 21-A, 21-B and 21-C, the following definitions apply:

- (a) "adviser" means an individual retained by a party to advise or assist that party in connection with the arbitration proceedings;
- (b) "arbitration panel" means a panel established pursuant to Article 21.9;

- (c) "arbitrator" means an individual who is a member of an arbitration panel;
- (d) "assistant" means an individual who, under the terms of appointment of an arbitrator, conducts researches or provides assistance to that arbitrator;
- (e) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 21.8(3) and who is under consideration for selection as a member of an arbitration panel established pursuant to Article 21.9;
- (f) "complaining party" means a party that requests the establishment of an arbitration panel pursuant to Article 21.7;
- (g) "expert" means an individual with specialised and recognised knowledge and experience in a certain field that is requested by an arbitration panel or mediator to provide an opinion, or whose opinion in that field is submitted to, or requested by, any of the parties;
- (h) "mediator" means an individual who conducts a mediation pursuant to Article 21.6;
- (i) "representative of a party" means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents that Party for the purposes of a dispute under this Chapter; and
- (j) "staff" means, in respect of an arbitrator, individuals under the direction and control of an arbitrator, other than assistants.

## ARTICLE 21.3

### Parties to the dispute

1. For the purposes of this Chapter, the European Union and MERCOSUR or one

or more of the Signatory MERCOSUR States may be parties to a dispute. The parties to the dispute shall be hereinafter referred to as "party" or "parties".

2. The European Union may initiate dispute settlement proceedings against MERCOSUR regarding a measure that concerns the European Union or one or more of its Member States, if the measure at issue is a measure of MERCOSUR.

3. The European Union may initiate dispute settlement proceedings against one or more of the Signatory MERCOSUR States regarding a measure that concerns the European Union or one or more of its Member States, if the measure at issue is a measure of such Signatory MERCOSUR States.

4. MERCOSUR may initiate dispute settlement proceedings against the European Union regarding a measure that concerns MERCOSUR or all of the Signatory MERCOSUR States, if the measure at issue is a measure of the European Union<sup>1</sup> or of one or more of its Member States.

5. One or more Signatory MERCOSUR States may individually initiate dispute settlement proceedings against the European Union regarding a measure that concerns such Signatory MERCOSUR State or Signatory MERCOSUR States, if the measure is a measure of the European Union or of one or more of its Member States.

6. If more than one Signatory MERCOSUR State initiate dispute settlement proceedings against the European Union on the same matter, Article 9 of the DSU shall apply *mutatis mutandis*<sup>2</sup>.

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<sup>1</sup> For greater certainty, a measure of the European Union referred to in this Article would also cover a measure of one or more of its Member States.

<sup>2</sup> For greater certainty, paragraph 3 of article 9 of the DSU shall not prevent a Signatory MERCOSUR State to appoint a member of the arbitration panel from the sub-list referred to in point (b) of Article 21.8(3) of this Chapter different from the one that served or is serving as arbitrator in a panel established to examine a complaint of another Signatory MERCOSUR State on the same matter.

## ARTICLE 21.4

### Scope

The provisions of this Chapter apply with respect to any dispute:

- (a) concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions"), except if otherwise expressly provided; or
- (b) concerning an allegation by a party that a measure applied by the other party nullifies or substantially impairs any benefit accruing to it under the covered provisions in a manner adversely affecting trade between the parties, whether or not such measure conflicts with the provisions of this Agreement, except if otherwise expressly provided.

## SECTION B

### CONSULTATIONS AND MEDIATION

## ARTICLE 21.5

### Consultations

1. The parties shall endeavour to resolve any dispute regarding the alleged non-compliance with the covered provisions referred to in point (a) of Article 21.4 or regarding the alleged nullification or substantial impairment referred to in point (b) of Article 21.4 by entering into consultations in good faith with the aim of reaching a mutually agreed solution. In this context, additional consideration shall be given to the specific challenges of landlocked developing countries.
2. A party shall seek consultations through a written request delivered to the other

party and to the Trade Committee, giving the reason for the request, including identification of the measure at issue and, in the case of a dispute referred to in point (a) of Article 21.4, the covered provisions that it considers applicable and not complied with by the other party, or, in the case of a dispute referred to in point (b) of Article 21.4, the benefits it considers to have been, as a result of the measure at issue, nullified or substantially impaired in a manner adversely affecting trade between the parties.

