

CHAPTER TWENTY-TWO
INSTITUTIONAL PROVISIONS AND DISPUTE SETTLEMENT

Section A: Institutional Provisions and Administration

ARTICLE 22.1: CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.
2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

ARTICLE 22.2: JOINT COMMITTEE

1. The Parties hereby establish a Joint Committee comprising officials of each Party, which shall be co-chaired by the United States Trade Representative and the Minister for Trade of Korea, or their respective designees.
2. The Joint Committee shall:
 - (a) supervise the implementation of this Agreement;
 - (b) supervise the work of all committees, working groups, and other bodies established under this Agreement;
 - (c) consider ways to further enhance trade relations between the Parties;
 - (d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;
 - (e) establish the amount of remuneration and expenses that will be paid to panelists; and
 - (f) consider any other matter that may affect the operation of this Agreement.
3. The Joint Committee may:
 - (a) establish and delegate responsibilities to *ad hoc* and standing committees, working groups, or other bodies;
 - (b) seek the advice of non-governmental persons or groups;
 - (c) consider amendments to this Agreement or make modifications to the

commitments therein;

- (d) issue interpretations of the provisions of this Agreement, including as provided in Articles 11.22 (Governing Law) and 11.23 (Interpretation of Annexes);
- (e) adopt its own rules of procedure; and
- (f) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Committee shall convene:

- (a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and
- (b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as the Parties may agree.

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee or any body created under paragraph 3(a) on the same basis as the Party providing the information.

6. Recognizing the importance of transparency and openness, the Parties affirm their respective practices of considering the views of members of the public in order to draw on a broad range of perspectives in the implementation of this Agreement.

7. All decisions of the Joint Committee and all committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties.

Section B: Dispute Settlement Proceedings

ARTICLE 22.3: 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 22.4: SCOPE OF APPLICATION

Except as otherwise provided in this Agreement or as the Parties otherwise agree, this Section 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 Two (National Treatment and Market Access for Goods), Three (Agriculture), Four (Textiles and Apparel), Six (Rules of Origin and Origin Procedures), Twelve (Cross-Border Trade in Services), Seventeen (Government Procurement), or Eighteen (Intellectual Property Rights)¹ is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this subparagraph with respect to a benefit under Chapter Twelve (Cross-Border Trade in Services) or Eighteen (Intellectual Property Rights) if the measure is subject to an exception under Article 23.1 (General Exceptions).

ARTICLE 22.5: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 22.9. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

ARTICLE 22.6: CHOICE OF FORUM

1. Where a dispute regarding any 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 22.7: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 22.4 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. Promptly after requesting or receiving a request for consultations pursuant to this

¹ Neither Party will invoke subparagraph (c) with respect to a measure affecting benefits under Chapter Eighteen (Intellectual Property Rights) during any period for which WTO Members have agreed not to initiate complaints of the type provided for under subparagraph 1(b) of Article XXIII of GATT 1994 under the TRIPS Agreement.

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.

3. 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.

4. A Party may request the other Party to make available during consultations under this Article personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

ARTICLE 22.8: 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 22.7, or 20 days where the matter concerns perishable goods,² either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 19.7 (Labor Consultations) or 20.9 (Environmental Consultations and Panel Procedure), either Party may also refer the matter to the Joint Committee by delivering written notification to the other Party.

3. The Joint Committee shall promptly meet and endeavor to resolve the matter.

ARTICLE 22.9: ESTABLISHMENT OF PANEL³

1. If the Joint Committee has not resolved a matter within 60 days after delivery of a notification described in Article 22.8, 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 or other matter at issue and a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

² For greater certainty, **perishable goods** means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

³ Article 13.18 (Dispute Settlement) contains additional provisions relating to the establishment of a panel for matters arising under Chapter Thirteen (Financial Services).

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) Each Party shall propose one panelist within 28 days after the matter has been referred to a panel. If a Party fails to propose 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 3 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 28 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 3 who are not nationals of either Party.⁴
- (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.

3. Within 180 days of the date this Agreement enters into force, 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 at least six nationals of each Party and at least eight individuals who are not nationals of either Party. 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

⁴ 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 22.13 or 22.14, 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.

contingent list is no longer available to serve.

4. Individuals appointed to a panel pursuant to paragraph 2 or to the contingent list pursuant to paragraph 3 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.

In addition, in any dispute arising under Chapter Nineteen (Labor) or Twenty (Environment), panelists other than those chosen by lot from the contingent list shall have expertise or experience relevant to the subject matter under dispute. Paragraph 2(c) shall not apply to disputes arising under Chapter Nineteen or Twenty.

ARTICLE 22.10: RULES OF PROCEDURE

1. By the date this Agreement enters into force, the Parties shall establish model rules of procedure, 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) an opportunity for each Party to provide initial and rebuttal submissions;
- (d) that each Party's written submissions, written versions of its oral statements, and written responses to a request or questions from the panel shall be made available to the public within seven days after they are submitted, subject to subparagraph (f);
- (e) that the panel shall consider requests from non-governmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties; and
- (f) the protection of confidential information.

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 otherwise agree within 20 days from the date 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 paragraphs 1 and 2 of Article 22.11, and to present the written reports referred to in paragraphs 1 and 4 of Article 22.11.”

4. On 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 and subject to such terms and conditions as the Parties may agree.

ARTICLE 22.11: PANEL REPORT

1. Unless the Parties otherwise agree, the panel shall, within 180 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;
- (ii) whether a Party 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 22.4(c); 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. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, which are reflected in Articles 31 through 33 of the *Vienna Convention on the Law of Treaties* (1969). The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

3. 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.

4. 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.

