

## **CHAPTER 10: ENFORCEMENT AND SETTLEMENT OF DIFFERENCES**

### **Section A: Joint Safeguard**

#### **Article 10.1: Basis for Safeguard**

1. The Parties recognize that this Agreement is designed to promote fair competition among the Parties. The Parties further recognize that raising standards with respect to labor and the environment should not pose a disadvantage to the Parties. Finally, the Parties recognize that the low average tariffs at the World Trade Organization create the risk that labor and environmental standards may create an economic incentive to source from non-Parties that do not abide by such standards.
2. Accordingly, if serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising as a result of imports from non-Parties, the Parties may jointly take appropriate measures.
3. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation.
4. This Article is without prejudice to the application of special safeguard measures in accordance with Article 5 of the WTO Agreement on Agriculture.
5. Within one year of the entry into force of this Agreement, the Parties shall develop procedures for conduct a joint safeguard investigation.

### **Section B: Border Enforcement**

#### **Article 10.2: Cooperation on Enforcement**

1. The Parties agree to strengthen and expand their customs and trade enforcement efforts and cooperation.
2. Each Party shall cooperate with any other Party for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offenses in the trade in goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.
3. The Parties shall cooperate regarding customs issues that affect goods traded between the Parties.
4. The Parties shall, subject to their respective laws, regulations and procedures, cooperate by sharing information, including exchanging historical data and if practicable and appropriate, data in real time with respect to imports, exports, and transit of goods to identify potential or real sources of customs offenses. Each Party shall identify and maintain the capability for the secure exchange of customs data with another Party.

5. Each Party shall, whenever practicable, and subject to its laws and regulations, provide another Party with information that has come to its attention that it believes would assist the receiving Party in detecting, preventing, or addressing potential or real customs offenses in particular those related to unlawful activities, including duty evasion, smuggling, and similar infractions. Such information may include specific data on any person suspected to be involved in unlawful activity, the mode of transportation, other relevant information, and the results of enforcement actions, application of penalties, or unusual trade patterns, both collected directly by the providing Party and received from other sources.

6. The Parties shall cooperate by developing customs enforcement initiatives, which may include the creation of task forces, joint or coordinated data analysis, and identification of special monitoring measures and other actions, to prevent, deter, and address customs offenses, particularly with respect to priorities of mutual concern.

### **Article 10.3: Exchange of Specific Confidential Information**

1. For the purposes of enforcing or assisting in the enforcement of its respective measures concerning customs offenses, a Party may request that another Party provide specific confidential information that is normally collected in connection with the importation, exportation, or transit of a good if the requesting Party has relevant facts indicating that a customs offense is occurring or is likely to occur.

2. A request under paragraph 1 shall be made in writing, electronically, or through another means that allows for the acknowledgement of receipt, and shall include a brief statement of the matter at issue, the information requested, the relevant facts indicating that a customs offense is occurring or is likely to occur, and sufficient information for the Party that receives a request to respond in accordance with its laws and regulations.

3. The Party that receives a request under paragraph 1 shall provide to the requesting Party a written response containing the requested information held by the Party as soon as practicable.

4. A Party may provide information under this Article in paper or electronic format.

5. In order to facilitate the rapid and secure exchange of information, each Party shall designate or maintain a contact point for cooperation.

### **Article 10.4: Customs Compliance Verification Requests**

1. A Party may request another Party to conduct a verification in that Party's territory to assist the requesting Party to determine whether a customs offense is occurring or has occurred by obtaining information, including documents, from an exporter or producer. The requesting Party shall make the request in writing. The requested Party shall respond to the request promptly and in no case later than 30 days after the date it receives the request, and such response shall include whether that Party will conduct the verification. If the Party does not intend to conduct the verification, the Party shall indicate in the response the basis for refusal. If

the requesting Party agrees to conduct the verification, that Party shall so indicate in the response, including the intended timing and other relevant details.

2. If the requested Party conducts a verification under paragraph 1, it shall provide the requesting Party promptly upon completing the verification a report containing the relevant information including data and documents, obtained during its verification.

3. In the case of a site visit by the requested Party, the requesting Party may, through officials it designates and subject to the consent of a legally responsible person for the location visited, accompany the requested Party. The designated officials of the requesting Party shall fulfill the conditions and procedures mutually agreed between the relevant Parties for the visit.