3. Consultations shall be held no later than 15 (fifteen) days after the date of receipt of the request and shall, unless the parties agree otherwise, be held in the territory of the consulted party. Consultations shall be deemed to have been concluded no later than 30 (thirty) days after the date of receipt of the request, unless both parties agree to continue consultations. Consultations, and in particular the positions taken by the parties therein, shall be confidential and without prejudice to the rights of a party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value, shall be held no later than 15 (fifteen) days after the date of receipt of the request and shall be deemed to have been concluded within those 15 (fifteen) days, unless both parties agree to continue consultations.

5. During consultations, each party shall provide factual information, so as to allow a complete examination of the manner in which the measure at issue could, in the case of a dispute referred to in point (a) of Article 21.4, affect the application of this Agreement, or, in the case of a dispute referred to in point (b) of Article 21.4, nullify or substantially impair the benefits accruing to the requesting party under this Agreement in a manner adversely affecting trade between the parties.

6. If consultations are not held within the time period laid down in paragraphs 3 or 4, as the case may be, or if consultations are concluded and a mutually agreed solution is not reached, the party which has requested consultations may have recourse to the establishment of an arbitration panel in accordance with Article 21.7.

7. A request for consultations concerning a dispute referred to in point (a) of Article 21.4 shall be without prejudice to the right of the requesting party to request, concurrently or subsequently, consultations concerning a dispute referred to in point (b) of Article 21.4 in respect of the same measure, and vice versa.

## ARTICLE 21.6

### Mediation

A party may request pursuant to Annex 21-C to enter into mediation with respect to any measure by a party adversely affecting trade between the parties. Mediation may only be initiated by mutual consensus of the parties.

## SECTION C

### ARBITRATION

## ARTICLE 21.7

### Initiation of arbitration panel proceedings

1. If the parties have failed to resolve the dispute through consultations in accordance with Article 21.5, or if the complaining party considers that the defending party has failed to comply with a solution mutually agreed during consultations, the complaining party may seek the establishment of an arbitration panel by means of a written request delivered to the defending party and to the Trade Committee.

2. The complaining party shall give the reasons for the request, including identification of the measure at issue and explain, in the case of a dispute referred to in point (a) of Article 21.4, how that measure constitutes a breach of the covered

provisions in a manner that clearly presents the legal basis for the complaint, or, in the case of a dispute referred to in point (b) of Article 21.4, how the measure at issue nullifies or substantially impairs the benefits accruing to the complaining party under this Agreement.

3. A request for establishment of an arbitration panel concerning a dispute referred to in point (a) of Article 21.4 shall be without prejudice to the right of the complaining party to request, concurrently or subsequently, the establishment of an arbitration panel concerning a dispute referred to in point (b) of Article 21.4 in respect of the same measure, and vice versa.

4. If the complaining party has, at the same time and in respect of the same measure, requested the establishment of an arbitration panel concerning both a dispute referred to in point (a) of Article 21.4 and a dispute referred to in point (b) of Article 21.4, a single arbitration panel shall be established conducting a single arbitration in respect of both disputes. In case of subsequent arbitrations concerning the same measure, the latter arbitration shall be referred to the same panel as the preceding dispute, wherever possible.

## ARTICLE 21.8

### Appointment of arbitrators

1. Arbitrators must have specialised knowledge or experience in law and international trade. Arbitrators that are not nationals of a party shall be jurists.

2. Arbitrators shall:

(a) be independent;

(b) serve in their individual capacity;

(c) not take instructions from any organisation or government or be affiliated to any

government or governmental organisation of a Party to this Agreement; and

- (d) comply with Annex 21-B.

