

7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

ARTICLE 86

The Secretariat

1. The Parties hereby establish a Secretariat of this Agreement, comprising the competent organs referred to in Annex XVI.

2. All communications to or by a Party shall be sent through the respective competent organs unless otherwise provided for in this Agreement.

CHAPTER X

DISPUTE SETTLEMENT

ARTICLE 87

Scope

1. This Chapter shall apply with respect to the avoidance or the settlement of all disputes arising from this Agreement between one or several EFTA States and Chile.

2. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

3. This Chapter shall not apply to Articles 14(2), 16(1), 17(1), 18(3), 20, 24(1) and 81(1) and (2).

ARTICLE 88

Choice of forum

1. Disputes on the same matter arising under both this Agreement and the WTO Agreement, or any agreement negotiated thereunder, to which the Parties are party, may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.

2. Once dispute settlement procedures have been initiated under this Agreement pursuant to Article 91 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party or Parties, that Party shall notify all other Parties of its intention.

ARTICLE 89

Good offices, conciliation or mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties involved so agree. They may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

ARTICLE 90

Consultations

1. A Party may request in writing consultations with another Party whenever it considers that a measure applied by that Party is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired by such measure. The Party requesting consultations shall at the same time notify the other Parties in writing thereof. Consultations shall take place before the Joint Committee unless the Party or Parties making or receiving the request for consultations disagree.

2. Consultations shall be held within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable agricultural goods, shall commence within 15 days from the receipt of the request for consultations.

3. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure is inconsistent with, or may impair the benefit accruing to them under this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

4. The consultations shall be confidential and without prejudice to the rights of the Parties involved in any further proceedings.

5. The Parties involved in the consultations shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 91

Establishment of arbitration panel

1. If the matter has not been resolved within 60 days, or 30 days in relation to a matter of urgency, after the date of receipt of the request for consultations, it may be referred to arbitration by one or more of the Parties involved by means of a written notification addressed to the Party or Parties complained against. A copy of this notification shall also be communicated to all Parties so that each Party may determine whether to participate in the dispute.

2. Where more than one Party requests the establishment of an arbitration panel relating to the same matter, a single arbitration panel should be established to examine these complaints whenever feasible.

3. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

4. A Party to this Agreement which is not a Party to the dispute, on delivery of a written notice to the disputing Parties, shall be entitled to make written submissions to the arbitration panel, receive written submissions of the disputing Parties, attend all hearings and make oral submissions.

ARTICLE 92

Arbitration panel

1. The arbitration panel shall comprise three members.

2. In the written notification pursuant to Article 91, the Party or the Parties referring the dispute to arbitration shall designate one member of the arbitration panel.

3. Within 15 days of the receipt of the notification referred to in paragraph 2, the Party or Parties to which it was addressed to shall designate one member of the arbitration panel.

4. The Parties to the dispute shall agree on the appointment of the third arbitrator within 15 days of the appointment of the second arbitrator. The member thus appointed shall chair the arbitration panel.

5. If all 3 members have not been designated or appointed within 30 days from the date of receipt of the notification referred to in paragraph 2, the necessary designations

shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further 30 days.

6. The Chair of the arbitration panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed or previously have been employed by any of the Parties, nor have dealt with the case in any capacity.

7. If an arbitrator dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is selected.

8. The date of establishment of the arbitration panel shall be the date on which the Chair is appointed.

ARTICLE 93

Procedures of the arbitration panel

1. Unless the Parties to the dispute agree otherwise, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure set out at Annex XVII.

2. Unless the Parties to the dispute otherwise agree within 10 days from the date of delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 91 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

3. At the request of a Party to the dispute or on its own initiative, the arbitration panel may seek scientific information and technical advice from experts as it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.

4. The arbitration panel shall make its ruling based on the provisions of this Agreement, in particular in the light of its objectives as set out in Article 2, applied and interpreted in accordance with the rules of interpretation of public international law.

