

CHAPTER SIXTEEN

DISPUTE SETTLEMENT

Article 16.1: Cooperation

The Parties shall 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 any matter that might affect its operation.

Article 16.2: Scope of Application

Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 16.3: Administration of Dispute Settlement Proceedings

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 16.8. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

Article 16.4: Choice of Forum

1. Where a dispute regarding a particular matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to

in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 16.5: Consultations

1. Either Party may request consultations with the other Party with respect to any matter described in Article 16.2 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The other Party shall reply promptly to the request and enter into consultations.

2. If a request for consultations is made, the Party complained against shall reply to the request within 10 days of receipt of such a request in writing and shall enter into consultations in good faith with a view to reaching a mutually satisfactory solution within a period of no more than:

- (a) 15 days after the date of receipt of the request for urgent matters including those concerning perishable goods¹; or
- (b) 30 days after the date of receipt of the request for all other matters.

3. Consultations shall take place in person or by any other technological means agreed by the Parties. If in person, consultations shall take place in the territory of the Party complained against, unless agreed otherwise.

4. Promptly after requesting or receiving a request for consultations pursuant to this Article, each Party shall seek the views of interested parties and other members of the public on the matter in order to draw on a broad range of perspectives.

5. Each Party shall:

- (a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. A Party may request the other Party to make available during consultations under this Article personnel of its government agencies or other

¹ “Perishable goods” means products that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

regulatory bodies who have expertise in the matter subject to consultations.

7. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 16.6: Referral to the Joint Committee

1. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 16.5, or 20 days where the matter concerns perishable goods, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.
2. The Joint Committee shall promptly meet and endeavor to resolve the matter.

Article 16.7: Good Offices, Conciliation, or Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution such as good offices, conciliation, and mediation. Proceedings under this Article may begin and be terminated at any time upon request of either Party.
2. If the Parties agree, good offices, conciliation, or mediation may begin, continue, and be terminated while the proceedings of the panel provided for in this Chapter are in progress.
3. Proceedings involving good offices, conciliation, or mediation, and, in particular, positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 16.8: Establishment of Panel

1. If the Joint Committee has not resolved a matter within 60 days after delivery of a notification described in Article 16.6, within 30 days where the matter concerns perishable goods, or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and a brief summary of the factual and legal basis for the complaint sufficient to present the problem clearly.

2. Unless the Parties otherwise agree, the Parties shall apply the following procedures in selecting a panel:

- (a) The panel shall have three members.
- (b) Within 20 days following the receipt of the request for the establishment of a panel is made in accordance with paragraph 1, each Party shall appoint a panelist. The Parties shall, by common agreement, appoint the third panelist, who shall serve as the chairperson of the panel, within 40 days following the receipt of the request for the establishment of a panel in accordance with paragraph 1.
- (c) If either Party fails to appoint a panelist within the period established in subparagraph (b), the other Party, within a period of 20 days, may request the Director-General of the WTO to appoint the unappointed panelists within 20 days of that request.
- (d) If the Director-General of the WTO notifies the Parties that he or she is unavailable or does not appoint the unappointed panelist within 20 days of the date of the request made pursuant to subparagraph (c), any Party may request the Secretary-General of the Permanent Court of Arbitration to appoint the unappointed panelist within 20 days of that request.
- (e) If the Parties do not agree on the chairperson of the panel within the time period established in subparagraph (b), they shall within the next 10 days, exchange their respective lists comprising three nominees each who shall not be nationals of either Party. The chairperson shall then be appointed by draw of lot from the lists within 10 days of the expiry of the time period during which the Parties shall exchange their respective lists of nominees. The selection by lot of the chairperson of the panel shall be made by the Joint Committee.
- (f) If a Party fails to submit its list of three nominees within the time period established in subparagraph (e), the chairperson shall be appointed by draw of lot from the list submitted by the other Party.

3. The date of composition of the panel shall be the date on which the last of the three selected panelists is appointed.

4. Individuals appointed to a panel pursuant to paragraph 2 shall:

- (a) be chosen strictly on the basis of objectivity, reliability, and

sound judgment;

- (b) have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements;
- (c) be independent of, and not be affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct to be established by the Joint Committee.

Article 16.9: Rules of Procedure

1. Unless the Parties otherwise agree, a panel shall follow the Rules of Procedure set out in Annex 16-A (Rules of Procedure) and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the Annex 16-A (Rules of Procedure).

2. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the panel, the panel's 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 the panel pursuant to Article 16.8 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute, conclusions, and recommendations.”

3. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree.

4. Unless the Parties otherwise agree, the remuneration of the panelists and other expenses of the panel shall be borne by the Parties in equal shares.

