

## **CHAPTER 22**

### **DISPUTE SETTLEMENT**

#### **Section A: Dispute Settlement**

##### **ARTICLE 22.1: COOPERATION**

1. 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 satisfactory resolution of any matter that might affect its operation.
2. All solutions of matters raised under this Chapter shall be consistent with this Agreement and must not impede the achievement of its objectives.
3. Solutions reached in accordance with paragraph 2 shall be notified to the Joint Committee within 15 days from the agreement of the Parties.

##### **ARTICLE 22.2: SCOPE**

1. 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 or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement;
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
- (c) a benefit the Party could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 6 (Technical Barriers to Trade), 8 (Government Procurement) or 10 (Cross-border Trade in Services) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. A Party may not invoke paragraph 1(c) with respect to any measure subject to an exception under Article 23.1 (General Exceptions).

##### **ARTICLE 22.3: CHOICE OF FORUM**

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other trade agreement to which the Parties to the dispute 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 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 22.4: CONSULTATIONS

1. Any one or more of the Republics of Central America may request consultations with Korea and vice-versa with respect to any matter described in Article 22.2 by delivering written notification through the designated office, with copies to the other Parties. The requesting Party or Parties 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 in writing within 10 days of the date of receipt of the request.

2. Consultations may be conducted in person or by technological means and shall be held within 30 days of the date of the receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to whom the consultations were requested. The consultations shall be deemed concluded within 60 days of the date of the receipt of the request, unless the Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential and without prejudice to the rights of any Party in any further proceedings.

3. Consultations on matters of urgency, including those regarding perishable or seasonal goods<sup>1</sup> or goods or services that rapidly lose their trade value such as certain seasonal goods or services, shall be held within 15 days of the date of the receipt of the request, and shall be deemed concluded within 20 days of the date of the receipt of the request.

4. If consultations are not held within the time frames laid down in paragraph 2 or 3 respectively, or if consultations have been concluded and no agreed solution has been reached, the requesting Party may request the intervention of the Joint Committee in accordance with Article 22.5.

5. The consulting Parties shall make every attempt to arrive at a satisfactory solution of any matter through consultations under this Article. 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

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<sup>1</sup> For greater certainty, **perishable goods** means perishable agricultural and fish goods classified in HS Chapters 1 through 24. **Seasonal goods** are goods whose imports, over a representative period, are not spread over the whole year but concentrated on specific times of the year as a result of seasonal factors.

the same basis as the Party providing the information.

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

7. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

#### ARTICLE 22.5: REFERRAL TO THE JOINT COMMITTEE<sup>2</sup>

1. If the Parties fail to resolve a matter within 60 days of the receipt of a request for consultations under Article 22.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable or seasonal goods or goods or services that rapidly lose their trade value such as certain seasonal goods or services, only the consulting Party may request the intervention of the Joint Committee by delivering written notice to the other Party or Parties.

2. The requesting Party shall deliver the request to the other Party or Parties, and shall set out in the request, the reasons thereof including identification of the measure at issue and an indication of the legal and factual basis for the complaint.

3. Unless it decides otherwise, the Joint Committee shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly, with the objective to arrive at a satisfactory resolution.

4. The Joint Committee may meet in person or through any other technological means available to the Parties.

5. The Joint Committee may consolidate two or more proceedings regarding the same measure or matter pursuant to this Article when it determines that it is appropriate to be considered jointly.

#### ARTICLE 22.6: 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.

2. Proceedings that involve good offices, conciliation, and mediation, shall be confidential and without prejudice to the rights of either Party in any other proceedings.

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

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<sup>2</sup> For the purposes of this Article, the Joint Committee shall consist of representatives of the consulting Parties, as set out in Annex 21-A (Joint Committee) or of persons appointed by them.

proceedings at any time.

4. Once procedures for good offices, conciliation, or mediation are concluded without an agreement between the Parties, the complaining Party may request the establishment of a panel.

#### ARTICLE 22.7: ESTABLISHMENT OF PANEL

1. The Party may deliver a written request to establish a dispute settlement panel to the other Party, provided that a matter has not been resolved in any of the following cases:

- (a) when the Parties to the dispute have not settled the dispute during consultations within the 60 day period established in Article 22.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable goods, or goods or services that rapidly lose their trade value such as certain seasonal goods or services, or within any other period that the Parties to the dispute may agree during consultations;
- (b) 30 days after the Joint Committee has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 22.5;
- (c) within 30 days after the receipt of the request to refer the matter to the Joint Committee or any other period agreed by the Parties to the dispute, or when the meeting has not been held pursuant to the provisions established in Article 22.5.3; or
- (d) when the requesting Party that referred the matter to the Joint Committee considers, once the period indicated by the Joint Committee has expired, that the measures aimed at complying with the agreement reached pursuant to Article 22.5, were not adopted.

2. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

3. A panel shall be established upon the date of receipt of the request referred to in paragraph 1.

4. A Party that is eligible under paragraph 1 to request the establishment of a panel may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.