#### **Article 10.5: Confidentiality between Parties**

1. If a Party provides information to another Party in accordance with this Section and designates the information as confidential or is confidential under the receiving Party's law, the receiving Party shall keep the information confidential in accordance with its law.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. For the purposes of paragraph 1, relevant facts indicating that a customs offense is occurring or is likely to occur means historical evidence of non-compliance with laws or regulations, or other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.

3. A Party may use or disclose confidential information received from another Party under this Section but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

#### **Article 10.6: Confidentiality of Trader Information**

1. Each Party's customs administration shall apply measures governing the collection, protection, use, disclosure, retention, correction, and disposal of information that it collects from traders.

2. Each Party's customs administration shall protect, in accordance with its law, confidential information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.

3. Notwithstanding paragraph 2, a Party may use or disclose confidential information but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

4. If confidential information is used or disclosed other than in accordance with this Article, the Party shall address the incident, in accordance with its laws, regulations, or procedures, and strive to prevent a recurrence.

### **Section C: General Verification of Origin Claims**

#### **Article 10.7: Verification Procedures**

1. For the purpose of determining whether a good imported into its territory is an originating good, the importing Party may, through its customs administration, conduct a verification of a claim for preferential tariff treatment by one or more of the following:

- (a) a written request or questionnaire seeking information, including documents, from the importer, exporter, or producer of the good;
- (b) a verification visit to the premises of the exporter or producer of the good in order to request information, including documents, and to observe the production process and the related facilities;
- (c) for a textile or apparel good, the procedures set out in Article 10.9 (Verification);  
or
- (d) any other procedure as may be decided by the Parties.

2. The importing Party may choose to initiate a verification under this Article to the importer or the person who completed the certification of origin.

3. If an importing Party conducts a verification under this Article it shall accept information, including documents, directly from the importer, exporter, or producer.

4. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer, and in response to a request for information by an importing Party to determine whether a good is originating in verifying a claim of preferential treatment under paragraph 1(a), the importer does not provide sufficient information to demonstrate that the good is originating, the importing Party shall request information from the exporter or producer under paragraph 1 before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1, within the time provided in paragraph 15.

5. A written request or questionnaire seeking information, including documents, or a request for a verification visit, under paragraphs 1(a) or (b) shall:

- (a) include the identity of the customs administration issuing the request;
- (b) state the object and scope of the verification, including the specific issue the requesting Party seeks to resolve with the verification;

- (c) include sufficient information to identify the good that is being verified; and
  - (d) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited and indicate:
    - (i) the legal authority for the visit,
    - (ii) the proposed date and location for the visit,
    - (iii) the specific purpose of the visit, and
    - (iv) the names and titles of the officials performing the visit.
6. If an importing Party has initiated a verification under paragraph 1(a) or 1(b) other than to the importer, it shall inform the importer of the initiation of the verification.
7. For a verification under paragraph 1(a) or 1(b), the importing Party shall:
- (a) ensure that the written request for information, or documentation to be reviewed, is limited to information and documentation to determine whether the good is originating;
  - (b) describe the information or documentation in detail to allow the importer, exporter, or producer to identify the information and documentation necessary to respond;
  - (c) allow the importer, exporter, or producer at least 30 days from the date of receipt of the written request or questionnaire under paragraph 1(a) to respond; and
  - (d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(b) to consent to or refuse the request.
8. On request of the importing Party, the Party where the exporter or producer is located may assist with the verification. This assistance may include providing information it has that is relevant to the origin verification. The importing Party shall not deny a claim for preferential tariff treatment solely on the grounds that the Party where the exporter or producer is located did not provide requested assistance.
9. If an importing Party initiates a verification under paragraph 1(b), it shall, at the time of the request for the visit under paragraph 5(d), provide a copy of the request to:
- (a) the customs administration of the Party in whose territory the visit is to occur; and
  - (b) if requested by the Party in whose territory the visit is to occur, the embassy of that Party in the territory of the Party proposing to conduct the visit.

10. Each Party shall provide that, when the exporter or producer receives notification pursuant to paragraph 5(d), the exporter or producer may, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period not exceeding 30 days from the proposed date of the visit.

11. Each Party shall provide that, when its customs administration receives notification pursuant to paragraph 9(a), the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the proposed date of the visit, or for a longer period as the relevant Parties may decide.

12. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 10 or 11.

13. Each Party shall permit an exporter or a producer whose good is subject to a verification visit by another Party to designate two observers to be present during the visit, provided that:

- (a) the observers do not participate in a manner other than as observers;
- (b) the failure of the exporter or producer to designate observers does not result in the postponement of the visit; and
- (c) an exporter or producer of a good identifies to the customs administration conducting a verification visit any observers designated to be present during the visit.

