

IX DISPUTE SETTLEMENT

ARTICLE 56

Scope and Coverage

1. The provisions of this Chapter shall apply with respect to the avoidance or the settlement of all disputes arising from this Agreement between any one or more of the EFTA States and Singapore.
2. 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.
3. Before a Party initiates a dispute settlement proceedings under the WTO Agreement against another Party or Parties or, vice-versa, that Party shall notify all other Parties of its intention.

ARTICLE 57

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 Parties' rights in any other proceedings.

ARTICLE 58

Consultations

1. 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.
2. Any one or more of the EFTA States may request in writing consultations with Singapore, and vice-versa whenever a Party considers that a measure applied by the Party or Parties to which the request is made is inconsistent with this Agreement or that any

benefit accruing to it directly or indirectly under this Agreement is impaired by such measure.¹⁴ 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.

3. 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.

4. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure or other matter might affect the operation of 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.

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

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

ARTICLE 59

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.

¹⁴ The word “such” refers to “a measure applied by the Party or Parties to which the request is made”.

ARTICLE 60

Arbitration Panel

1. The arbitration panel shall comprise three members.
2. In the written notification pursuant to Article 59, 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 30 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 45 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 World Trade Organization 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 61

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 that shall be adopted at the first meeting of the Joint Committee. Pending the adoption of such rules, the arbitration panel shall regulate its own procedures, unless the Parties to the dispute agree otherwise.¹⁵

¹⁵ Model rules of procedure were adopted by Joint Committee Decision No. 2 of 2004 (26 May 2004).

2. Notwithstanding paragraph 1, for all arbitration panel proceedings the procedures shall ensure that:

- (a) the Parties to the dispute have the right to at least one hearing before the arbitration panel as well as the opportunity to provide initial and rebuttal written submissions;
- (b) the Parties to the dispute shall be invited to all the hearings held by the arbitration panel;
- (c) all submissions and comments made to the arbitration panel be available to the Parties to the dispute, subject to any requirements on confidentiality; and
- (d) hearings, deliberations and initial report and all written submissions to and communications with the arbitration panel be confidential.

3. Unless the Parties to the dispute otherwise agree within 20 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 59 and to make findings of law and fact together with the reasons therefore as well as recommendations, if any, for the resolution of the dispute."

4. 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.

5. The arbitration panel shall make its award based on the provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law.

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

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.

ARTICLE 62

Initial Report

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 an initial report.
2. The arbitration panel shall base its report on the submissions and arguments of the Parties to the dispute and on any scientific information and technical advice pursuant to paragraph 4 of Article 61.
3. A Party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days of presentation of the report.
4. In such an event, and after considering such written comments, the arbitration panel, on its own initiative or at the request of any of the Parties to the dispute, may:
 - (a) request the views of any of the Parties to the dispute;
 - (b) reconsider its report; and
 - (c) make any further examination that it considers appropriate.

ARTICLE 63

Final Report

1. The arbitration panel shall present to the Parties to the dispute a final report, containing the matters referred to in paragraph 2 of Article 62, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report.
2. Unless the Parties to the dispute decide otherwise, the final report shall be published 15 days after it is presented to them.

ARTICLE 64

Termination of Arbitration Panel Proceedings

A complaining Party may withdraw its complaint at any time before the initial report 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 65

Implementation of Arbitration Panel Reports

1. The final report shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures involved in carrying out the final report referred to in Article 63.
2. The Party or Parties concerned shall inform the other Party or Parties to the dispute within 30 days after the final report has been issued of its intentions in respect of its implementation.
3. The Parties to the dispute shall endeavour to agree on the specific measures that are required for implementing the final report. Wherever possible, the resolution shall be the removal of a measure not conforming to this Agreement, or failing such a resolution, compensation.
4. The Party or Parties concerned shall promptly comply with the final report. 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, any Party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall be given within 15 days from that request.
5. The Party or Parties concerned shall notify to the other Party or Parties to the dispute the measures adopted in order to implement the final report 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 final report. The ruling of the arbitration panel shall be given within 60 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 inconsistent with the final report, 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 violate this Agreement.
7. In considering what benefits to suspend, the complaining Party or Parties should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to violate 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 violate 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 violate this Agreement has been withdrawn or amended so as to bring it 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 rule on the conformity with the final report 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 paragraphs 4, 5, 8 and 10 shall be binding.

ARTICLE 66

Other Provisions

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

X FINAL CLAUSES

ARTICLE 67

Transparency

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings and judicial decisions of general application as well as their respective international agreements that may affect the operation of this Agreement.