ARTICLE 22.12: 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 or that a Party's measure is causing nullification or impairment in the sense of Article 22.4(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 22.13: NON-IMPLEMENTATION

1. If a panel has made a determination of the type described in Article 22.12.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 22.12.1 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 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. Subject to paragraph 5, the complaining Party may begin suspending benefits 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. 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 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 benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 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.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Korean currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under this Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

ARTICLE 22.14: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 22.13.3, 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 90 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, and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 22.13.5.

ARTICLE 22.15: FIVE-YEAR REVIEW

The Joint Committee shall review the operation and effectiveness of Article 22.13 not later than five years after the date this Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.

Section C: Domestic Proceedings and Private Commercial Dispute Settlement

ARTICLE 22.16: PRIVATE RIGHTS

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

ARTICLE 22.17: 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 established under Article 1.1 (Establishment of a 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*, done at New York, June 10, 1958.

ANNEX 22-A
ALTERNATIVE PROCEDURES FOR DISPUTES CONCERNING MOTOR VEHICLES

With respect to any matter described in Article 22.4 that relates to motor vehicles, a Party may initiate the dispute settlement procedures set out in this Annex in lieu of the procedures provided for in Articles 22.7 through 22.13.

Unless the Parties otherwise agree:

1. The complaining Party may refer the matter to the Joint Committee by delivering written notification to the Party complained against. The Joint Committee shall promptly meet and endeavor to resolve the matter.
2. If the Joint Committee has not resolved the matter within 30 days after delivery of the notification described in paragraph 1, the complaining Party may notify the Party complained against in writing that it is referring the matter to a dispute settlement panel.
3. Within seven days after the complaining Party delivers written notice under paragraph 2, the Parties shall meet and select by lot from the contingent list established in Article 22.9.3 one national of each Party to serve as panelists and one person who is not a national of either Party to serve as chair of the panel. If an individual selected by lot is unable to serve on the panel, the Parties shall promptly meet to select a replacement by lot. The panel shall be deemed to be established once panel selection is complete.
4. The procedures provided for in Articles 22.10 and 22.11 shall apply to panel proceedings under this Annex, except that:
 - (a) the panel shall also make a determination as to whether the non-conformity or the nullification or impairment, if any, has materially affected the sale, offering for sale, purchase, transportation, distribution, or use of originating goods of the complaining Party;
 - (b) the panel shall present an initial report on the matter to the Parties within 120 days after the panel is established;
 - (c) each Party may submit written comments to the panel on its initial report within seven days of the presentation of the report; and
 - (d) the panel shall present its final report within 21 days after it presents its initial report.
5. If, in its final report, the panel determines that:

- (a) the Party complained against has not conformed with its obligations under this Agreement or that its measure is causing nullification or impairment in the sense of Article 22.4(c); and
- (b) the non-conformity or the nullification or impairment that the panel has found has materially affected the sale, offering for sale, purchase, transportation, distribution, or use of originating goods of the complaining Party,⁵

the complaining Party may increase the rate of customs duty on originating goods under tariff heading 8703 to a level not to exceed its prevailing most-favored-nation applied rate of duty on those goods.

- 6. If the complaining Party has increased duties pursuant to paragraph 5, it shall rescind the increased duties when the Party complained against has eliminated the non-conformity or the nullification or impairment.
- 7. The Party complained against may deliver a request in writing to the complaining Party to reconvene the panel if it considers that the complaining Party has failed to rescind the increased duties in conformity with paragraph 6. 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. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly rescind the increased duties.
- 8. The procedures set forth in this Annex shall terminate ten years after the date this Agreement enters into force, provided that no panel established under this Annex during that period has determined that a Party has failed to conform with its obligations under this Agreement or that a Party's measure has caused nullification or impairment in the sense of Article 22.4(c).

⁵ If the panel determines that the non-conformity or the nullification or impairment that the panel has found has not materially affected the sale, offering for sale, purchase, transportation, distribution, or use of originating goods of the complaining Party, the procedures provided for in Articles 22.12 and 22.13 shall apply.

ANNEX 22-B
COMMITTEE ON OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA

1. Recognizing the Republic of Korea's constitutional mandate and security interests, and the corresponding interests of the United States, the Parties shall establish a Committee on Outward Processing Zones on the Korean Peninsula. The Committee shall review whether conditions on the Korean Peninsula are appropriate for further economic development through the establishment and development of outward processing zones.
2. The Committee shall be comprised of officials of each Party. The Committee shall meet on the first anniversary of the entry into force of the Agreement and at least once annually thereafter, or at any time as mutually agreed.
3. The Committee shall identify geographic areas that may be designated outward processing zones. The Committee shall establish criteria that must be met before goods from any outward processing zone may be considered originating goods for the purposes of this Agreement, including but not limited to: progress toward the denuclearization of the Korean Peninsula; the impact of the outward processing zones on intra-Korean relations; and the environmental standards, labor standards and practices, wage practices and business and management practices prevailing in the outward processing zone, with due reference to the situation prevailing elsewhere in the local economy and the relevant international norms.
4. The Committee shall determine whether any such outward processing zone has met the criteria established by the Committee. The Committee shall also establish a maximum threshold for the value of the total input of the originating final good that may be added within the geographic area of the outward processing zone.
5. Decisions reached by the unified consent of the Committee shall be recommended to the Parties, which shall be responsible for seeking legislative approval for any amendments to the Agreement with respect to outward processing zones.

ANNEX 22-C
FISHERIES COMMITTEE

1. The Parties hereby establish a Fisheries Committee, comprising representatives of each Party, to promote cooperation between the Parties regarding fisheries matters.
2. The Committee shall discuss:
 - (a) each Party's policies on commercial activities within its Exclusive Economic Zones;
 - (b) cooperation on scientific research on fisheries matters of mutual concern; and
 - (c) global fisheries issues of mutual concern.
3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Committee of the results of each meeting.