14. The importing Party shall provide the importer, exporter, or producer that certified that the good was originating and is the subject of a verification, with a written determination of origin that includes the findings of facts and the legal basis for the determination. If the importer is not the certifier, the importing Party shall also provide that written determination to the importer.

15. The Party conducting a verification shall, as expeditiously as possible and within 120 days after it has received all the information necessary<sup>2</sup> to make the determination, provide the written determination under paragraph 14. Notwithstanding the foregoing, the Party may extend this period, in exceptional cases, for up to 90 days after notifying the importer, and any exporter or producer who is subject to the verification or provided information during the verification.

16. Prior to issuing a written determination under paragraph 14, if the importing Party intends to deny preferential tariff treatment, the importing Party shall inform the importer, and any exporter or producer who is subject to the verification and provided information during the verification, of the preliminary results of the verification and provide those persons with a notice of intent to deny that includes when the denial would be effective and a period of at least 30 days for the submission of additional information, including documents, related to the originating status of the good.

17. If verifications by a Party indicate a pattern of conduct by an importer, exporter, or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported, or produced by such person until that person establishes compliance with this Chapter, Chapter 1 (Market Access), and Chapter 2 (Rules of Origin).

18. For the purposes of this Article, all communication to the exporter or producer and to the customs administration of the Party of export will be sent by any means that can produce any confirmation of receipt. The specified time periods will begin from the date of receipt.

## **Section D: Textile and Apparel Verification**

### **Article 10.8: Cooperation**

1. The Parties shall cooperate, through information sharing and other activities as provided for in Article 10.2 (Cooperation on Enforcement), Article 10.3 (Exchange of Specific Confidential Information), Article 10.4 (Customs Compliance Verification Requests), and Article 10.5 (Confidentiality between Parties), on matters related to trade in textile and apparel goods.

2. The Parties recognize that documents such as bills of lading, invoices, contracts of sale, purchase orders, packing lists, and other commercial documents are particularly important to detect, prevent, or address customs offenses related to trade in textile and apparel goods.

3. Each Party shall designate a contact point for information exchange and other cooperation activities related to trade in textile and apparel goods

### **Article 10.9: Verification**

1. An importing Party may, through its customs administration, conduct a verification with respect to a textile or apparel good to verify whether a good qualifies for preferential tariff treatment, or through a request for a site visit as described in this Article.

2. An importing Party may request a site visit under this Article from an exporter or producer of textile or apparel goods to verify whether:

- (a) a textile or apparel good qualifies for preferential tariff treatment under this Agreement; or
- (b) customs offenses with regard to a textile or apparel good are occurring or have occurred.

3. During a site visit under paragraph 2, an importing Party may request access to:

- (a) records and facilities relevant to the claim for preferential tariff treatment; or

(b) records and facilities relevant to the customs offenses being verified.

4. If an importing Party seeks to conduct a site visit under paragraph 2, it shall provide the host Party, not later than 20 days prior to the date of the first visit to an exporter or producer, with:

- (a) the proposed dates;
- (b) the number and general location of exporters and producers to be visited in appropriate detail to allow the efficient and effective application of the provisions of paragraphs 7(a) and 7(b), but does not need to specify the names of the exporters or producers to be visited;
- (c) whether assistance by the host Party will be requested and what type;
- (d) the suspected customs offenses to be verified under paragraph 2(b), including relevant factual information available at the time of the notification related to the specific offenses, which may include historical information; and
- (e) whether the importer claimed preferential tariff treatment.

5. If an importing Party seeks to conduct a site visit under paragraph 2, and does not provide the names of the exporters or producers 20 days prior to the site visit, it shall provide the host Party with a list of the names and addresses of the exporters or producers it proposes to visit, in a timely manner and prior to the date of the first visit to an exporter or producer under paragraph 2, to facilitate coordination, logistical support, and scheduling of the site visit.

6. The host Party shall promptly acknowledge receipt of the notification of a proposed site visit under paragraph 2, and may request information from the importing Party to facilitate planning of the site visit, such as logistical arrangements or provision of requested assistance.

