

## CHAPTER 9

### HORIZONTAL AND INSTITUTIONAL PROVISIONS

#### ARTICLE 408

##### Consultations

1. A Party may request consultations with the other Party regarding any matter arising under Article 355(3) and Chapters 6, 7, and 8 by delivering a written request to the other Party. The complaining Party shall specify in its written request the reasons and basis for the request, including identification of the measures at issue, specifying the provisions that it considers applicable. Consultations must commence promptly after a Party delivers a request for consultations and in any event not later than 30 days after the date of delivery of the request, unless the Parties agree to a longer period.
2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised. Each Party shall endeavour to ensure the participation of personnel of their competent authorities who have expertise in the matter subject to the consultations.

3. In matters relating to Article 355(3) or to the multilateral agreements or instruments referred to in Chapters 6, 7 or 8 the Parties shall take into account available information from the ILO or relevant bodies or organisations established under multilateral environmental agreements. Where relevant, the Parties shall jointly seek advice from such organisations or their bodies, or any other expert or body they deem appropriate.

4. Each Party may seek, when appropriate, the views of the domestic advisory groups referred to in Article 13 or other expert advice.

5. Any resolution reached by the Parties shall be made available to the public.

## ARTICLE 409

### Panel of experts

1. For any matter that is not satisfactorily addressed through consultations under Article 408, a Party may, after 90 days from the receipt of a request for consultations under that Article, request that a panel of experts be convened to examine that matter, by delivering a written request to the other Party. The request shall identify the measure at issue, specify and explain how that measure does not conform with the provisions of the relevant Chapter or Chapters in a manner sufficient to present the complaint clearly.

2. The panel of experts shall be composed of three panellists.
  
3. The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists. Each Party shall name at least five individuals to the list to serve as panellists. The Parties shall also name at least five individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a panel of experts. The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development shall ensure that the list is kept up to date and that the number of experts is maintained at a minimum of 15 individuals.
  
4. The experts proposed as panellists must have specialised knowledge or expertise in labour or environmental law, other issues addressed in the relevant Chapter or Chapters, or in the resolution of disputes arising under international agreements. They must serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. They must not be affiliated with or take instructions from either Party. They shall not be persons who are members, officials or other servants of the Union institutions, of the Government of a Member State, or of the Government of the United Kingdom.

5. Unless the Parties agree otherwise within five days from the date of establishment of the panel of experts, the terms of reference shall be:

"to examine, in the light of the relevant provisions, the matter referred to in the request for the establishment of the panel of experts, and to deliver a report in accordance with this Article that makes findings on the conformity of the measure with the relevant provisions".

6. In respect of matters related to multilateral standards or agreements covered in this Title, the panel of experts should seek information from the ILO or relevant bodies established under those agreements, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO and those bodies.

7. The panel of experts may request and receive written submissions or any other information from persons with relevant information or specialised knowledge.

8. The panel of experts shall make available such information to each Party, allowing them to submit their comments within 20 days of its receipt.

9. The panel of experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter including as to whether the respondent Party has conformed with its obligations under the relevant Chapter or Chapters and the rationale behind any findings and determinations that it makes. For greater certainty, the Parties share the understanding that if the Panel makes recommendations in its report, the respondent Party does not need to follow these recommendations in ensuring conformity with this Agreement.

10. The panel of experts shall deliver to the Parties the interim report within 100 days after the date of establishment of the panel of experts. When the panel of experts considers that this deadline cannot be met, the chairperson of the panel of experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its interim report. The panel of experts shall, under no circumstances, deliver its interim report later than 125 days after the date of establishment of the panel of experts.

11. Each Party may deliver to the panel of experts a reasoned request to review particular aspects of the interim report within 25 days of its delivery. A Party may comment on the other Party's request within 15 days of the delivery of the request.

12. After considering those comments, the panel of experts shall prepare the final report. If no request to review particular aspects of the interim report are delivered within the time period referred to in paragraph 11, the interim report shall become the final report of the panel of experts.