3. The Trade Committee shall, no later than 6 (six) months after the date of entry into force of this Agreement, establish a list of 32 (thirty-two) individuals who are willing and able to serve as arbitrators. That list shall be composed of the following 3 (three) sub-lists:

- (a) one sub-list of 12 (twelve) individuals proposed by the European Union;
- (b) one sub-list of 12 (twelve) individuals proposed by MERCOSUR; and
- (c) one sub-list of 8 (eight) individuals, proposed by both Parties, who are not nationals of either Party and who shall act as chairperson of the arbitration panel.

4. The Trade Committee shall ensure that the list referred to in paragraph 3 of this Article contains the number of individuals therein required. The Trade Committee may amend the list of arbitrators, in accordance with Rule 25 of the Rules of Procedure as set out in Annex 21-A.

5. If, at the moment of the establishment of a particular arbitration panel pursuant to Article 21.9, the list provided for in paragraph 3 of this Article has not been established or, once established, not all individuals included in a particular sub-list are able to serve as arbitrator in a dispute, the co-chair of the Trade Committee of the complaining party shall draw by lot the arbitrators in accordance with Rules 10, 26 and 28 to 31 of the Rules of Procedure as set out in Annex 21-A.

## ARTICLE 21.9

### Establishment of the arbitration panel

1. An arbitration panel shall be composed of 3 (three) arbitrators.
2. No later than 10 (ten) days after the date of receipt of the written request for the establishment of an arbitration panel pursuant to Article 21.7(1), the parties shall consult one another with a view to agreeing on its composition<sup>3</sup>. Expertise relevant to the subject matter of the dispute may be taken into consideration by the parties for the selection of arbitrators. The arbitration panel shall always be chaired by a non-national of either Party.
3. If there is no agreement on the composition of the arbitration panel within the time period set out in paragraph 2 of this Article, each party shall appoint one member of the arbitration panel from the sub-list of that party referred to in Article 21.8(3) no later than 10 (ten) days after the expiry of the time period referred to in paragraph 2 of this Article. If a party fails to appoint an arbitrator within that time period, the co-chair of the Trade Committee of the complaining party or his or her designee shall, no later than 5 (five) days after the expiry of the time period referred to in the previous sentence, select the arbitrator by lot from the sub-list of that party.

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<sup>3</sup> For greater certainty, when agreeing on the composition of the arbitration panel pursuant to this paragraph, the parties may agree to select as arbitrators persons who are not included in the list of arbitrators established pursuant to Article 21.8(3).

4. During the time period referred to in paragraph 2 of this Article, the parties shall endeavour to agree on the chairperson of the arbitration panel. If they are unable to agree, either party shall request the co-chair of the Trade Committee of the complaining party to select the chairperson of the arbitration panel by lot from the sub-list referred to in point (c) of Article 21.8(3) no later than 5 (five) days after that request.
5. The date of the establishment of the arbitration panel shall be that on which all selected arbitrators have accepted the appointment in accordance with the Rules of Procedure set out in Annex 21-A.
6. If a party considers that an arbitrator does not comply with Annex 21-B, the procedures provided for in Annex 21-A apply.
7. If an arbitrator is unable to participate in the proceedings, withdraws or needs to be replaced, a new arbitrator shall be selected in accordance with the selection procedures set out in this Article and the Rules of Procedure set out in Annex 21-A. The arbitration proceedings shall be suspended during that period for up to a maximum of 25 (twenty-five) days.
8. The parties shall accept as binding, *ipso facto* and with no need for a special agreement, the authority of any arbitration panel established in accordance with this Chapter.

## ARTICLE 21.10

### Decision on urgency

If a party so requests, the arbitration panel shall decide, within 10 (ten) days of its establishment, whether the case concerns matters of urgency.

## ARTICLE 21.11

### Hearings

The hearings of the arbitration panel shall be open to the public, unless the parties to the dispute decide otherwise. The hearings of the arbitration panel shall be partially or completely closed to the public when the submission or arguments of a party contain information which that party has designated as confidential.

## ARTICLE 21.12

### Information and technical advice

1. The arbitration panel may request, in accordance with Annex 21-A, the opinion of experts or may obtain information from any source deemed relevant.

