

CHAPTER TWENTY-ONE

DISPUTE SETTLEMENT

Section A Dispute Settlement

Article 21.1: Cooperation

The Parties shall endeavour at all times 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 a matter that may affect its operation.

Article 21.2: Scope and Coverage

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Section 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 otherwise fails to carry out its obligations under this Agreement; or
- (c) there is nullification or impairment in the sense of Annex 21-A.

Article 21.3: Choice of Forum

1. Subject to paragraph 2, disputes regarding a matter arising under both this Agreement and another trade agreement to which both Parties are party, including the WTO Agreement, may be settled in either forum at the discretion of the complaining Party.

2. Notwithstanding paragraph 1, if a Party complained against claims that its measures are subject to Article 1.3 (Relation to Multilateral Environmental Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely u

(b) 10 days of the date of

5. Within 60 days after the Receipt Date or 15 days in cases of motor vehicles, the Parties shall endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties are unable to agree on the chair within this time period, within an additional period of seven days, or within an additional period of four days in cases of motor vehicles, the chair shall be selected by lot from the candidates proposed by each Party in accordance with paragraph 3.

6. If a panellist appointed by a Party is unable to serve, withdraws or is removed, a replacement shall be appointed by that Party within 30 days, or within 10 days in cases of motor vehicles, failing which the replacement shall be appointed in accordance with paragraph 4. If the chair is unable to serve, withdraws or is removed, the Parties shall promptly agree on the appointment of a replacement, failing which the replacement shall be appointed by a selection by lot from among the remaining candidates previously proposed by each Party to serve as the chair in accordance with paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates satisfying the criteria set out in paragraph 3 and the chair shall be selected by lot from among them. In any such case, any time period applicable to the proceeding is suspended for a period beginning on the date the panellist or the chair is unable to serve, withdraws or is removed and ending on the date the replacement is selected.

7. Each panellist shall:

- (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or in the settlement 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;
- (d) not be employed by either Party; and
- (e) comply with the Code of Conduct for Members of Panels set out in Annex 21-B.

8. If a Party believes that a panellist does not satisfy a qualification set out in paragraph 7 or has failed to comply with the Code of Conduct for Members of Panels set out in Annex 21-B, the Parties shall consult and, if they agree, the panellist shall be removed.

Article 21.8: Rules of Procedure

1. A panel established under this Chapter shall follow the Model Rules of Procedure set out in Annex 21-C. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

2. Unless the Parties agree otherwise, the rules of procedure of a panel shall ensure:

- (a) that each Party has the opportunity to provide initial and rebuttal written submissions;
- (b) subject to subparagraph (g), that a Party may make available to the public

3. Unless the Parties agree otherwise, the terms of reference of the panel shall be:

provisions of this Agreement, the matter referred to in the written notification of the panel establishment, and to make findings, determinations,
4. If a complaining Party wishes to argue that there is nullification or impairment of benefits in the sense of Annex 21-A, the terms of reference shall so indicate.
5. If a Party wishes the panel to make findings as to the degree of adverse effects of any measure determined to be inconsistent with the obligations of this Agreement or as to the degree of nullification or impairment in the sense of Annex 21-A, the terms of reference shall so indicate.
6.

information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to any terms and conditions agreed to by the Parties.
7. The panel may rule on its own jurisdiction.
8. Findings, determinations, and recommendations of the panel in the sense of Article 21.9 shall be made by a majority of its members. Panellists may provide separate opinions on matters not unanimously agreed.
9. The expenses of a panel proceeding under this Section, including the remuneration of its members, shall be borne by the Parties in equal shares.