7. If an importing Party seeks to conduct a site visit under paragraph 2:

- (a) officials of the customs administration of the host Party may accompany the officials of the importing Party during the site visit;
- (b) officials of the customs administration of the host Party may, in accordance with its laws and regulations, on request of the importing Party or on its own initiative, assist the officials of the importing Party during the site visit and provide, to the extent practicable, information relevant to conduct the site visit;
- (c) the importing and the host Party shall limit communication regarding the site visit to relevant government officials and shall not inform any person outside the government of the host Party in advance of a site visit or provide any other verification or other information not publicly available the disclosure of which could undermine the effectiveness of the action;



- (d) the importing Party shall request permission from the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit if this would not undermine the effectiveness of the site visit or at the time of the site visit, to access the relevant records or facilities; and
- (e) if the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer denies permission or access to the records or facilities, the site visit will not occur. If the exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer is not able to receive the importing Party to carry out the site visit, the site visit shall be conducted on the following working day unless:
  - (i) the importing Party agrees otherwise, or
  - (ii) the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, substantiates a valid reason acceptable to the importing Party that the site visit cannot occur at that time.

If the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, does not have a valid reason acceptable to the importing Party that the site visit cannot take place on the following working day, the importing Party may deem permission for the site visit or access to the records or facilities to be denied. The importing Party shall give consideration to any reasonable alternative proposed dates, taking into account the availability of relevant employees or facilities of the person visited.

8. On completion of a site visit under paragraph 2, the importing Party shall:
- (a) on request of the host Party, inform the host Party of its preliminary findings;
  - (b) on receiving a written request from the host Party, provide the host Party with a written report of the results of the site visit, including any findings, no later than 90 days after the date of the request; and
  - (c) on receiving a written request of the exporter or producer, provide that person with a written report of the results of the site visit as it pertains to that exporter or producer, including any findings. This may be a report prepared under subparagraph (b), with appropriate changes. The importing Party shall inform the exporter or producer of the entitlement to request this report.

9. If an importing Party conducts a site visit under this Article and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it shall, prior to issuing a written determination, inform the importer and any exporter or producer that provided information directly to the importing Party, of the preliminary results of the verification and provide those persons with a notice of intent to deny that includes when the denial would be effective and a

period of at least 30 days to submit additional information, including documents, to support the claim for preferential tariff treatment.

10. The importing Party shall not reject a claim for preferential tariff treatment on the sole grounds that the host Party does not provide requested assistance or information under this Article.

11. If verifications of identical textile or apparel goods by a Party indicate a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into its territory qualifies for preferential tariff treatment, the importing Party may withhold preferential tariff treatment to identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to the importing Party that those identical textile or apparel goods qualify for preferential tariff treatment. For the purposes of this paragraph, “identical textile or apparel goods” means textile or apparel goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods.

12. These provisions are without prejudice to the right of each Party to impose penalties pursuant to its customs laws.

#### **Article 10.10: Determinations**

The importing Party may deny a claim for preferential tariff treatment for a textile or apparel good:

- (a) the good is not originating;
- (b) if, pursuant to a site visit under Article 10.9.2 (Verification), it has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment; or
- (c) if, pursuant to a request for a site visit under Article 10.9.2 (Verification), a the importing Party is unable to conduct a site visit as access or permission for the site visit is denied, the importing Party is prevented from completing the site visit, or the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer does not provide access to the relevant records or facilities during a site visit.

#### **Article 10.11: Enforcement**

Each Party shall enforce laws implementing the provisions of this Chapter, including collecting duties owing as a result of false claims for preferential tariff treatment.

### **Section E: Labor and Environment Verifications**

#### **Article 10.12: Non-Compliance with Domestic Laws**

The provisions in this Section apply whenever a Party believes that a Covered Facility is not in compliance with labor laws or environmental laws, as defined in Article 4.20 (Definitions) and Article 5.19 (Definitions), respectively.

#### **Article 10.13: Labor Verification Roster**

1. By the date of entry into force of this Agreement, each Party shall establish a verification roster of five individuals and appoint, by consensus, five individuals to a joint roster. These individuals shall have:

- (a) expertise and experience in labor law or practice and with the application of standards and rights as recognized by the International Labor Organization;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct for dispute settlement under this chapter.

3. If a Party fails to populate its roster or agree to the joint roster by entry into force, the other Party or Parties shall populate such roster and joint roster until such time as the Party complies with paragraph 1.

4. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

5. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 10.33. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 10.14: Environmental Verification Roster**

1. By the date of entry into force of this Agreement, each Party shall establish a verification roster of five individuals and appoint, by consensus, five individuals to a joint list. These individuals shall have:

- (a) expertise and experience in environmental law or practice and with the application of standards and rights embodied in multilateral environmental agreements;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct for dispute settlement under this chapter.

