

CHAPTER 9

DISPUTE SETTLEMENT

ARTICLE 9.1

Scope and Coverage

1. The provisions of this Chapter shall apply with respect to the avoidance or the settlement of any dispute arising from this Agreement, taking into account the modalities set out in Article 4.21 of this Agreement and Article 25 of Annex I.
2. Disputes on the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.
3. For purposes of this Article, dispute settlement proceedings under the WTO Agreement or this Agreement are deemed to be initiated upon a request for a panel by a Party.
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party or Parties as regards a matter arising under both this Agreement and the WTO Agreement, it shall notify all the Parties of its intention.
5. The arbitration rules provided for in Articles 9.4 to 9.10 do not apply to Articles 2.7, 2.9, 2.10 and Chapter 5.

ARTICLE 9.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties involved so agree. They may begin at any time and be terminated at any time.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

ARTICLE 9.3

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Any one or more of the EFTA States may request in writing consultations with Korea and vice-versa whenever a Party considers that a measure applied by the Party or Parties to which the request is made is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired or nullified by such measure. Consultations shall take place in the Joint Committee unless the Party or Parties making or receiving the request for consultations disagree.

3. Consultations shall be held within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable agricultural goods, shall commence within 15 days from the receipt of the request for consultations.

4. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure or other matter might affect the operation of this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

5. The consultations shall be confidential and without prejudice to the rights of the Parties involved in any further proceedings.

6. The Parties involved in the consultations shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 9.4

Establishment of Arbitration Panel

1. If the matter has not been resolved within 60 days, or 30 days in relation to a matter of urgency, after the date of receipt of the request for consultations, it may be referred to arbitration by one or more of the Parties involved by means of a written request addressed to the Party or Parties complained against. A copy of this request shall also be communicated to all Parties so that each Party may determine whether to participate in the dispute.

2. Where more than one Party requests the establishment of an arbitration panel relating to the same matter, a single arbitration panel shall be established to examine these complaints whenever feasible².

3. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

² In the following, the terms “Party to the dispute”, “complaining Party”, “Party complained against” are used regardless of whether two or more Parties are involved in a dispute

ARTICLE 9.5

Arbitration Panel

1. The arbitration panel referred to in Article 9.4 shall consist of three members.
2. Each Party to the dispute shall appoint one member of the arbitration panel within 15 days of the receipt of the request under Article 9.4.
3. The Parties to the dispute shall agree on the appointment of the third member within 30 days of the appointment of the second member. The member thus appointed shall chair the arbitration panel.
4. If all three members have not been designated or appointed within 45 days from the date of receipt of the request referred to in Article 9.4, the necessary designations shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further 30 days. Where the designation of the members of the arbitration panel by the Director-General of the WTO is not made within the specified period, the Parties to the dispute shall within the next ten days exchange lists comprising four nominees each who shall not be nationals of either Party. The panel members shall then be appointed in the presence of both Parties by lot from the lists within ten days from the date of exchange of their respective lists. If a Party fails to submit its list of four nominees, the panel members shall be appointed by lot from the list already submitted by the other Party.
5. The chair of the arbitration panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed or previously have been employed by any of the Parties, nor have dealt with the case in any capacity.
6. If a member dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the member dies, withdraws or is removed and ending on the date the replacement is selected.
7. Any person appointed as a member of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or in the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence and shall conduct himself or herself according to these characteristics throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article, and following the procedure outlined in paragraph 6.
8. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

ARTICLE 9.6

Procedures of the Arbitration Panel

1. Unless the Parties to the dispute agree otherwise, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure that shall be adopted at the first meeting of the Joint Committee. Pending the adoption of those rules, the arbitration panel shall regulate its own procedures, unless the Parties to the dispute agree otherwise.

2. Notwithstanding paragraph 1, for all arbitration panel proceedings the procedures shall ensure that:

- (a) the Parties to the dispute have the right to at least one hearing before the arbitration panel as well as the opportunity to provide initial and rebuttal written submissions;
- (b) the Parties to the dispute be invited to all the hearings held by the arbitration panel;
- (c) all submissions and comments made to the arbitration panel be available to the Parties to the dispute, subject to any requirements of confidentiality; and
- (d) hearings, deliberations, initial report and all written submissions to and communications with the arbitration panel be confidential.

3. Unless the Parties to the dispute otherwise agree within 20 days from the date of delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 9.4 and to make findings of law and fact together with the reasons therefor as well as recommendations, if any, for the resolution of the dispute.”

4. At the request of a Party to the dispute or on its own initiative, the arbitration panel may seek scientific information and technical advice from experts as it deems appropriate.

5. The arbitration panel shall make its ruling based on the provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law.

6. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. No

arbitration panel may disclose which members are associated with majority or minority opinions.

7. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARTICLE 9.7

Withdrawal of Complaint

A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

ARTICLE 9.8

Initial Report

1. The arbitration panel shall present to the Parties to the dispute an initial report within 90 days from the date of the establishment of the arbitration panel.

2. The arbitration panel shall base its report on the submissions and arguments of the Parties to the dispute and on any scientific information and technical advice obtained pursuant to paragraph 4 of Article 9.6.

3. A Party to the dispute may submit written comments to the arbitration panel on the initial report within 14 days of presentation of the report.

4. In such an event, and after considering the written comments, the arbitration panel, on its own initiative or at the request of a Party to the dispute, may:

- (a) request the views of any of the Parties to the dispute;
- (b) reconsider its report; and/or
- (c) make any further examination that it considers appropriate.

ARTICLE 9.9

Final Report

1. The arbitration panel shall present to the Parties to the dispute the final report, containing the matters referred to in paragraph 2 of Article 9.8, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report.

2. Unless the Parties to the dispute decide otherwise, the final report shall be published 15 days after it is presented to them.

ARTICLE 9.10

Implementation of Arbitration Panel Reports

1. The final report shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures involved in carrying out the final report.

2. On receipt of the final report of an arbitration panel, the Parties to the dispute shall agree on:

- (a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitration panel; and
- (b) the reasonable period of time which may be necessary in order to implement the means to resolve the dispute. If the Parties to the dispute fail to agree, a Party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitration panel shall be presented within 15 days from that request.

3. If, in its final report, the arbitration panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall be, whenever possible, to eliminate the inconsistency or the nullification or impairment.

4. If the Parties to the dispute are unable to agree on the means to resolve the dispute pursuant to paragraph 2(a) within 30 days of issuance of the final report, or have agreed on the means to resolve the dispute but the Party complained against fails to implement the means within 30 days following the expiration of the reasonable period of time determined in accordance with paragraph 2(b), the Party complained against shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement that are equivalent to those affected by the measure found to violate this Agreement.

5. In considering the benefits to be suspended, the complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to violate this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

6. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties to the dispute may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to violate this Agreement, and whether the proposed suspension is in accordance with paragraphs 4 and 5. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

7. The suspension of benefits shall be temporary and only be applied by the complaining Party until the measure found to violate this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or the Parties to the dispute have reached agreement on a resolution of the dispute.

8. At the request of a Party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

9. The rulings provided for in paragraphs 2 (b), 6 and 8 shall be binding.

ARTICLE 9.11

Other Provisions

Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties involved.