

CHAPTER 20 DISPUTE SETTLEMENT

Article 20.1: Cooperation

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 mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

Article 20.2: Scope

Unless otherwise provided in this Agreement or as the Parties otherwise agree, this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation and 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; or
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 20.3: Choice of Forum

1. Where a dispute 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 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 20.4: Consultations

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.

2. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. The requesting Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, in the written notification. If a request for consultations is made, the other Party shall reply in writing

to the request within 10 days after the date of its receipt.

3. Consultations shall be held in good faith within 30 days after the date of receipt of the request with a view of reaching a mutually satisfactory solution and take place, unless the Parties otherwise agree, in the territory of the requested Party .

4. If the requested Party does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for consultations, then the requesting Party may proceed directly to request the establishment of a panel in accordance with Article 20.6.

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. Consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings under this Chapter.

Article 20.5: Good Offices, Conciliation or Mediation

1. Good offices, conciliation, and mediation are procedures undertaken voluntarily if the Parties so agree.

2. Proceedings involving good offices, conciliation, and 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.

3. Good offices, conciliation, or mediation may be requested at any time by any Party. They may begin at any time and be terminated at any time. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 20.6.

4. The Parties are encouraged to enter into a mediation procedure in particular when a Party believes that a certain non-tariff measure adversely affects trade between the Parties and that such measure is related to the matter falling under market access of goods of this Agreement and is subject to this Chapter, unless the Parties otherwise agree.

5. The Parties should endeavor to participate in the mediation procedure provided for in paragraph 4 in an expeditious way and with the aim to reach a mutually agreed solution within a reasonable period of time with the assistance of a mediator designated

or appointed by the Parties upon agreement. Where the Parties have agreed to a solution, each Party should take any measure necessary to implement the mutually agreed solution.

6. The mediation procedure provided for in paragraph 4 is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement in which the Parties participate as parties.

Article 20.6: Establishment of Panel

1. If the consultations referred to in Article 20.4 fail to resolve a matter within 60 days after the date of receipt of the request for consultations or within such other period as the Parties may agree, the complaining Party may deliver a written request to establish a panel to the other Party.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measure at issue and provide 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.

Article 20.7: Composition of Panel

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

- (a) the panel shall comprise three members;
- (b) each Party shall appoint one panelist respectively within 15 days after the establishment of the panel. If a Party fails to appoint a panelist within that period, the panelist shall be appointed by the other Party, unless the Parties otherwise decide;
- (c) the Parties shall endeavor to agree on the third panelist, who shall serve as the chair, within 30 days after the establishment of the panel; and
- (d) if the Parties are unable to agree on the chair within 30 days after the establishment of the panel, on the request of any Party to the dispute, the Director General of the WTO is expected to designate the chair within a further period of 30 days. In the event that the Director General of the WTO is a national of either Party or unable to perform this task, the Deputy Director-General of the WTO who is not a national of either Party shall be requested to perform such task.

2. The chair of the panel shall not be a national of either Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either Party, nor have dealt with the matter in any capacity.

3. If a panelist appointed under this Article resigns or becomes unable to serve on the panel, a successor shall be appointed within 15 days in accordance with the selection procedure 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 during the appointment of the successor.

4. All panelists shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct established in Annex 20-B (Code of Conduct for Panelists and Mediators).

5. Where a Party considers that a panelist does not comply with the requirements of Annex 20-B (Code of Conduct for Panelists and Mediators), the Parties shall consult and, if so agreed, replace that panelist in accordance with paragraph 3.

Article 20.8: Functions of Panel

1. The function of a panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Where a panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement.

Article 20.9: Rules of Procedure

1. Unless the Parties otherwise agree, a panel shall follow the Rules of Procedure set out in Annex 20-A (Rules of Procedure) and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the Annex 20-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 20.6 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 20.10: Suspension or Termination of Panel Proceedings

1. The Parties may agree that a panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, all relevant timeframes set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse, unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel.