3. If a Party fails to populate its roster or agree to the joint roster by entry into force, the other Party or Parties shall populate such roster and joint roster until such time as the Party complies with paragraph 1.

4. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

5. The parties shall address the compensation of Environmental Panelists in the Rules of Procedure established in accordance with Article 10.33. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 10.15: Request for Establishment of Panel**

1. If a Party has a reasonable basis to claim that a Covered Facility is not in compliance with labor laws or environmental laws, as defined in Article 4.20 (Definitions) and Article 5.19 (Definitions), respectively, that Party may submit to the Secretariat a request for the establishment of a panel to verify the Covered Facility's compliance.

2. The request shall identify:

(a) the Covered Facility; and

(b) the claim of non-compliance, including the labor laws or environmental laws upon which the claim of non-compliance is based.

3. Upon filing a request:

(a) the Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists; and

(b) the complaining Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility.

#### **Article 10.16: Site Verification**

1. Upon establishment of a panel Article 10.15.3 (Request for Establishment of Panel), the Panel shall issue a request for site verification to the Party where the Covered Facility is located (Party of the Covered Facility), unless the Panel determines that it can adjudicate the complaint without conducting a site verification.

2. The Party of the Covered Facility shall respond to the request for site verification within 10 business days, or the request shall be deemed granted.

3. The verification shall occur within 30 business days of the request.
4. The complaining Party or the Party of the Covered Facility may accompany the panel in any site verification.

#### **Article 10.17: Panel Determination**

1. The panel shall make a determination with respect to any claim of non-compliance:
  - (a) within 30 days of panel establishment; or
  - (b) in the case of a site verification, 30 days of the site verification.
2. The complaining Party, the Party of the Covered Facility, the Covered Facility, and any other interested Party may present written submissions no later than 10 days before the determination is due. The Panel shall permit submission of confidential information and shall protect the confidentiality of such information.
3. The Panel's determination shall be in writing and shall be made public, with the exception of confidential information designated as such during the proceedings.

#### **Article 10.18: Consultations**

1. If the Panel determination does not uphold any claims of non-compliance, the complaining Party shall proceed with final settlement of customs accounts related to entries of goods from the Covered Facility.
2. If the Panel determination upholds one or more claims of non-compliance, the complaining Party shall file with the panel a proposal of remedies and shall notify the Party of the Covered Facility. Such remedies may take effect five business days after notice is provided. Remedies may include:
  - (a) suspension of preferential tariff treatment for goods manufactured at a Covered Facility; or
  - (b) the imposition of penalties on goods manufactured at or services provided by the Covered Facility.
3. Where a prior panel, pursuant to these procedures, has upheld one or more claims against a Covered Facility, remedies may also include denial of entry of such goods. Such denial may extend to the same or related goods produced at another Covered Facility that is owned or controlled by the same person. In the case of services, any penalties imposed with respect to services produced at one Covered Facility may be extended to another Covered Facility that is owned or controlled by the same person and provides the same or related services.
4. The Party of the Covered Facility may request consultations at any time.

### **Article 10.19: Remediation**

1. The Parties shall cooperate to encourage remediation of findings of non-compliance.
2. If the Party of the Covered Facility believes the violations have been remediated, it may notify the complaining Party. If, after 30 business days the Parties do not agree that the violations have been remediated, the Party of the Covered Facility may request that the panel determine whether the violations have been remediated. The complaining Party may request a site verification in accordance with Article 10.16.
3. The panel shall issue a determination within 30 calendar days after receiving the request.
4. If the panel determines that any of the violations has not been remediated, the Party of a Covered Facility may not request another determination under this Article for 180 days.

### **Article 10.20: Definitions**

For purposes of this Section:

**Covered Facility** means a facility in the territory of a Party that:

- (a) produces a good or supplies a service traded between the Parties; or
- (b) produces a good or supplies a service that competes in the territory of a Party with a good or service of the other Party.

## **Section F: Intellectual Property**

### **Article 10.21: Border Measures for Trademarked or Copyrighted Goods**

1. Each Party shall provide for applications to suspend the release of, or to detain, suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.
2. Each Party shall require a right holder, submitting an application referred to in paragraph 1, to:
  - (a) provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right; and
  - (b) supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognizable by its competent authorities.

3. Each Party shall provide that its competent authorities have the authority to require a right holder submitting an application referred to in paragraph 1 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities, and to prevent abuse.

