

Summary of U.S.-Chile FTA Dispute Settlement Chapter

This Chapter sets out detailed procedures for government-to-government dispute resolution. The procedures established in the chapter are based in large part on Chapter Twenty of the NAFTA.

1. Dispute Settlement Procedures

Article 1 provides that the parties shall endeavor to agree on the implementation and application of the agreement, and shall attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter.

Article 2 sets out the scope of application of the dispute settlement procedures.

Article 3 provides that disputes arising under both the agreement and the WTO generally may be settled in either forum at the discretion of the complaining government.

a. Consultations

Article 4 provides that either party may request consultations with respect to any actual or proposed measure that it considers might affect the operation of the agreement. The request must identify the measure and the legal basis for the complaint. A party may request that the other party make available personnel of government agencies or other regulatory bodies who have expertise in the subject matter of the consultations. The agreement places priority on reaching an amicable settlement.

b. Commission Consultations

Under Article 5, if the parties cannot resolve the matter through consultations within a specified period (generally 60 days (15 days in cases involving perishable goods)), a party may request a meeting of the Commission, which will occur within 10 days unless the Commission decides otherwise. To help resolve the dispute, the Commission may employ technical advisers, good offices, conciliation, mediation or other dispute resolution procedures.

c. Establishment of a Panel

Article 6 provides that if the Commission is unable to resolve a dispute within a specified period (generally 30 days), either party may request the establishment of an arbitral panel. Only actual measures are subject to panel review.

d. Roster and Panel Selection

Articles 7 through 9 set out procedures governing the establishment and operation of three-member arbitral panels. The parties will jointly establish and maintain a roster of 20, well-

qualified individuals to serve as panelists. Normally, panelists will be drawn from the roster.

e. Panel Procedures

Pursuant to Article 10, the Commission will establish Rules of Procedure that panels must follow unless the parties decide otherwise. Subject to the requirement to protect confidential information, the Rules of Procedure will provide for open hearings and public release of submissions. The Rules of Procedure will also provide an opportunity for the panel to accept submissions from non-governmental entities.

f. Initial Panel Report

Under Article 12, unless the parties decide otherwise, the panel must present its initial report within 120 days of the selection of the last panelist. The initial report must contain findings of fact and a determination on whether a party has not conformed with its obligations or that a party's measure nullifies or impairs benefits that the complaining government could reasonably have anticipated under the agreement.

The parties are allowed 14 days to provide written comments to the panel on the initial report. Upon receipt of such comments, the panel may reconsider its report and make any further examination that it considers appropriate.

g. Final Report

Article 13 requires the panel to present its final report to the parties within 30 days of the presentation of its initial report, unless the governments agree otherwise. The parties must release the report to the public, subject to the protection of confidential information.

Article 14 provides that on receipt of the final report the parties shall agree on the resolution of the dispute, which normally shall conform to the panel's determinations and recommendations (if any). Whenever possible, the resolution shall be to eliminate the non-conformity or the nullification or impairment.

h. Suspension of Benefits

Under Article 15, if the parties are unable to reach agreement on a resolution pursuant to Article 14 within 45 days of receipt of the final report, the parties shall enter into negotiations to develop mutually acceptable compensation. If the parties are unable to agree on compensation within 30 days, or if the complaining party considers that the defending party has failed to implement the agreed resolution, the complaining party may provide notice that it intends to suspend the application of benefits of equivalent effect.

If the defending party considers that the proposed level of benefits to be suspended is manifestly

excessive or that it has eliminated the non-conformity or nullification or impairment, it may request that the panel be reconvened to consider the matter and the panel will issue its determination not later than 120 days after the request is made.

The complaining party may suspend benefits up to the level that the panel determines or the level that the complaining party has proposed, if the panel has not determined the level. The complaining party may not suspend benefits if the defending party provides notice that it will pay a monetary assessment, the amount of which will be established by agreement of the parties or pursuant to a specified formula.

Article 16 establishes rules for labor and environmental disputes. Under these rules, if a panel determines that a party has not conformed to its obligations and the parties are unable to agree on a resolution or the complaining party considers that the defending party has failed to implement the agreed resolution, the complaining party may request that the panel be reconvened to determine the amount of an annual monetary assessment to be imposed on the defending party. Subject to a cap, the panel will establish the amount of the assessment taking into account several trade and non-trade-related factors. Assessments will be paid into a fund established by the Commission and funds will be used for labor and environmental initiatives at the direction of the Commission. If the defending party fails to pay the monetary assessment, the complaining party may take other appropriate steps to collect the assessment, which may include suspending tariff benefits.

Article 17 establishes a compliance review mechanism. If the defending party considers that it has eliminated the non-conformity or the nullification or impairment that a panel has found, it may refer the matter to the panel. If the panel decides that the defending party has eliminated the non-conformity or the nullification or impairment, the complaining party must eliminate the suspension of benefits or, in cases involving a monetary assessment, the defending party shall no longer be required to pay the assessment.

Article 18 requires the Commission to review the operation and effectiveness of Articles 15 and 16 within five years.

2. Interpretations of the Agreement in Domestic Proceedings

Article 19 establishes a procedure under which the parties jointly or individually may submit their views to a court or administrative body of a party if an issue of interpretation or application of the agreement arises in any domestic judicial or administrative proceeding.

3. Suits Against Other Party

Article 20 prohibits either party from providing a right of action in its domestic law to challenge the consistency of another government's actions under the agreement.

4. Settlement of Private Commercial Disputes

Article 21 requires the parties to encourage and facilitate the use of arbitration and other alternative dispute mechanisms to settle international commercial disputes between private parties. Each country must provide procedures to ensure observance of agreements to arbitrate and for recognition and enforcement of arbitral awards, for example by complying with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration*.