13. The panel of experts shall deliver its final report to the Parties within 175 days of the date of establishment of the panel of experts. When the panel of experts considers that this time limit cannot be met, its chairperson shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its final report. The panel of experts shall, under no circumstances, deliver its final report later than 195 days after the date of establishment of the panel of experts.

14. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.
15. The Parties shall make the final report available to the public within 15 days of its delivery by the panel of experts.
16. If the final report of the panel of experts determines that a Party has not conformed with its obligations under the relevant Chapter or Chapters, the Parties shall, within 90 days of the delivery of the final report, discuss appropriate measures to be implemented taking into account the report of the panel of experts. No later than 105 days after the report has been delivered to the Parties, the respondent Party shall inform its domestic advisory groups established under Article 13 and the complaining Party of its decision on any measures to be implemented.
17. The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development shall monitor the follow-up to the report of the panel of experts. The domestic advisory groups of the Parties established under Article 13 may submit observations to the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development in that regard.
18. When the Parties disagree on the existence of, or the consistency with, the relevant provisions of any measure taken to address the non-conformity, the complaining Party may deliver a request, which shall be in writing, to the original panel of experts to decide on the matter. The request shall identify any measure at issue and explain how that measure is not in conformity with the relevant provisions in a manner sufficient to present the complaint clearly. The panel of experts shall deliver its findings to the Parties within 45 days of the date of the delivery of the request.

19. Except as otherwise provided for in this Article, Article 739(1), Article 740 and Articles 753 to 758, as well as Annexes 48 and 49, shall apply *mutatis mutandis*.

## ARTICLE 410

### Panel of experts for non-regression areas

1. Article 409 shall apply to disputes between the Parties concerning the interpretation and application of Chapters 6 and 7.
2. For the purposes of such disputes, in addition to the Articles listed in Article 409(19), Articles 749 and 750 shall apply *mutatis mutandis*.
3. The Parties recognise that, where the respondent Party chooses not take any action to conform with the report of the panel of experts and with this Agreement, any remedies authorised under Article 749 continue to be available to the complaining Party.

## ARTICLE 411

### Rebalancing

1. The Parties recognise the right of each Party to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control, in a manner consistent with each Party's international commitments, including those under this Agreement. At the same time, the Parties acknowledge that significant divergences in these areas can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of this Agreement.
2. If material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties in the areas referred to in paragraph 1, either Party may take appropriate rebalancing measures to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement. A Party's assessment of those impacts shall be based on reliable evidence and not merely on conjecture or remote possibility.

3. The following procedures shall apply to rebalancing measures taken under paragraph 2:
- (a) the concerned Party shall, without delay, notify the other Party through the Partnership Council of the rebalancing measures it intends to take, providing all relevant information. The Parties shall immediately enter into consultations. Consultations shall be deemed concluded within 14 days from the date of delivery of the notification, unless they are jointly concluded before that time limit;
  - (b) if no mutually acceptable solution is found, the concerned Party may adopt rebalancing measures no sooner than five days from the conclusion of the consultations, unless the notified Party requests within the same five day period, in accordance with Article 739(2)<sup>1</sup>, the establishment of an arbitration tribunal by means of a written request delivered to the other Party in order for the arbitration tribunal to decide whether the notified rebalancing measures are consistent with paragraph 2 of this Article;
  - (c) the arbitration tribunal shall conduct its proceeding in accordance with Article 760 and deliver its final ruling within 30 days from its establishment. If the arbitration tribunal does not deliver its final ruling within that time period, the concerned Party may adopt the rebalancing measures no sooner than three days after the expiry of that 30 day time period. In that case, the other Party may take countermeasures proportionate to the adopted rebalancing measures until the arbitration tribunal delivers its ruling. Priority shall be given to such countermeasures as will least disturb the functioning of this Agreement. Point (a) shall apply *mutatis mutandis* to such countermeasures, which may be adopted no sooner than three days after the conclusion of consultations;

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<sup>1</sup> For greater certainty, in this case the Party shall not have prior recourse to consultations in accordance with Article 738.