4. Each Party shall provide that its competent authorities may initiate border measures *ex officio* against suspected counterfeit trademark goods or pirated copyright goods under customs control that are:

- (a) imported;
- (b) destined for export;
- (c) in transit; and
- (d) admitted into or exiting from a free trade zone or a bonded warehouse.

5. This Article applies to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers' personal luggage.

#### **Article 10.22: Border Measures for Patented Goods**

Each Party shall provide for a procedure that suspends the release of, or detains, articles that are imported into the territory of a Party that are suspected of having been found in violation of a patent.

### **Section G: Settlement of Differences**

#### **Article 10.23: Cooperation**

The Parties shall at all times endeavor 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 a matter that might affect its operation or application.

#### **Article 10.24: Scope**

1. Unless otherwise provided for in this Agreement, the dispute settlement provisions of this Section apply:

- (a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or
- (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement; or

2. When a Party considers that a benefit it could reasonably have expected to accrue to it is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement, the dispute settlement provisions of this Section apply, with the exception of Articles 10.39 (Implementation of Final Report) and 10.40 (Non-Implementation – Suspension of Benefits).

#### **Article 10.25: Choice of Forum**

1. If a dispute regarding a matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, 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, a panel under this Chapter or a panel or tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

#### **Article 10.26: Consultations**

1. A Party may request consultations with another Party with respect to a matter described in Article 10.24 (Scope).

2. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. The requesting Party shall deliver the request concurrently to the other Parties through their respective Sections of the Secretariat, including a copy to its Section.

4. A third Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing through their respective Sections of the Secretariat, including a copy to its Section, no later than seven days after the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. Unless the consulting Parties decide otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of delivery of the request for a matter concerning perishable goods; or

(b) 30 days after the date of delivery of the request for all other matters.

6. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article or other consultative provisions of this Agreement. To this end:



- (a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure or other matter at issue might affect the operation or application of this Agreement;
- (b) a Party that participates in the consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and
- (c) the consulting Parties shall seek to avoid a resolution that adversely affects the interests of another Party under this Agreement.

7. Consultations may be held in person or by a technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties decide otherwise.

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

9. Consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

#### **Article 10.27: Good Offices, Conciliation, and Mediation**

1. Parties to a dispute may decide at any time 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 shall be confidential and without prejudice to the rights of the Parties in another proceeding.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings.

4. If the disputing Parties decide, good offices, conciliation, or mediation may continue while a dispute proceeds for resolution before a panel established under Article 10.28 (Establishment of a Panel).

#### **Article 10.28: Establishment of a Panel**

1. If the consulting Parties fail to resolve the matter within:

- (a) 30 days after a Party has delivered a request for consultations under Article 10.26 (Consultations) in a matter regarding perishable goods;

- (b) 75 days after a Party has delivered a request for consultations under Article 10.26 (Consultations); or
  - (c) another period as the consulting Parties may decide, a consulting Party may request the establishment of a panel by means of a written notice delivered to the responding Party through its Section of the Secretariat.
2. The complaining Party shall circulate the written notice concurrently to the other Parties through their respective Sections of the Secretariat.
  3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly.
  4. On delivery of the request, the panel is established.
  5. Unless the disputing Parties decide otherwise, the panel shall be established and perform its functions in a manner consistent with this Chapter and the Rules of Procedure.
  6. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

#### **Article 10.29: Terms of Reference**

1. Unless the disputing Parties decide otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:
  - (a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 10.28 (Establishment of a Panel); and
  - (b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 10.39 (Implementation of Final Panel Report).
2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs a benefit within the meaning of Article 10.24 (Scope), the terms of reference shall so indicate.

#### **Article 10.30: Roster and Qualifications of Panelists**

1. The Parties shall establish, by the date of entry into force of this Agreement, and maintain a roster of up to 30 individuals who are willing to serve as panelists. Each Party shall designate up to 10 individuals. The Parties shall endeavor to achieve consensus on the appointments. If the Parties are unable to achieve consensus by one month after the date of entry into force of this

Agreement, the roster shall be comprised of the designated individuals. The roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. If a Party fails to designate its individuals to the roster, the Parties may still request the establishment of panels under Article 10.28 (Establishment of a Panel). The Rules of Procedure, which shall be established by the date of entry into force of this Agreement, shall provide for how to compose a panel in such circumstances. Members of the roster may be reappointed. In the event that an individual is no longer able or willing to serve as a panelist, the relevant Party shall designate a replacement. The Parties shall endeavor to achieve consensus on the appointment. If the Parties are unable to achieve consensus by one month after the date the replacement is designated, the individual shall be added to the roster.