5. Decisions of the arbitration panel shall be taken by a majority of its members. Arbitrators may furnish separate opinions on matters not unanimously agreed. No arbitration panel may disclose which arbitrators are associated with majority or minority opinions.

6. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARTICLE 94

Ruling

1. The arbitration panel shall within 90 days from the date of the establishment of the arbitration panel present to the Parties to the dispute its ruling.
2. The arbitration panel shall base its ruling on the submissions and arguments of the Parties to the dispute and on any scientific information and technical advice pursuant to Article 93(3).
3. Unless the Parties to the dispute decide otherwise, the ruling shall be published 15 days after it is presented to them.

ARTICLE 95

Termination of arbitration panel proceedings

A complaining Party may withdraw its complaint at any time before the ruling has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

ARTICLE 96

Implementation of arbitration panel rulings

1. The ruling shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures necessary to comply with the ruling referred to in Article 94.
2. The Parties to the dispute shall endeavour to agree on the specific measures that are required for complying with the ruling.
3. The Party complained against shall notify the other Party within 30 days after the ruling has been transmitted to the Parties to the dispute:
 - (a) the specific measures required for complying with the ruling;
 - (b) the reasonable period of time to do so; and
 - (c) a concrete proposal of a temporary compensation until the full implementation of the specific measures required for compliance with the ruling.

4. In case of disagreement between the Parties to the dispute on the content of such notification, the complaining Party may request the original arbitration panel to rule on whether the proposed measures referred to under paragraph 3(a) are in compliance with the ruling, on the duration of the period of time and on whether the compensation proposal is manifestly disproportionate. The ruling shall be given within 45 days after that request.

5. The Party or Parties concerned shall notify to the other Party or Parties to the dispute and the Joint Committee the measures adopted in order to implement the ruling before the expiry of the reasonable period of time determined in accordance with paragraph 4. Upon that notification, any Party to the dispute may request the original arbitration panel to rule on the conformity of those measures with the ruling. The ruling of the arbitration panel shall be given within 45 days from that request.

6. If the Party or Parties concerned fails to notify the implementing measures before the expiry of the reasonable period of time determined in accordance with paragraph 4, or if the arbitration panel rules that the implementing measures notified by the Party or Parties concerned are not in compliance with the ruling, such Party or Parties shall, if so requested by the complaining Party or Parties, enter into consultations with a view to agree on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party or Parties shall be entitled to suspend only the application of benefits granted under this Agreement equivalent to those affected by the measure found to be inconsistent with, or to impair benefits under, this Agreement.

7. In considering what benefits to suspend, the complaining Party or Parties should first seek to suspend benefits in the same sector¹² or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with, or to impair benefits under, this Agreement. The complaining Party or Parties that consider it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

8. The complaining Party or Parties shall notify the other Party or Parties of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties to the dispute may request the original arbitration panel to rule on whether the benefits which the complaining Party or Parties intend to suspend are equivalent to those affected by the measure found to be inconsistent with, or to impair benefits under, this Agreement, and whether the proposed suspension is in accordance with paragraphs 6 and 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party or Parties until the measure found to be inconsistent with, or to impair benefits under, this Agreement has been withdrawn or amended so as to bring it

¹² For the purpose of this Article, with respect to goods 'sector' shall mean goods classified in Chapters 1 to 97 of the HS.

into conformity with this Agreement, or the Parties to the dispute have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties to the dispute, the original arbitration panel shall decide on the conformity with the ruling of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

11. The rulings provided for in this Article shall be binding.

ARTICLE 97

Other provisions

1. Any time period mentioned in this Chapter may be extended by mutual agreement of the Parties involved.

2. Hearings of the arbitration panels shall be closed to the public, unless the Parties decide otherwise.

CHAPTER XI

GENERAL EXCEPTIONS

ARTICLE 98

Balance of payments difficulties

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. Such a measure shall be in accordance with the conditions established in the WTO Agreements and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.