- (d) if the arbitration tribunal has found the rebalancing measures to be consistent with paragraph 2, the concerned Party may adopt the rebalancing measures as notified to the other Party;
- (e) if the arbitration tribunal has found the rebalancing measures to be inconsistent with paragraph 2 of this Article, the concerned Party shall, within three days from the delivery of the ruling, notify the complaining Party of the measures<sup>1</sup> it intends to adopt to comply with the ruling of the arbitration tribunal. Article 748(2) and Articles 749<sup>2</sup> and 750 shall apply *mutatis mutandis*, if the complaining Party considers that the notified measures are not in compliance with the ruling of the arbitration tribunal. The procedures under Article 748(2) and Articles 749 and 750 shall have no suspensive effect on the application of the notified measures pursuant to this paragraph;
- (f) if rebalancing measures were adopted prior to the arbitration ruling in accordance with point (c), any countermeasures adopted pursuant to that point shall be withdrawn immediately, and in no case later than five days, after delivery of the ruling of the arbitration tribunal;
- (g) a Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from taking measures pursuant to paragraphs 2 and 3, including when those measures consist of suspension of obligations under this Agreement;

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<sup>1</sup> Such measures may include withdrawal or adjustment of the rebalancing measures, as appropriate.

<sup>2</sup> Suspension of obligations under Article 749 shall be available only if rebalancing measures have in fact been applied.

(h) if the notified Party does not submit a request pursuant to point (b) of this paragraph within the time period laid down therein, that Party may without having prior recourse to consultations in accordance with Article 738 initiate the arbitration procedure referred to in Article 739. An arbitration tribunal shall treat the issue as a case of urgency for the purposes of Article 744.

4. In order to ensure an appropriate balance between the commitments made by the Parties in this Agreement on a more durable basis, either Party may request, no sooner than four years after the entry into force of this Agreement, a review of the operation of this Heading. The Parties may agree that other Headings of this Agreement may be added to the review.

5. Such a review shall commence at a Party's request, if that Party considers that measures under paragraph 2 or 3 have been taken frequently by either or both Parties, or if a measure that has a material impact on trade or investment between the Parties has been applied for a period of 12 months. For the purposes of this paragraph, the measures in question are those which were not challenged or not found by an arbitration tribunal to be strictly unnecessary pursuant to point (d) or (h) of paragraph 3. This review may commence earlier than four years after the entry into force of this Agreement.

6. The review requested pursuant to paragraph 4 or 5 shall begin within three months of the request and be completed within six months.

7. A review on the basis of paragraph 4 or 5 may be repeated at subsequent intervals of no less than four years after the conclusion of the previous review. If a Party has requested a review under paragraph 4 or 5, it may not request a further review under either paragraph 4 or 5 for at least four years from the conclusion of the previous review or, if applicable, from the entry into force of any amending agreement.
8. The review shall address whether this Agreement delivers an appropriate balance of rights and obligations between the Parties, in particular with regard to the operation of this Heading, and whether, as a result, there is a need for any modification of the terms of this Agreement.
9. The Partnership Council may decide that no action is required as a result of the review. If a Party considers that following the review there is a need for an amendment of this Agreement, the Parties shall use their best endeavours to negotiate and conclude an agreement making the necessary amendments. Such negotiations shall be limited to matters identified in the review.
10. If an amending agreement referred to in paragraph 9 is not concluded within one year from the date the Parties started negotiations, either Party may give notice to terminate this Heading or any other Heading of this Agreement that was added to the review, or the Parties may decide to continue negotiations. If a Party terminates this Heading, Heading Three shall be terminated on the same date. The termination shall take effect three months after the date of such notice.

11. If this Heading is terminated pursuant to paragraph 10 of this Article, Heading Two shall be terminated on the same date, unless the Parties agree to integrate the relevant parts of Title XI of this Heading in Heading Two.

12. Title I of Part Six does not apply to paragraphs 4 to 9 of this Article.

## TITLE XII

### EXCEPTIONS

#### ARTICLE 412

##### General exceptions

1. Nothing in Chapter 1 and Chapter 5 of Title I, Chapter 2 of Title II, Title III, Title VIII and Chapter 4 of Title XI shall be construed as preventing a Party from adopting or maintaining measures compatible with Article XX of GATT 1994. To that end, Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.