

CHAPTER 8 DISPUTE SETTLEMENT

ARTICLE 43

Consultations

1. In case of any divergence with respect to the interpretation, implementation and application of this Agreement, the Parties shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory solution.
2. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing thereof and supply all relevant information.
3. The consultations shall take place in the Joint Committee if any of the Parties so requests within 20 days from the receipt of the notification referred to in paragraph 2, with a view to finding a commonly acceptable solution. If the Party to which a request is made in accordance with paragraph 2 does not reply within ten days or does not enter into consultations within 20 days after receipt of the request, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 44⁸.

ARTICLE 44

Arbitration

1. Disputes between the Parties relating to the interpretation of rights and obligations under this Agreement, which have not been settled through direct consultations or in the Joint Committee within 60 days from the date of the receipt of the request for consultations, may be referred to arbitration by the complaining Party by means of a written notification addressed to the Party complained against. A copy of this notification shall be communicated to all other Parties so that each of those Parties 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 may, whenever feasible, be established to consider such disputes⁹.

⁸ As amended by the *Protocol amending the Free Trade Agreement between the EFTA States and the Republic of Serbia*, signed on 20 May 2015 and entered into force on 1 February 2017.

⁹ For the purpose of this Chapter, the terms “Party” and “party to the dispute” are used regardless of whether two or more Parties are involved in a dispute.

3. A Party that is not a party to the dispute shall be entitled, on delivery of a written request to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

4. The arbitration panel shall comprise three members. Within 25 days of the receipt of the notification referred to in paragraph 1, each party to the dispute shall appoint one member, unless a single arbitration panel is established in accordance with paragraph 2. In the latter case, the EFTA States shall appoint one member and Serbia shall appoint one member. The two members already appointed shall agree on the appointment of the third member within 30 days of the appointment of the second member. The third member shall not be a national of the Parties, nor permanently reside in the territory of any such Party. The member thus appointed shall be the President of the arbitration panel.

5. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in light of the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law. The award of the arbitration panel shall be final and binding upon the parties to the dispute.

6. The award of the arbitration panel shall be rendered within 180 days of the date on which the President of the panel was appointed. This period can be extended by a maximum of 90 days, if the parties to the dispute so agree.

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

8. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration (PCA), effective 20 October 1992, shall apply.

ARTICLE 45

Implementation of the Award

1. The Party concerned shall promptly comply with the award of the arbitration panel. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 30 days from the date of the award, either party to the dispute may, within ten days from the expiration of such period, request the original arbitration panel to determine the length of the reasonable period of time.

2. The Party concerned shall notify the other party to the dispute of the measure adopted in order to implement the award.

3. If the Party concerned fails to comply with the award within a reasonable period of time and the parties to the dispute have not agreed on any compensation, the other party to the dispute may, until the award has been properly implemented or the dispute has been otherwise resolved, and subject to a prior notification of 30 days, suspend the application of benefits granted under this Agreement, but only equivalent to those affected by the measure that the arbitration panel has found to violate this Agreement.

4. Any dispute regarding the implementation of the award or the notified suspension shall be decided by the arbitration panel upon request of either party to the dispute before compensation can be sought or suspension of benefits can be applied. The arbitration panel may also rule on the conformity with the award of any implementing measures adopted after the suspension of benefits and whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel under this paragraph shall normally be given within 45 days from the date of receipt of the request.

ARTICLE 46

Non-Application

This Chapter shall not apply to Articles 12 and 13, paragraph 1 of Article 17 and paragraph 1 of Article 20, where the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes may be applicable.