2. Each roster member and panelist shall:

- (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be selected on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, a Party; and
- (d) comply with the Code of Conduct established by the Commission.

3. For a dispute arising under Chapter 4 (Labor) or Chapter 5 (Environment), each disputing Party shall select a panelist in accordance with the following requirements, in addition to those set out in paragraph 1:

- (a) in a dispute arising under Chapter 4 (Labor), panelists other than the chair shall have expertise or experience in labor law or practice; and
- (b) in a dispute arising under Chapter 5 (Environment), panelists other than the chair shall have expertise or experience in environmental law or practice.

4. In disputes regarding specialized areas of law not set out in paragraph 3, the disputing Parties should select panelists to ensure that the necessary expertise is available on the panel.

5. An individual shall not serve as a panelist in the same dispute in which the individual has participated pursuant to Articles 10.27 (Consultations) or Article 10.28 (Good Offices, Conciliation, and Mediation).

### **Article 10.31: Panel Composition**

1. If there are two disputing Parties, the following procedures shall apply:

- (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.
  - (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to decide on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
  - (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select an individual from the roster who is not a citizen of that Party. The complaining Party shall notify the responding Party of the selection no later than the next working day.
  - (d) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
  - (e) If a disputing Party fails to select its panelists within that period, those panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.
  - (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select two individuals from the roster who are citizens of the complaining Party. The complaining Party shall notify the responding Party of the selections no later than the next working day.
2. If there are more than two disputing Parties, the following procedures apply:
- (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.
  - (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel and, if the disputing Parties are unable to decide on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of that Party or those Parties.
  - (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is not a citizen of either complaining Party. The complaining Parties shall notify the responding Party of the selection no later than the next working day.
  - (d) Within 15 days of selection of the chair, the responding Party shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom

is a citizen of another complaining Party and the complaining Parties shall select two panelists who are citizens of the responding Party.

- (e) If a disputing Party fails to select a panelist within that period, that panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (d).
- (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is a citizen of one of the complaining Parties. The complaining Parties shall notify the responding Party of the selection no later than the next working day.

3. A panelist shall normally be selected from the roster. A disputing Party may exercise a peremptory challenge against an individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed, unless no qualified and available individual on the roster possesses necessary specialized expertise, including as required by Article 10.29.3 (Roster and Qualifications of Panelists), in which case a disputing Party may not exercise a peremptory challenge but may raise concerns that the panelist does not meet the requirements of Article 10.29.2 (Roster and Qualifications of Panelists).

4. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult and if they concur the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

#### **Article 10.32: Replacement of Panelists**

1. If a panelist resigns, is removed, or becomes unable to serve, the time frames applicable to that panel's proceeding shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended.

2. If a panelist resigns, is removed, or becomes unable to serve on the panel, a replacement panelist shall be appointed within 15 days in accordance with the same method used to select the panelist in accordance with Article 10.31 (Panel Composition).

3. If a disputing Party believes that a panelist is in violation of the Code of Conduct, the disputing Parties shall consult. If they concur on removing the panelist, they shall be removed and a new panelist shall be selected in accordance with this Article.

#### **Article 10.33: Rules of Procedure for Panels**

1. The Rules of Procedure, established under this Agreement in accordance with Article 9.2 (Functions of the Commission), shall ensure that:

- (a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

- (b) subject to subparagraph (f), a hearing before the panel shall be open to the public, unless the disputing Parties decide otherwise and provide a written, public explanation of the reasons for closing the hearing;
  - (c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;
  - (d) subject to subparagraph (f), each disputing Party's written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, are public as soon as possible after the documents are filed;
  - (e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;
  - (f) confidential information is protected;
  - (g) written submissions and oral arguments shall be made in one of the languages of the Parties, unless the disputing Parties decide otherwise; and
  - (h) unless the disputing Parties decide otherwise, hearings shall be held in the capital of the responding Party.
2. The Rules of Procedure shall include rules of evidence, which shall ensure that:
- (a) the disputing Parties have the right to submit testimony in person or via declaration, affidavit, report, teleconference, or videoconference, and the disputing Parties and the panel the right to test the veracity of such testimony;
  - (b) the disputing Parties have the right to submit anonymous testimony and redacted evidence, in appropriate circumstances;
  - (c) the panel may request, on its own initiative or at the request of a disputing Party, that a Party make available documents or other information relevant to the dispute, and may take a failure to comply with such request into account in its decision; and
  - (d) a panel shall accept the disputing Parties' stipulations in advance of the hearing.