Article 16.10: Panel Report

1. Unless the Parties otherwise agree, the panel shall, within 90 days after the chair is appointed, present to the Parties an initial report containing findings of fact and its determination as to:

- (a) (i) whether the measure at issue is inconsistent with the obligations of this Agreement; or
- (ii) whether a Party has otherwise failed to carry out its

obligations under this Agreement; and

(b) any other matter that the Parties have jointly requested that the Panel address,

as well as the reasons for its findings and determinations.

2. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.

3. The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties* (1969). The rulings of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided under this Agreement.

4. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

5. Each Party may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

6. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

7. Determinations of the final report of the panel shall be final and binding on the Parties and shall not be subject to appeal.

8. Where the panel concludes that a measure is inconsistent with this Agreement or the Party complained against has failed to carry out its obligations under this Agreement, it shall recommend that the Party complained against brings the measure into conformity with this Agreement or complies with its obligations under this Agreement.

Article 16.11: Implementation of the Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not

conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

Article 16.12: Non-Implementation

1. If a panel has made a determination of the type described in Article 16.11.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 16.11.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation.

2. If the Parties:

- (a) are unable to agree on compensation within 30 days after the negotiation for developing such compensation has begun; or
- (b) have agreed on compensation or on a resolution pursuant to Article 16.11.1 and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of the concessions or other obligations of equivalent effect. The notice shall specify the level of concessions or other obligations that the complaining Party proposes to suspend. The complaining Party may begin suspending concessions or other obligations 30 days after the later of the date on which it provides notice to the other Party under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. In considering what concessions or other obligations to suspend:

- (a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that in which the report of the panel referred to in Article 16.10 has found a failure to comply with the obligations under this Agreement; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may suspend concessions or other obligations in other sectors. The communication in which it

notifies such a decision shall indicate the reasons on which it is based.

4. If the Party complained against considers that:

- (a) the level of the concessions or other obligations that the complaining Party has proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the non-conformity that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days for a request under both subparagraphs (a) and (b). If the panel determines that the level of the concessions or other obligations proposed to be suspended is manifestly excessive, it shall determine the level of the concessions or other obligations it considers to be of equivalent effect. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the determination of the panel on the same.

5. The complaining Party may suspend the concessions or other obligations up to the level the panel has determined under paragraph 4 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity.

6. Suspension of concessions or other obligations shall be temporary, and shall apply until the implementation of the final report takes place or mutually satisfactory solution is reached.

Article 16.13: Compliance Review

1. Without prejudice to the procedures set out in Article 16.12.4, if the Party complained against considers that it has eliminated the non-conformity that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits

it has suspended under Article 16.12.

ARTICLE 16.14: Suspension or Termination of Proceedings

1. The Parties may agree that the panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In such event, the Parties shall jointly notify the chair of the panel. Upon the expiration of 12 months, the panel's authority for considering the dispute shall lapse, unless the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings of panel by jointly notifying the chair of the panel at any time before the issuance of the final report to the Parties.

Annex 16-A

Rules of Procedure

Application

1. The following rules of procedure are established pursuant to Article 16.9 and shall apply to dispute settlement proceedings under Chapter Sixteen (Dispute Settlement) unless the Parties otherwise agree.

Definitions

2. For purposes of Chapter Sixteen (Dispute Settlement) and this Annex:

- (a) **adviser** means a person retained by a Party to advise or assist that Party in connection with the panel proceeding;
- (b) **assistant** means a person who, under the terms of appointment of a panelist, conducts research or provides support to the panelist;
- (c) **complaining Party** means a Party that requests the establishment of a panel under Article 16.8;
- (d) **panel** means a panel established under Article 16.8;
- (e) **panelist** means a member of the panel established under Article 16.8; and
- (f) **Party complained against** means the Party that receives a written notification indicating that the complaining Party has referred the matter to a dispute settlement panel in accordance with Article 16.8.

3. Any reference made in the Rules of Procedure to an Article is a reference to the appropriate Article in Chapter Sixteen (Dispute Settlement).

Administration of Proceedings

4. The Party in whose territory the hearing takes place shall be in charge of the logistical administration of the dispute settlement proceedings, in particular the organization of hearings, unless the Parties agree otherwise.

Notifications

5. The Parties and the panel shall transmit any request, notice, written submission or other document by e-mail, and, if agreed by the Parties, also by delivery against receipt, registered post, courier, facsimile transmission, or any other means of telecommunication that provides a record of the sending thereof.

6. A Party shall provide a copy of each of its written submissions to the other Party and to each of the panelists during the course of the dispute settlement proceedings.