Article 20.11: Panel Report

1. Unless the Parties otherwise agree, a panel shall, within 120 days after the last panelist is appointed, issue to the Parties an interim report.

2. In exceptional cases, if the panel considers it cannot issue its interim report within the period of 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

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, including those codified in the *Vienna Convention on the Law of Treaties* (1969).

4. Each Party may submit written comments to the panel on its interim report within 15 days of the presentation of the report. After considering any written comments by the Parties on the interim 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 45 days of the presentation of the interim report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days after the issuance of the final report, subject to the protection of confidential information, unless the Parties decide not to do so.

6. The panel shall make every effort to take its decision by consensus. If the panel is unable to reach consensus, it may take its decision by majority vote. Panelists may furnish dissenting or separate opinions on matters not unanimously agreed. All opinions expressed in the panel report by individual panelists shall be anonymous.

7. The final report of the panel shall be final and binding on the Parties for the dispute and shall not create any rights or obligations for persons. The final report 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 the panel makes.

Article 20.12: Implementation of the Final Report of the panel

1. 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.

2. Unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity as determined in the final report of the panel immediately, or if this is not practicable, within a reasonable period of time referred to in Article 20.13.

Article 20.13: Reasonable Period of Time

1. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 30 days of the issuance of the final report of the panel, either Party may, to the extent possible, refer the matter to the original panel, which shall determine the reasonable period of time.

2. The panel shall provide its report to the Parties within 30 days after the date of the referral of the matter to it. When the panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the final report of the panel.

4. The Party complained against will inform the complaining Party in writing of

its progress to comply with the final report of the panel at least 30 days before the expiry of the reasonable period of time.

Article 20.14: Compliance Review

1. The Party complained against shall notify the complaining Party before the end of the reasonable period of time of any measures that it has taken to comply with the final report of the panel.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations of the panel, such dispute shall be referred to a panel proceeding, including wherever possible by resort to the original panel.

3. The panel shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

4. Articles concerning panel procedures in this Agreement shall apply *mutatis mutandis* to the procedure under this Article.

Article 20.15: Suspension of Concessions or Other Obligations

1. If the panel under Article 20.14 finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the panel within the reasonable period of time established, or if the Party complained against expresses in writing that it will not implement the recommendations, or if no measure taken to comply exists, and the Parties fail to reach an agreement on compensation within 20 days after entering into negotiations for compensation, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. Compensation and suspension of concessions or other obligations are temporary measures available in the event that the recommendations and determinations are not implemented within the reasonable period of time. However, neither compensation nor suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with this Agreement. Compensation shall be consistent with this Agreement.

3. In considering concessions or other obligations to suspend:

- (a) the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors that affected by the measure that the panel has found to be inconsistent with the obligations derived of 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 concession or other obligations in other sectors.

4. The level of suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.

5. If the Party complained against considers that the level of suspension of concessions or other obligations is not equivalent to the nullification or impairment, it may request in writing to the original panel. On the written request of the Party complained against, the original panel shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 4. If the panel cannot be established with its original panelists, the proceeding set out in Article 20.6 shall be applied.

6. The panel shall present its determination within 60 days after the date of receipt of the request, or if the panel cannot be established with its original panelists, from the date on which the last panelist is appointed.

7. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the panel's determination pursuant to this Article.

Article 20.16: Post Suspension

1. Without prejudice to the procedure in Article 20.15, if the Party complained against considers that it has eliminated the non-conformity that the panel has found, it may provide a written notice to the complaining Party with description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The panel shall issue its report within 60 days after the referral of the matter.