5. If a Party does not join as a complaining Party in accordance with paragraph 4, it shall

refrain thereafter from initiating or continuing subparagraph (a) and (b) regarding the same matter in the absence of a significant change in economic or commercial circumstances:

- (a) a dispute settlement procedure under this Agreement; or
- (b) a dispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement.

6. Unless otherwise agreed by the Parties to the dispute, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

7. A panel may not be established to review a proposed measure.

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

- (a) the panel shall be composed of three members;
- (b) each Party shall appoint one panelist within 30 days after the date of receipt of the request for the establishment of a panel. If a Party fails to appoint a panelist within that period, the Parties shall meet within seven days and select a panelist by lot from among the members of the contingent list established under paragraph 10 who are nationals of that Party;
- (c) a Party may exercise a peremptory challenge against any individual not on the contingent list within 14 days after the individual has been proposed as a panelist. If a Party has exercised three peremptory challenges, the other Party shall select a panelist from the contingent list;
- (d) the Parties shall endeavor to agree on a third panelist who shall serve as chair;
- (e) if the Parties are unable to agree on the chair within 30 days after the date on which the second panelist has been appointed, the Parties shall meet within seven days and select the chair by lot from among the members of the contingent list established under paragraph 10 who are not nationals of either Party; and<sup>3</sup>

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<sup>3</sup> If a panelist selected by lot under subparagraph (b) or (e) is unable to serve on the panel, the Parties shall meet within seven days of learning that the panelist is unavailable to select another panelist by lot from among the remaining members of the contingent list who are nationals of the relevant Party (in the case of subparagraph (b)) or not nationals of either Party (in the case of subparagraph (e)). If a panelist becomes unable to serve during the course of the proceeding or when the panel is reconvened pursuant to Article 22.12 or 22.13, then within seven days of learning that the panelist is unavailable, the relevant Party shall select a replacement panelist from the contingent list or, in the case of the chair, the Parties shall meet to select a replacement chair by lot from among the members of the contingent list who are not nationals of either Party.

- (f) a panelist shall be considered appointed to a panel when that person is proposed pursuant to subparagraph (b) and no peremptory challenge is exercised pursuant to subparagraph (c), or when that person is selected from the contingent list pursuant to this paragraph.

9. In cases where two or more Parties acting together as complaining Party or Party complained against, and there is no agreement as to the appointment of a panelist, one of them, chosen by lot, shall represent the other with respect to the procedure set out in paragraph 8(b).

10. Within 180 days of the date of entry into force of this Agreement, the Parties shall establish a contingent list of individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, the contingent list shall include three nationals of each Party and at least eight individuals who are not nationals of any of the Parties. An individual on the contingent list shall be appointed by agreement of the Parties for a minimum term of three years and shall remain on the list until the individual is replaced or is unable to serve. The Parties shall review the contingent list every three years and may replace individuals on the list as appropriate. The Parties may also appoint a replacement where a member of the contingent list is no longer available to serve.

11. If a panelist appointed under this Article becomes unable to serve on the panel, a successor shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. In such a case, any time period applicable to the panel proceedings shall be suspended for a period beginning on the date when the original panelist becomes unable to serve and ending on the date when the new panelist is appointed.

12. Individuals appointed to a panel pursuant to paragraph 8 or to the contingent list pursuant to paragraph 10 shall:

- (a) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (b) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (c) be independent of, and not be affiliated with or take instructions from, any of the Parties; and
- (d) comply with the code of conduct established by the Joint Committee.

13. If a Party to the dispute believes that a panelist has violated or is in violation of the code of conduct, the Parties to the dispute shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

#### ARTICLE 22.8: MODEL RULES OF PROCEDURE

1. Unless the Parties to the dispute otherwise agree, the panel shall follow the model rules of procedure established by the Joint Committee, which shall ensure:

- (a) a right to at least one hearing before the panel;
- (b) that, subject to subparagraph (f), any hearing before the panel shall be open to the public;
- (c) the possibility of using technological means to conduct the proceedings;
- (d) an opportunity for each Party to the dispute to provide initial and rebuttal submissions;
- (e) that each participating Party's written submissions, written versions of its oral statement, and written response to a request or questions from the panel may be made available to the public subject to subparagraph (f);
- (f) the protection of information designated by any of the Parties for confidential treatment; and
- (g) that all notices to the Parties are made through the designated office.

2. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. Unless the Parties to the dispute otherwise agree within 20 days of the delivery 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 referenced in the request for the establishment of the panel, to make findings, determinations, and recommendations as provided in Articles 22.10.1 and 22.10.2, and to present the written reports referred to in Articles 22.10.1 and 22.10.5."

4. Upon request of a Party to the dispute, 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 to the dispute so agree and subject to such terms and conditions as the Parties to the dispute may agree.

5. The decisions of the panel, including the adoption of the report, shall be adopted by a majority of its members. No panel may disclose which panelists are associated with majority or minority opinions.