7. All notifications shall be made and delivered to the Ministry of Trade, Industry and Energy of Korea, or its successor and to the Ministry of Economy and Sustainable Development of Georgia, or its successor respectively.

8. The deadlines are counted from the following date of receipt of such submission or documents.

9. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

10. If the last day for delivery of a document falls on a legal holiday of Korea or Georgia, the document shall be deemed delivered within the deadline on the next business day.

Commencing the Panel Procedure

11. Unless the Parties otherwise agree, they shall meet with the panel within 15 days of the date of the establishment of the panel in order to determine such matters that the Parties or the panel deems appropriate, including the remuneration and expenses that shall be paid to the panelists, which will be in accordance with the WTO standards. Such meeting may take place via telephone or video conference.

First Written Submissions

12. The complaining Party shall deliver its first written submission no later than 20 days after the last panelist is appointed. The Party complained against shall deliver its first written submission no later than 20 days after the date of receipt of the complaining Party's first written submission, unless the panel otherwise decides.

Conduct of Panel Proceedings

13. The chair of the panel shall preside at all its meetings. The panel may delegate to the chair authority to make administrative and procedural decisions.

14. Unless otherwise provided for in this Agreement, the panel may conduct its activities by any means, including telephone, facsimile transmission or computer links.

15. Only panelists may take part in the deliberations of the panel, but the panel may, after consultation with the Parties, permit its assistants to be present at its deliberations. Any person present for such deliberations shall not disclose any information discussed during the deliberation to the Parties.

16. The drafting of any ruling shall remain the exclusive responsibility of the panel and must not be delegated.

17. If a procedural question arises that is not covered by the provisions of the Chapter Sixteen (Dispute Settlement), including this Annex, the panel may adopt an appropriate procedure that is compatible with those provisions.

18. When the panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed.

Hearings

19. The chair of the panel shall fix the venue, date, and time of the hearing after consultation with the Parties and the other panelists. The chair shall notify the Parties in writing of those determined venue, date and time of the hearing. Unless one of the Parties disagrees, the panel may decide not to convene a hearing.

20. Unless the Parties agree otherwise, the hearings shall alternate between the territories of the Parties with the first hearing to take place in the territory of the Party complained against.

21. The panel may convene additional hearings if the Parties so agree.

22. All panelists shall be present during the entirety of any hearing.

23. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters and translators; and
- (d) panelists' assistants.

Only the representatives and advisers of the Parties may address the panel.

24. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

argument

- (a) argument of the complaining Party; and
- (b) argument of the Party complained against;

rebuttal argument

- (a) argument of the complaining Party; and
- (b) counter-reply of the Party complained against.

25. The panel may direct questions to either Party at any time during a hearing.

26. The panel shall arrange for a transcript of each hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments.

27. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 20 days after the date of the hearing.

Questions in Writing

28. The panel may at any time during the proceedings address questions in writing to a Party or both Parties. Each Party shall receive a copy of any questions put by the panel.

29. A Party shall also provide a copy of its written response to the panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt of such reply.

Confidentiality

30. The panel's hearings and the documents submitted to it shall be kept confidential. The information submitted by the other Party to the panel which that Party has designated as confidential shall be treated as confidential. Nothing in this paragraph shall preclude a Party to a dispute from disclosing statements of its own positions to the public to the extent that, when making

reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

Ex Parte Contacts

31. The panel shall not meet or contact a Party in the absence of the other Party. Neither Party may contact any panelist in relation to the dispute in the absence of the other Party or the other panelists.

32. No panelist may discuss any aspect of the subject matter of the proceedings with a Party in the absence of the other Party and other panelists.

Amicus Curiae Submissions

33. Unless the Parties agree otherwise, within three days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from interested persons of the Parties, provided that they are made within 10 days of the date of the establishment of the panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual and legal issues under consideration by the panel.

34. The submission must contain a description of the person making the submission, including its nationality or place of establishment, the nature of its activities and the source of its financing, and specify the nature of the interest that the person has in the proceeding.

35. The panel shall list in its ruling all the submissions it has received that conform to paragraphs 33 and 34. The panel is not obliged to address in its ruling the factual or legal arguments made in these submissions. A submission obtained by the panel under paragraphs 33 and 34 shall be submitted to the Parties for their comments. The comments of the Parties shall be submitted within ten days from the notification of the panel and any such comments shall be taken into consideration by the panel.

Computation of Time

36. Where anything under this Agreement or this Annex is to be done, or the panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

37. Where, by reason of the application of paragraph 10 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Working Languages

38. The working language for the dispute settlement proceedings shall be English. Written submissions, documents, oral arguments or presentations, the panel reports and all written and oral communications between the Parties and with the panel shall be in the English language.