Article 21.9: Panel Reports

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Section.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a)

Article 21.12: Compliance Review

If there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of a panel established under Article 21.6, a Party may refer the matter to a dispute settlement panel (hereinafter referred to as the _____) through written notification to the other Party. The compliance panel is established upon receipt by the other Party of the written notification.² In the written notification of compliance panel establishment, the Party shall identify the matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. A compliance panel established under this paragraph shall be composed, to the extent possible, of the panellists who served on the original panel established under Article 21.6. If an original panellist is unable to serve on the compliance panel established under this paragraph, a replacement panellist shall be appointed in accordance with Article 21.7, applied *mutatis mutandis*. Articles 21.8 and 21.9 apply to procedures adopted and reports issued by a compliance panel. Where a complaining Party has suspended benefits in accordance with Article 21.11, it may continue to suspend such benefits during proceedings under this paragraph. A compliance panel may include in its final report a recommendation that such suspension be terminated or that the amount of benefits suspended be modified.

Section B Domestic Proceedings and Private Commercial Dispute Settlement

Article 21.13: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in a domestic judicial or administrative proceeding of a Party that either 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 Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

²

compliance panel established under this Article shall take into account relevant jurisprudence under the Dispute Settlement Understanding.

Annex 21-A

Nullification and Impairment

Annex 21-B

Code of Conduct for Members of Panels

Definitions

1. For the purposes of this Annex:
 - (a) **panellist** means a member of a panel established under Article 21.6;
 - (b) **candidate** means a natural person who is under consideration for selection as a member of a panel under Article 21.7;
 - (c) **assistant** means a natural person who, under the terms of appointment of a panellist, conducts research or provides assistance to the panellist;
 - (d) **proceeding**, unless otherwise specified, means a panel proceeding under this Chapter; and
 - (e) **staff**, in respect of a panellist, means natural persons under the direction and control of the panellist, other than assistants.

Responsibilities to the Process

2. Every candidate and panellist 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. Former panellists must comply with the obligations established in paragraphs 15 through 18.

Disclosure Obligations

3. Prior to confirmation of his or her selection as a panellist under this Agreement, a candidate 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. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

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

5.

3. A reference made in these rules of procedure to an Article is a reference to the appropriate Article in this Chapter.

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 organisation of hearings, unless the Parties decide otherwise.

Notifications

5. The Parties and the panel shall transmit a 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 written submissions to the other Party and to each of the panellists. A copy of the document shall also be provided in electronic format.

7. All notifications shall be addressed to the Ministry of Trade, Industry and Energy of Korea, or its successor and to the Department of Foreign Affairs, Trade and

Initial Submissions

12. The complaining Party shall deliver its initial written submission no later than 20 days after the appointment of the three panellists. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

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 transmissions, or computer links.

15. Only panellists may take part in the deliberations of the panel, but the panel may permit its assistants to be present at its deliberations.

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 this Chapter, 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 date and time of the hearing in consultation with the Parties and the other members of the panel, and confirm this information in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public.

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 panellists 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, translators, and court reporters; and
 - (d) panellists

rebuttal argument

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

27. The panel may direct questions to either Party at any time during the hearing.

28. 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.

29. Each Party may deliver a supplementary written submission concerning a matter that arises during the hearing within 10 days of the date of the hearing.

Questions in Writing

30. 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.

31. A Party shall also provide a copy of its written submissions to the other Party. Each Party shall be given the opportunity to provide written comments

Confidentiality

32. The Parties and their advisers shall maintain the confidentiality of the panel hearings if the hearings are held in closed session, in accordance with paragraph 25. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the panel which that Party has designated as confidential. If a Party submits a confidential version of its written submissions to the panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its

Ex Parte Contacts

33. The panel shall not meet with or contact a Party in the absence of the other Party, nor shall a Party communicate with the panel or individual panellists without notifying the other Party.

34. Subject to paragraph 13, no member of the panel may discuss an aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other panellists.

Amicus Curiae Submissions

35. Unless the Parties decide otherwise, within three days of the date of the appointment of the three panellists, 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 appointment of the three panellists, 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.

36. 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.

37. The panel shall list in its ruling all the submissions it has received that conform to paragraphs 35 and 36. 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 35 and 36 shall be submitted to the Parties for their comments.

Cases of Urgency

38. In cases of urgency referred to in Article 21.6.1(b), the panel shall adjust, as appropriate, the time limits referred to in this Annex.

Translation and Interpretation

39. During the consultations referred to in Article 21.4, and no later than the meeting referred to in paragraph 10, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.

