

CHAPTER 9

DISPUTE SETTLEMENT

ARTICLE 9.1

Scope and Coverage

1. Unless otherwise provided in this Agreement, this Chapter applies with respect to the settlement of any disputes concerning the interpretation or application of this Agreement.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement, 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. For the purposes of paragraph 2, the complaining Party shall be deemed to have selected the forum when it has requested the establishment of an arbitration panel in accordance with Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes or in accordance with paragraph 1 of Article 9.4 (Establishment of Arbitration Panel).
4. For the purposes of this Chapter, the terms “Party”, “party to the dispute”, “complaining Party” and “Party complained against” can denote one or more Parties.

ARTICLE 9.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may begin and be terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.

ARTICLE 9.3

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 cooperation and consultations to promptly reach a mutually satisfactory solution of any matter raised in accordance with this Article.

2. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply to the request within ten days from the receipt of the request. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise.

3. Consultations shall commence within 30 days from the receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within ten days or does not enter into consultations within 30 days from the receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 9.4 (Establishment of Arbitration Panel).

4. The parties to the dispute shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential 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 to the dispute in any other proceedings.

6. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 9.4

Establishment of Arbitration Panel

1. If the consultations referred to in Article 9.3 (Consultations) fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, from the receipt of the request for consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration process.

2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.

3. An arbitration panel shall be composed of three members. In the written request pursuant to paragraphs 1 and 2, the complaining Party shall appoint one member of the arbitration panel. Within 30 days of the receipt of the request, the Party complained against shall appoint another member of the arbitration panel. The two members shall agree on the appointment of the third member within 30 days of the appointment of the second member. The parties to the dispute shall, within seven days of the appointment

of the third member, approve or disapprove the appointment of that member, who shall, if approved, act as the chairperson of the arbitration panel. The date of establishment of the arbitration panel shall be the date on which the chairperson is approved.

4. If any of the members of the arbitration panel has not been appointed within the deadlines referred to in paragraph 3, a party to the dispute may request the Secretary-General of the Permanent Court of Arbitration (PCA) to appoint any missing members of the arbitration panel within 30 days, in accordance with the Arbitration Rules 2012 of the PCA (Arbitrational Rules), *mutatis mutandis*.

5. Any member of the arbitration panel may be challenged if circumstances give rise to justifiable doubts as to the member's objectivity, reliability, sound judgment or independence. If a party to the dispute does not agree with the challenge or the challenged member of the arbitration panel does not withdraw, the party making the challenge may request the Secretary-General of the PCA to decide whether the challenged arbitrator shall be replaced. In such case, a new arbitrator shall be appointed pursuant to the procedure provided for in the Arbitrational Rules.

6. In the event that the Secretary-General of the PCA is a national of a party to the dispute, a party to the dispute may request the Deputy Secretary-General of the PCA or the officer next in seniority, who is not a national of a party to the dispute, to make the necessary appointments.

7. Any person appointed as a member of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. Additionally, the chairperson shall not be a national of either Party or have his or her usual place of residence in the territory of, nor be employed by, a Party nor have dealt with the dispute at issue in any capacity.

8. Unless the parties to the dispute otherwise agree within 20 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 9.4 (Establishment of Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

9. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel shall be established to examine complaints relating to the same matter.

10. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice 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.

ARTICLE 9.5

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the panel shall be governed by the Arbitrational Rules, *mutatis mutandis*.
2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement interpreted in accordance with the rules of interpretation of public international law.
3. The language of any proceedings shall be English. Unless the Parties otherwise agree, the hearings shall be held in the capital city of the EFTA State complained against where the complaining Party is the Republic of Turkey, or in Ankara, where the complaining Party is an EFTA State. If there are more than one EFTA State complained against, the hearings shall be held in Geneva. The hearings of the arbitration panels shall be closed to the public. The Parties may decide to open the hearings partially or completely to the public.
4. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.
5. All documents or information submitted by a Party to the arbitration panel, shall, at the same time, be transmitted by that Party to the other party to the dispute.
6. The arbitration panel and the Parties shall treat as confidential the information submitted to the arbitration panel which has been designated as confidential by the Party submitting the information.
7. The arbitration panel shall make its decisions, including panel reports, by consensus or by majority vote when consensus cannot be reached. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose which members are associated with majority or minority opinions.

ARTICLE 9.6

Suspension or Termination of Arbitration Panel Proceedings

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.
2. 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.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to the release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

ARTICLE 9.7

Panel Reports

1. The arbitration panel should submit an initial report containing its findings and rulings to the parties to the dispute no later than 90 days from the date of establishment of the arbitration panel. Within 30 days from the receipt of the initial report, a party to the dispute may submit written comments to the arbitration panel. After considering the written comments received from the parties to the dispute on the initial report, the arbitration panel may modify its initial report and make any further examination it considers appropriate. The arbitration panel should present to the parties to the dispute its final report within 180 days from date of establishment of the arbitration panel.

2. The initial and final reports shall contain:

- (a) a summary of the submissions and arguments of the parties to the dispute;
- (b) the findings of fact, together with reasons;
- (c) a determination as to whether a measure at issue is inconsistent with the provisions of this Agreement, or any other determination requested in the terms of reference set out in paragraph 8 of Article 9.4 (Establishment of Arbitration Panel); and
- (d) recommendations, if any, for the resolution of the dispute and the implementation of the ruling.

3. The final report shall include an assessment of the written comments received from the parties to the dispute on the initial report.

4. The final report, as well as any report under Articles 9.8 (Implementation of the Final Panel Report) and 9.9 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.

5. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute. Nothing in the final report may add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 9.8

Implementation of the Final Panel Report

1. The Party complained against shall promptly comply with the ruling in 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 within 45 days from the issuance of the final report, a 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 should be given within 60 days from the receipt of that request.
2. The Party complained against shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.
3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of a party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 9.9 (Compensation and Suspension of Benefits). The ruling of the arbitration panel should be rendered within 90 days from the receipt of that request.

ARTICLE 9.9

Compensation and Suspension of Benefits

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 9.8 (Implementation of the Final Panel Report), or notifies the complaining Party that it does not intend to comply with the ruling in the final panel report, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20 days from the receipt of the request, the complaining Party shall be entitled to 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 be inconsistent with this Agreement.
2. In considering what benefits to suspend, the complaining Party 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 be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors. The complaining Party will take into consideration those concessions or other obligations the suspension of which would least disturb the functioning of this Agreement.
3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will

commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel should be given within 45 days from the receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party 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 should be given within 30 days from the receipt of that request.

ARTICLE 9.10

Other Provisions

1. Whenever possible, the arbitration panel referred to in Articles 9.8 (Implementation of the Final Panel Report) and 9.9 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrator.

2. A written submission, request, notice or other document shall be considered received when it has been delivered to the addressee through diplomatic channels, unless otherwise agreed by the parties to the dispute. An electronic copy should be submitted simultaneously to the respective e-mail addresses designated and notified by the parties to the dispute.

3. Any time period mentioned in this Chapter may be modified by mutual agreement of the parties to the dispute or, upon request of a Party, may be extended by the arbitration panel.

4. When an arbitration panel considers that it cannot comply with a timeframe imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

5. The costs of arbitration shall be borne by the parties to the dispute in equal shares. Each party to the dispute shall bear its own legal and other costs incurred in relation to the arbitration.