#### ARTICLE 22.9: THIRD PARTIES

1. Any Party having a substantial interest in a dispute before a panel and having notified its interest in writing to the Parties to such a dispute and the rest of the Parties shall have an opportunity to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and may be reflected in the report of the panel.
2. Third Parties shall receive the submissions of the Parties to the dispute at the first meeting of the panel.
3. If a third Party considers that a measure that is already the subject of a panel proceeding nullifies or impairs benefits accruing to it under the covered agreements, such Party may have recourse to normal dispute settlement procedures under this Agreement.

#### ARTICLE 22.10: PANEL REPORT

1. Unless the Parties to the dispute otherwise agree, the panel shall, within 90 days after the chair is appointed, present to the Parties to the dispute 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;
    - (ii) whether a Party to the dispute has otherwise failed to carry out its obligations under this Agreement; or
    - (iii) whether the measure at issue is causing nullification or impairment in the sense of Article 22.2.1(c); and
  - (b) any other matter that the Parties to the dispute have jointly requested that the panel address, as well as the reasons for its findings and determinations.
2. When the panel considers that it cannot provide its report within 90 days, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 120 days. The panel shall inform the Parties to the dispute of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party or Parties and shall adjust the remainder of the schedule accordingly.
3. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, such as the ones established in the *Vienna Convention on the Law of Treaties* (1969). The panel may, at the request of the Parties to the dispute, make recommendations for the resolution of the dispute.
4. Each Party to the dispute 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 to the dispute on the initial report, the panel may modify its report and make any further examination it considers appropriate.

5. The panel shall present a final report to the Parties within 30 days of the presentation of the initial report, unless the Parties to the dispute otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

6. The final report of a panel shall be final and binding unless the Parties to the dispute otherwise agree. The report of the panel shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes.

#### ARTICLE 22.11: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties to the dispute may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party to the dispute. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties to the dispute otherwise agree.

2. The Parties to the dispute may agree to terminate the proceedings of a panel in the event that a satisfactory solution to the dispute has been found. In such event the Parties to the dispute shall jointly notify the chair of the panel.

3. Before the panel provides its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.

#### ARTICLE 22.12: IMPLEMENTATION OF THE FINAL REPORT

1. Upon receipt of the final report of a panel, the Parties to the dispute 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 to the dispute has not conformed with its obligations under this Agreement or that a Party to the dispute's measure is causing nullification or impairment in the sense of Article 22.2.1(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

#### ARTICLE 22.13: NON-IMPLEMENTATION AND SUSPENSION OF BENEFITS

1. If a panel has made a determination of the type described in Article 22.12.2, and the Parties to the dispute are unable to reach an agreement on a resolution pursuant to Article

22.12.1, within 30 days of receiving the final report, or such other period as the Parties to the dispute may agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing acceptable compensation.

2. If the Parties to the dispute:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
- (b) have agreed on compensation or on a resolution pursuant to Article 22.12.1, 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 benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits of equivalent effect 15 days after the later of the date on which it provides notice to the other Party to the dispute under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. In considering which benefits to suspend pursuant to paragraph 2:

- (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as those affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Article 22.2.1(c); and
- (b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

4. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits under Article 22.2.1(c) has been brought into conformity with this Agreement, or until such time as the Parties to the dispute have otherwise reached an agreement on a resolution of the dispute. However, if the Party complained against comprises two or more Republics of Central America, and one or more complies with the final report, or reaches a satisfactory agreement with the complaining Party, the latter shall terminate the suspension of benefits for such Republic or Republics of Central America.

5. If the Party complained against considers that:

- (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or

- (b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original 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 to the dispute 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 benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 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 or the nullification or impairment. If the Party complained against comprises two or more Republics of Central America, and the panel decides that one or more has complied, the complaining Party shall immediately terminate the suspension of benefits for such Republic or Republics of Central America.

#### ARTICLE 22.14: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 22.13.5, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment 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 60 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 22.13.

#### ARTICLE 22.15: TIME LIMITS

1. All time limits laid down in this Chapter, including the limits for the panels to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by agreement of the Parties.

#### ARTICLE 22.16: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

1. Each Party shall:
  - (a) designate an office that shall provide administrative assistance to the panels established under this Chapter and perform such other functions as the Joint Committee may direct;
  - (b) notify the Joint Committee of the location of its designated office; and
  - (c) be responsible for:
    - (i) the operation and costs of its designated office; and
    - (ii) the remuneration and payment of expenses of panelists and experts, as set out in Annex 22-A.

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

### ARTICLE 22.17: REFERRAL OF MATTERS FROM JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any 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. The Joint Committee 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 any agreed interpretation of the Joint Committee to the court or administrative body in accordance with the rules of that forum.
3. If the Joint Committee is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

### ARTICLE 22.18: PRIVATE RIGHTS

No Party may provide for a right of action under its law against the other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

### ARTICLE 22.19: ALTERNATIVE DISPUTE RESOLUTION

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1958).

**ANNEX 22-A**  
**REMUNERATION AND PAYMENT OF EXPENSES**

1. The Joint Committee shall establish the amounts of remuneration and expenses that will be paid to panelists and experts.
2. The remuneration of panelists and their assistants, experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the Parties to the dispute.
3. Each panelist and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.