2. The opinions of experts as well as the information obtained from any relevant source shall be non-binding.
3. Experts must be persons of professional standing and experience in the relevant field. The arbitration panel shall consult the parties before choosing such experts.
4. The arbitration panel shall set a reasonable time period for the submission of information or the report of the experts.
5. Persons of the Parties shall be authorised to submit amicus curiae briefs to the arbitration panels in accordance with the conditions set out in Annex 21-A. Those conditions shall ensure that the amicus curiae briefs do not create an undue burden for the parties to the dispute or unduly delay or complicate the arbitration panel proceedings.
6. Any information obtained under this Article shall be disclosed to each of the parties and submitted for their comments.

## ARTICLE 21.13

### Applicable law and rules of interpretation

1. In the case of a dispute referred to in point (a) of Article 21.4, the arbitration panel shall resolve the dispute in accordance with the covered provisions.

2. In all disputes referred to in Article 21.4, the arbitration panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law. When interpreting an obligation under this Agreement which is identical to an obligation under the WTO Agreement, the arbitration panel shall take into consideration any relevant interpretation established in the rulings of the WTO Dispute Settlement Body.

## ARTICLE 21.14

### Arbitral award

1. The arbitration panel shall deliver an interim arbitral report to the parties no later than 90 (ninety) days after the date of establishment of the arbitration panel. The interim arbitral report shall set out the findings of fact, the applicability of covered provisions where relevant, and the basic rationale behind any findings and recommendations that the arbitration panel makes.
2. When the arbitration panel considers that the deadline referred to in paragraph 1 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 deliver its interim arbitral report. Under no circumstances shall the interim arbitral report be delivered later than 120 (one hundred and twenty) days after the date of establishment of the arbitration panel.
3. In cases of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value, the arbitration panel shall make every effort to deliver its interim arbitral report within 45 (forty-five) days and, in any case, no later than 60 (sixty) days after the date of establishment of the arbitration panel.

4. A party may deliver a written request to the arbitration panel to review precise aspects of the interim arbitral report no later than 14 (fourteen) days after its receipt or, in cases of urgency, including those involving perishable goods or seasonal goods or services, no later than 7 (seven) days after its receipt. After considering any written comments by the parties on the interim arbitral report, the arbitration panel may modify it and make any further examination it considers appropriate.

5. If no written request to review precise aspects of the interim arbitral report are delivered within the time period referred to in paragraph 4, the interim arbitral report shall become the arbitral award.

6. The arbitration panel shall deliver its arbitral award to the parties and the Trade Committee no later than 120 (one hundred and twenty) days after the establishment of the arbitration panel. If the arbitration panel considers that that 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. Under no circumstances shall the arbitral award be delivered later than 150 (one hundred and fifty) days after the establishment of the arbitration panel.

7. In cases of urgency, including those regarding perishable goods or other goods or services that rapidly lose their quality, current condition or commercial value, the arbitration panel shall make every effort to deliver its arbitral award no later than 60 (sixty) days after the date of its establishment. Under no circumstances shall the arbitral award be delivered later than 75 (seventy-five) days after such date.

8. The arbitral award shall set out the findings of fact, the applicability of covered provisions where relevant, and the basic rationale behind the findings and recommendations. The arbitral award shall include sufficient analysis of the arguments made by the parties, and shall clearly respond to the questions and observations of both parties, including those made to the interim arbitral report.

9. The arbitration panel shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and of the arguments and evidence presented by both parties, and:

- (a) in the case of a dispute referred to in point (a) of Article 21.4, the applicability of, and conformity with, the covered provisions; or
- (b) in the case of a dispute referred to in point (b) of Article 21.4, the existence of a nullification or substantial impairment of any benefit accruing to the complaining party under the covered provisions in a manner adversely affecting trade between the parties.