#### **Article 10.34: Electronic Document Filing**

The disputing Parties shall file all documents relating to a dispute, including written submissions, written versions of oral statements, and written responses to panel questions, by electronic means through their respective Sections of the Secretariat.

### **Article 10.35: Function of Panels**

1. A panel's function is to make an objective assessment of the matter before it and to present a report that contains:

- (a) findings of fact;
- (b) determinations as to whether:
  - (i) the measure at issue is inconsistent with obligations in this Agreement,
  - (ii) a Party has otherwise failed to carry out its obligations in this Agreement,
  - (iii) the measure at issue is causing nullification or impairment within the meaning of Article 10.24 (Scope), or
  - (iv) any other determination requested in the terms of reference;
- (c) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and
- (d) the reasons for the findings and determinations.

2. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

3. Unless the disputing Parties decide otherwise, the panel shall perform its functions and conduct its proceeding in a manner consistent with this Chapter and the Rules of Procedure.

4. The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969.

5. A panel shall take its decision by consensus, except that, if a panel is unable to reach consensus, it may take its decision by majority vote.

6. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information or advice put before it under Article 10.36 (Role of Experts).

7. The panel shall draft its reports without the presence of any Party.

8. Panelists may present separate views on matters not unanimously agreed.

### **Article 10.36: Role of Experts**

At the request of a disputing Party, or on its own initiative, a panel may seek information or technical advice from a person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions decided on by the disputing Parties. The disputing Parties shall have an opportunity to comment on information or advice obtained under this Article.

#### **Article 10.37: Suspension or Termination of Proceedings**

1. The panel may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties decide otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

#### **Article 10.38: Panel Report**

1. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panelist. In cases of urgency related to perishable goods, the panel shall endeavor to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panelist.

2. In exceptional cases, if the 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 decide otherwise.

3. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may decide.

4. After considering those comments, the panel, on its own initiative or on the request of a disputing Party, may:

- (a) request the views of a Party;
- (b) reconsider its report; or
- (c) make a further examination that it considers appropriate.

5. The panel shall present a final report including any separate opinions on matters not unanimously agreed to the disputing Parties no later than 30 days after presentation of the initial report, unless the disputing Parties decide otherwise.



6. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall make the final report available to the public.

#### **Article 10.39: Implementation of Final Report**

1. Within 45 days from receipt of a final report that contains findings that:
  - (a) the measure at issue is inconsistent with a Party's obligations in this Agreement;
  - (b) a Party has otherwise failed to carry out its obligations in this Agreement; or
  - (c) the measure at issue is causing nullification or impairment within the meaning of Article 10.24 (Scope),

the disputing Parties shall endeavor to agree on the resolution of the dispute.

2. Resolution of the dispute can comprise elimination of the non-conformity or the nullification or impairment, if possible, the provision of mutually acceptable compensation, or another remedy the disputing Parties may agree.

#### **Article 10.40: Non-Implementation – Suspension of Benefits**

1. If the disputing Parties are unable to agree on a resolution to the dispute under Article 10.39 (Implementation of Final Panel Report) within 45 days from receipt of the final report, the complaining Party may suspend the application to the responding Party of benefits of equivalent effect to the non-conformity until the disputing Parties agree on a resolution to the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1, a complaining Party shall seek to suspend benefits in the same sector as that affected by the measure or other matter that was the subject of the dispute.

3. If the responding Party considers that:
  - (a) the level of benefits proposed to be suspended is manifestly excessive; or
  - (b) it has eliminated the non-conformity that the panel has determined to exist,

the responding Party may request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel considers that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall provide its views as to the level of benefits it considers to be of equivalent effect.

4. If the panel's views are that the responding Party has not eliminated the non-conformity, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3.

#### **Article 10.41: Exceptions**

1. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 and GATS Article XIV(b) include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorized by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

#### **Article 10.42: Essential Security**

Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish or allow access to information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

### **Section H: Domestic Proceedings and Private Commercial Dispute Settlement**

#### **Article 10.43: Referrals of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that a Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit an agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

**Article 10.44: Private Rights**

No Party shall provide for a right of action under its law against another Party on the ground that a measure of that other Party is inconsistent with this Agreement.