3. If the panel determines that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 20.17: Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 20-A
RULES OF PROCEDURE

Application

1. The following rules of procedures are established pursuant to Article 20.9 (Rules of Procedure) and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For the purposes of this Chapter and this Annex:

adviser means a person retained by a Party to advise or assist that Party in connection with the panel proceeding;

assistant means a person who, under the terms of appointment of a panelist, conducts research or provides support for the panelist;

complaining Party means a Party that requests the establishment of a panel under Article 20.6 (Establishment of Panel);

day means a calendar day

deliver means to deliver on a carrier medium, by electronic transmission or in paper;

document includes any written matter submitted in the course of the panel proceeding, whether in paper or electronic form;

panel means a panel established under Article 20.6 (Establishment of Panel);

panelist means a member of the panel established under Article 20.6 (Establishment of Panel);

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 20.6 (Establishment of Panel);

3. Any reference made in the Rules of Procedure to an Article is a reference to the appropriate Article in this Chapter.

Logistical Administration

4. The Party complained against shall be in charge of the logistical administration of dispute settlement procedures, in particular the organization of hearings, unless the Parties otherwise agree.

Notifications

5. The Parties and the panel shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram 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 all written submissions to the other Party and to each of the panelists during the course of the dispute settlement proceedings. A copy of the document shall be also provided in electronic format.

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 Commerce of China, 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 China, the document may be delivered 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 deem appropriate, including the remuneration and expenses that shall be paid to the panelists.

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 delivery of the complaining Party's first written submission, unless the panel otherwise decides.

Operation of Panels

13. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.
14. Unless the Parties otherwise agree, 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, interpreters, or translators 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 the report shall remain the exclusive responsibility of the panel and must not be delegated.
17. Where a procedural question arises that is not covered by the provisions of this Agreement, a panel may adopt an appropriate procedure that is compatible with the Agreement.

Hearings

18. The chair of the panel shall fix the date, time, and venue of the hearing after consultation with the Parties and the other panelists. The chair shall notify the Parties in writing of those determined date, time, and venue of the hearing. Unless one of the Parties disagrees, the panel may decide not to convene a hearing.
19. Unless the Parties otherwise agree, the hearings shall be held in the territory of the Party complained against.
20. The panel may convene additional hearings if the Parties so agree.
21. All panelists shall be present during the entirety of any hearing.
22. 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 to the panel.

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

24. The panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

Supplementary Written Submissions

25. 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.

Confidentiality

26. 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

27. The panel shall not meet or contact a Party in the absence of the other Party. No Party may contact any panelist in relation to the dispute in the absence of the other Party or the other panelists.

28. No panelist may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other panelists.

Computation of Time

29. 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.

30. 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

31. Unless the Parties otherwise agree, the working language for the dispute settlement proceedings shall be English.

ANNEX 20-B
CODE OF CONDUCT FOR PANELISTS AND MEDIATORS

Definitions

1. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of a member of the panel, conducts research or provides support for the member;

mediator means a person who conducts a mediation procedure in accordance with Article 20.5 (Good Offices, Conciliation or Mediation);

panelist means a member of a panel established under Article 20.6 (Establishment of Panel);

proceeding, unless otherwise specified, means a panel proceeding under this Chapter; and

staff, in respect of member, means persons under the direction and control of the panelist, other than assistants.

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved.

Disclosure Obligations

3. A panelist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding by informing the Joint Commission, in writing, for consideration by the Parties.

4. A panelist shall only communicate matters concerning actual or potential violations of this Annex to the Joint Commission for consideration by the Parties.

Duties of Panelists

5. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. A panelist shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
7. A panelist shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with this Annex.
8. A panelist shall not engage in *ex parte* contacts concerning the proceeding.

Independence and Impartiality of Panelists

9. A panelist must be independent and impartial and avoid creating an appearance of impropriety or bias.
10. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
11. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid actions that may create the impression that others are in a special position to influence him or her.

Confidentiality

12. A panelist shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
13. A panelist shall not disclose a panel ruling or parts thereof prior to its publication in accordance with this Agreement.
14. A panelist shall not at any time disclose the deliberations of a panel or any panelist's view.

Mediators

15. The provisions described in the Annex 20-B shall apply, *mutatis mutandis*, to mediators.