10. In the case of a dispute referred to in point (b) of Article 21.4, unless the parties agree otherwise, the arbitration panel shall:

- (a) determine if the measure at issue nullifies or substantially impairs any benefit accruing to the complaining party under the covered provisions, in a manner adversely affecting trade between the parties;

- (b) if applicable, determine the level of benefits accruing to the complaining party under the covered provisions which have been nullified or substantially impaired in a manner adversely affecting trade between the parties;
- (c) if it has found that the measure at issue nullifies or substantially impairs any benefit accruing to the complaining party under the covered provisions, in a manner adversely affecting trade between the parties, recommend that the defending party make a mutually satisfactory adjustment; the defending party is not obliged to withdraw the measure at issue; and
- (d) if applicable, and if so requested by both parties, suggest ways and means of reaching a mutually satisfactory adjustment, including by means of compensation; such suggestions shall not be binding on the parties.

11. The arbitration panel shall make every effort to take any decision by consensus. If, nevertheless, a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. The arbitrators shall not issue dissenting or separate opinions and shall maintain confidentiality as regards the voting.

12. The Trade Committee shall make the arbitral award of the arbitration panel publicly available in its entirety, unless the parties decide, by mutual agreement, not to make public parts thereof which contain confidential information.

13. The arbitral award shall be binding on the parties from the date on which it is delivered and shall not be subject to appeal.

14. The arbitral award cannot add to or diminish the rights and obligations provided for in the covered provisions. The arbitral award shall not be construed as conferring rights on or imposing obligations for persons.

15. Paragraphs 2, 4, 6, 8 and 11 of this Article shall be applicable to the rulings of the arbitration panel referred to in Articles 21.18, 21.19, 21.20 and 21.21.

## ARTICLE 21.15

### Withdrawal, mutually agreed solution or suspension of a dispute

1. The complaining party may, subject to the consent of the defending party, withdraw its complaint before the arbitral award has been issued.

2. If the parties reach a mutually agreed solution at any time either before or following the issuance of the arbitral award, the Trade Committee shall be notified in writing by both parties.

3. The arbitration panel shall, at the request of both parties, suspend its work at any time, before the arbitral award has been issued, for a period agreed by the parties and not exceeding 12 (twelve) consecutive months. Within that period, the arbitration panel shall resume its work only at the written request of both parties. The request shall be notified to the Trade Committee. The proceedings shall be resumed from the stage at which they were suspended 20 (twenty) days after the date of receipt of the request. If the work of the arbitration panel has been suspended for more than 12 (twelve) months, the authority of the arbitration panel shall lapse, without prejudice to the right of the complaining party to request at a later point in time the establishment of an arbitration panel on the same subject matter.

## ARTICLE 21.16

### Request for clarification

No later than 10 (ten) days after the receipt of the arbitral award, a party may submit to the arbitration panel, with the other party and the Trade Committee in copy, a written request for clarification with regard to specific aspects of any finding or recommendation in the arbitral award that the requesting party considers ambiguous. The other party to the dispute may submit comments on that request to the arbitration panel no later than 5 (five) days after its receipt. The arbitration panel shall respond to the request for clarification of the arbitral award no later than 15 (fifteen) days after its receipt. Requests for clarification shall not be used as a means to review the arbitral award.

## ARTICLE 21.17

### Compliance with the arbitral award

1. The defending party shall take any measure necessary to comply promptly and in good faith with the arbitral award.
  
2. In the event that the arbitration panel concludes that the measure at issue nullifies or substantially impairs any benefit accruing to the complaining party under the covered provisions, in a manner adversely affecting trade between the parties, the parties shall engage in consultations with the purpose of agreeing a mutually agreed solution. The parties shall endeavour to privilege a solution which effectively expands market access by means of measures including the reduction of tariffs or the elimination of non-tariff barriers.

## ARTICLE 21.18

### Reasonable period of time for compliance

1. If it is impracticable to comply immediately with the arbitral award, the defending party shall have a reasonable period of time in which to do so. In that case, the defending party shall, no later than 30 (thirty) days after the receipt of the arbitral award, notify the complaining party and the Trade Committee of the length of the reasonable period of time it will require for compliance.
2. If the parties have not agreed on the length of the reasonable period of time to comply with the arbitral award, the complaining party shall, no later than 20 (twenty) days after the receipt of the notification made under paragraph 1 by the defending party, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified to the other party and to the Trade Committee. The arbitration panel shall deliver its ruling to the parties and to the Trade Committee no later than 20 (twenty) days after the date of the submission of the request.
3. The defending party shall inform the complaining party in writing of its progress in complying with the arbitral award at least 1 (one) month before the expiry of the reasonable period of time.
4. The reasonable period of time may be extended by mutual agreement between the parties.

## ARTICLE 21.19

### Review of any measure taken to comply with the arbitral award

1. Before the expiry of the reasonable period of time referred to in Article 21.18, the defending party shall notify the other party and the Trade Committee of any measure it has taken to comply with the arbitral award.
  
2. If the parties disagree on the existence or the conformity of the measure notified by the defending party pursuant to paragraph 1 with the arbitral award or with the covered provisions, the complaining party may deliver a request to the original arbitration panel to decide on the matter. Such request shall identify the specific measure at issue and explain how that measure does not comply with the arbitral award or is inconsistent with the covered provisions, in a manner to present the legal basis for the complaint clearly. The arbitration panel shall deliver its ruling to the parties no later than 45 (forty-five) days after the date of delivery of the request.

## ARTICLE 21.20

### Temporary remedies in the event of non-compliance

1. If the defending party has not notified the measure it has taken to comply with the arbitral award or with the covered provisions within the reasonable period of time determined according to Article 21.18, or if the arbitration panel makes a ruling pursuant to Article 21.19(2) to the effect that no measure taken to comply exists or that the measure notified pursuant to Article 21.19(1) is inconsistent with the arbitral award or with the defending party's obligations under the covered provisions, the defending party shall, if so requested by the complaining party, present an offer for temporary compensation.
2. The complaining party may, upon notification to the defending party and the Trade Committee, suspend concessions or other obligations under the covered provisions if:
  - (a) the complaining party decides not to request an offer for temporary compensation under paragraph 1; or
  - (b) such request is made and no agreement on compensation is reached within 30 (thirty) days after:
    - (i) the end of the reasonable period of time determined pursuant to Article 21.18; or
    - (ii) the delivery of an arbitral award pursuant to Article 21.19(2) finding that no measure taken to comply exists or that the measure notified pursuant to Article 21.19(1) is inconsistent with the arbitral award or with the covered provisions.

3. The suspension of concessions or other obligations shall not exceed the level equivalent to the nullification or impairment suffered as a result of the failure of the defending party to comply with the arbitral award. The complaining party shall notify the other party of the concessions or other obligations it intends to suspend 30 (thirty) days before the date on which the suspension is due to enter into force.

4. In considering which concessions or other obligations to suspend, a complaining party should first seek to suspend concessions or other obligations within the same sector or sectors as that or those affected by the measure found not to be in conformity with the covered provisions or to have nullified or substantially impaired benefits accruing to the complaining party under this Agreement in a manner adversely affecting trade between the parties.

5. In the case of a dispute referred to in point (a) of Article 21.4, the suspension of concessions may be applied to sectors other than the sector or sectors in which the arbitration panel has found nullification or impairment, in particular if the complaining party is of the view that such suspension is effective in inducing compliance.

6. In the case of a dispute referred to in point (b) of Article 21.4, if the complaining party considers that suspension of concessions within the same sector or sectors as that or those adversely affected by the measure at issue are not practicable or effective, it may seek to apply those to other sectors. In such case, the complaining party shall take into account:

- (a) the trade in the sector adversely affected by the measure at issue and the importance of such trade to that party;
- (b) the broader economic elements related to the nullification or substantial impairment; and

- (c) the broader economic consequences of the application of the suspension of concessions, including spreading the adoption of temporary remedies across multiple sectors in order to account for the different economic size of the sectors involved.

7. In the case of a dispute referred to in point (b) of Article 21.4, the complaining party shall continue to accord to the defending party, in the sector which is subject to the remedies in question, treatment that is meaningfully more favourable than the treatment it accorded to that party prior to the entry into force of this Agreement.

In particular, when a temporary remedy is adopted through the suspension of tariff concessions, the complaining party shall prioritise goods that are subject to full tariff liberalisation.

For goods subject to tariff rate quotas, any temporary remedies shall be applied in such a manner that at least 50 % (fifty per cent) of the quota volume specified in Annex 2-A, pertaining to the defending party, remains unaffected and fully accessible under the terms of this Agreement.

For goods subject to staged liberalisation and for which the staging period until full liberalisation is longer than 11 (eleven) years, any temporary remedies in the form of suspension of tariff concessions shall not exceed 50 % (fifty per cent) of the difference between, on the one hand, the rate set out in Annex 2-A applicable at the relevant time and, on the other hand, the suspending party's applied non-preferential tariff rate, until the trade in the goods concerned is fully liberalised.

8. In the case of a dispute referred to in point (b) of Article 21.4 involving a landlocked developing country, the complaining party shall consider what further action it might take which would be appropriate to the circumstances of that landlocked developing country, taking into account not only the trade coverage of measures complained about, but also the impact of any temporary remedies on the specific economic challenges of that landlocked developing country.

9. If the defending party considers that the notified level of suspension of concessions or other obligations exceeds the level equivalent to the nullification or impairment caused as a result of the failure of the defending party to comply with the arbitral award, it may deliver a written request to the original arbitration panel to rule on the matter. Such a request shall be notified by the defending party to the complaining party and to the Trade Committee no later than 30 (thirty) days after the date of receipt of the notification referred to in paragraph 2. Within 10 (ten) days of the date of receipt of the request for the arbitration panel, the complaining party shall present a document indicating the methodology used to calculate the level of suspension of concessions or other obligations. The arbitration panel shall deliver its ruling no later than 30 (thirty) days after the date of receipt of the request. During that time period, the complaining party shall not suspend any concessions or other obligations.

10. The suspension of concessions or other obligations shall be temporary, and shall not replace the objective of full compliance with the arbitral award and the covered provisions. Concessions or other obligations shall only be suspended until:

(a) in the case of a dispute referred to in point (a) of Article 21.4, any measure that the arbitration panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the defending Party into compliance with those provisions;

- (b) in the case of a dispute referred to in point (b) of Article 21.4, any measure that the arbitration panel has found to nullify or substantially impair a benefit accruing to the complaining party under the covered provisions, in a manner adversely affecting trade between the parties, has been withdrawn or amended so as to eliminate that nullification or substantial impairment;
- (c) the parties have agreed that the measure notified pursuant to Article 21.19(1) brings the defending party into compliance with the arbitral award or with the covered provisions; or
- (d) the parties have reached a mutually agreed solution pursuant to Article 21.24.

11. Notwithstanding paragraph 1, in the case of a dispute referred to in point (b) of Article 21.4, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

## ARTICLE 21.21

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

1. The defending party shall deliver a notification to the complaining party and the Trade Committee of any measure it has taken to comply with the arbitral award following the suspension of concessions or other obligations 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 or other obligations no later than 30 (thirty) days after the delivery of the notification. If compensation has been applied, and with the exception of cases under paragraph 2, the defending party may terminate the application of such compensation no later than 30 (thirty) days after its notification that it has complied with the arbitral award.
2. If the parties disagree on whether the notified measure brings the defending party into compliance with the arbitral award or the covered provisions, any of the parties may, no later than 30 (thirty) days after delivery of the notification of the measure, request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other party and to the Trade Committee. The arbitration panel shall notify its ruling to the parties and to the Trade Committee no later than 45 (forty-five) days after the receipt of the request. If the arbitration panel rules that the measure taken to comply is in conformity with the arbitral award and with the covered provisions, the suspension of concessions or other obligations or compensation, as the case may be, shall be terminated. If relevant, the complaining party shall adjust the level of suspension of concessions or other obligations to the level determined by the arbitration panel.

3. The suspension of concessions or other obligations or the compensation, as the case may be, shall also be terminated if no request to the arbitration panel is made in accordance with paragraph 2.

## ARTICLE 21.22

### Annexes

1. Annexes 21-A, 21-B and 21-C shall form an integral part of this Chapter.
2. Disputes under this Chapter shall be conducted in accordance with Annexes 21-A and 21-B.
3. The Trade Committee may amend Annexes 21-A and 21-B.

## SECTION D

### GENERAL PROVISIONS

#### ARTICLE 21.23

##### Choice of forum

1. Disputes related to the same matter arising under the covered provisions and under the WTO Agreement or under any other agreement to which the relevant parties are party may be settled under this Chapter, under the DSU or under the dispute settlement procedures of that other agreement at the discretion of the complaining party.
2. For the purposes of this Article:
  - (a) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a party's request for the establishment of an arbitration panel under Article 6 of the DSU;
  - (b) dispute settlement procedures under any other agreement are deemed to be initiated by a party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement; and
  - (c) dispute settlement procedures under this Chapter are deemed to be initiated by a party's request for the establishment of an arbitration panel under Article 21.7.

3. Notwithstanding paragraph 1 and subject to paragraph 4, when the European Union or MERCOSUR or one or more of the Signatory MERCOSUR States has or have requested the establishment of a panel under Article 6 of the DSU or under the relevant provisions of another agreement to which the relevant parties are party, or an arbitration panel pursuant to Article 21.7, that party may not initiate another set of proceedings on the same matter in any of the other fora, except in cases where the competent body in the forum chosen has not taken a decision on the substance of the matter due to jurisdictional or procedural reasons other than termination of the proceedings following a request for withdrawal or suspension of the proceedings.

4. Once MERCOSUR has requested the establishment of an arbitration panel under Article 21.7, a Signatory MERCOSUR State shall not initiate another proceeding on the same matter in any other forum. Once the European Union has requested the establishment of an arbitration panel under Article 21.7 against MERCOSUR, the European Union shall not initiate another proceeding against one or more Signatory MERCOSUR States in any other forum, if the contested measure of that or those Signatory MERCOSUR State(s) is a measure implementing the contested measure of MERCOSUR and the European Union alleges the violation of a substantially equivalent obligation.

5. 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 alleged violation of a substantially equivalent obligation<sup>4</sup>.

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<sup>4</sup> For greater certainty, two or more disputes which involve the same parties to the dispute and refer to the same measure, but do not concern an alleged violation of the covered provisions or the WTO Agreement or any other agreement to which the relevant parties are party, shall not be considered as concerning the same matter for the purpose of this Article.

6. Without prejudice to paragraph 3, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the disputing parties are party. The WTO Agreement or the other international agreement between the parties shall not be invoked to preclude a Party from suspending obligations under this Chapter.

## ARTICLE 21.24

### Mutually agreed solution

1. The parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 21.4. The parties shall agree upon a time period for the implementation of such a solution.

2. If a mutually agreed solution is reached during the arbitration panel proceedings, the parties shall jointly notify that solution to the chairperson of the arbitration panel. Upon such notification, the arbitration panel proceedings shall be terminated.

3. Each party shall adopt the measures necessary to implement the mutually agreed solution within the agreed time period.

4. The solution may be adopted by means of a decision of the Trade Council. The conclusion of the mutually agreed solution between the parties may be subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available without containing information that a party has designated as confidential.

5. The implementing party shall, within the agreed time period, inform the other party, in writing, of any measure that it has taken to implement the mutually agreed solution.

## ARTICLE 21.25

### Time periods

1. The arbitration panel or the mediator may at any time propose to the parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.
2. Any time period mentioned in this Chapter may be extended by mutual agreement of the parties.

## ARTICLE 21.26

### Confidentiality

The deliberations of the arbitration panel shall be confidential. The arbitration panel and the parties shall treat as confidential any information submitted by a party to the arbitration panel which that party has designated as confidential. Where that party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other party, provide a non-confidential summary of the information contained in its submissions that may be disclosed to the public.

## ARTICLE 21.27

### Costs

1. Each party shall bear its own expenses in relation to the participation in an arbitration panel or mediation proceedings.
2. The parties<sup>5</sup> shall share jointly and equally the expenses in relation to organisational matters, including the remuneration and expenses of the arbitrators and of the mediator in accordance with Annex 21-A.

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<sup>5</sup> For greater certainty, such costs are to be shared jointly and equally between, on the one part, the European Union and, on the other part, the Signatory MERCOSUR States that are parties to the dispute and MERCOSUR, if the latter is also party to the dispute.