

2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of any Party, and shall comply with Annex 14-C.

Article 14.19

Relation with WTO obligations

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.

2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Chapter or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of paragraph 2:

- (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the 'DSU') and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

Article 14.20

Time limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by mutual agreement of the Parties.

CHAPTER FIFTEEN

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 15.1

Trade Committee

1. The Parties hereby establish a Trade Committee⁽⁸⁸⁾ comprising representatives of the EU Party and representatives of Korea.

2. The Trade Committee shall meet once a year in Brussels or Seoul alternately or at the request of either Party. The Trade Committee shall be co-chaired by the Minister for Trade of Korea and the Member of the European Commission responsible for Trade, or their respective designees. The Trade Committee shall agree on its meeting schedule and set its agenda.

3. The Trade Committee shall:

- (a) ensure that this Agreement operates properly;
- (b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;
- (c) supervise the work of all specialised committees, working groups and other bodies established under this Agreement;
- (d) consider ways to further enhance trade relations between the Parties;
- (e) without prejudice to the rights conferred in Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures), seek appropriate ways and methods of forestalling problems which might arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

⁽⁸⁸⁾ As set out in the Protocol on Cultural Cooperation, the Trade Committee shall have no jurisdiction over the Protocol and the Committee on Cultural Cooperation shall exercise all functions of the Trade Committee as regards that Protocol, where such functions are relevant for the purposes of implementing that Protocol.

- (f) study the development of trade between the Parties; and
- (g) consider any other matter of interest relating to an area covered by this Agreement.

4. The Trade Committee may:

- (a) decide to establish and delegate responsibilities to specialised committees, working groups or other bodies;
- (b) communicate with all interested parties including private sector and civil society organisations;
- (c) consider amendments to this Agreement or amend provisions of this Agreement in cases specifically provided for in this Agreement;
- (d) adopt interpretations of the provisions of this Agreement;
- (e) make recommendations or adopt decisions as envisaged by this Agreement;
- (f) adopt its own rules of procedure; and
- (g) take such other action in the exercise of its functions as the Parties may agree.

5. The Trade Committee shall report to the Joint Committee on its activities and those of its specialised committees, working groups and other bodies at each regular meeting of the Joint Committee.

6. Without prejudice to the rights conferred in Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures), either Party may refer to the Trade Committee any issue relating to the interpretation or application of this Agreement.

7. When a Party submits information considered as confidential under its laws and regulations to the Trade Committee, specialised committees, working groups or any other bodies, the other Party shall treat that information as confidential.

8. Recognising 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.

Article 15.2

Specialised committees

1. The following specialised committees are hereby established under the auspices of the Trade Committee:

- (a) the Committee on Trade in Goods in accordance with Article 2.16 (Committee on Trade in Goods);
- (b) the Committee on Sanitary and Phytosanitary Measures in accordance with Article 5.10 (Committee on Sanitary and Phytosanitary Measures);

(c) the Customs Committee in accordance with Article 6.16 (Customs Committee). In matters exclusively covered by the Customs Agreement, the Customs Committee acts as the Joint Customs Cooperation Committee established under that Agreement;

(d) the Committee on Trade in Services, Establishment and Electronic Commerce in accordance with Article 7.3 (Committee on Trade in Services, Establishment and Electronic Commerce);

(e) the Committee on Trade and Sustainable Development in accordance with Article 13.12 (Institutional Mechanism); and

(f) the Committee on Outward Processing Zones on the Korean Peninsula in accordance with Annex IV of the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation.

The remit and tasks of the specialised committees established are defined in the relevant chapters and protocols of this Agreement.

2. The Trade Committee may decide to establish other specialised committees in order to assist it in the performance of its tasks. The Trade Committee shall determine the composition, duties and functioning of the specialised committees established pursuant to this Article.

3. Unless otherwise provided for in this Agreement, the specialised committees shall normally meet, once a year, at an appropriate level, alternately in Brussels or Seoul, or at the request of either Party or of the Trade Committee and shall be co-chaired by representatives of Korea and the European Union. The specialised committees shall agree on their meeting schedule and set their agenda.

4. The specialised committees shall inform the Trade Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Trade Committee on their activities at each regular meeting of the Trade Committee. The creation or existence of a specialised committee shall not prevent either Party from bringing any matter directly to the Trade Committee.

5. The Trade Committee may decide to change or undertake the task assigned to a specialised committee or dissolve any specialised committee.

Article 15.3

Working Groups

1. The following Working Groups are hereby established under the auspices of the Trade Committee:

- (a) the Working Group on Motor Vehicles and Parts in accordance with Article 9.2 (Working Group on Motor Vehicles and Parts) of Annex 2-C (Motor Vehicles and Parts);

- (b) the Working Group on Pharmaceutical Products and Medical Devices in accordance with Article 5.3 (Regulatory Cooperation) of Annex 2-D (Pharmaceutical Products and Medical Devices);
- (c) the Working Group on Chemicals in accordance with paragraph 4 of Annex 2-E (Chemicals);
- (d) the Working Group on Trade Remedy Cooperation in accordance with Article 3.16.1 (Working Group on Trade Remedy Cooperation);
- (e) the Working Group on MRA in accordance with Article 7.21.6 (Mutual Recognition);
- (f) the Working Group on Government Procurement in accordance with Article 9.3 (Government Procurement Working Group); and
- (g) the Working Group on Geographical Indications in accordance with Article 10.25 (Working Group on Geographical Indications).

2. The Trade Committee may decide to establish other working groups for a specific task or subject matter. The Trade Committee shall determine the composition, duties and functioning of working groups. Any regular or ad-hoc meetings between the Parties whose work addresses matters covered by this Agreement shall be considered working groups within the meaning of this Article.

3. Unless otherwise provided for in this Agreement, working groups shall meet, at an appropriate level, when circumstances require, or at the request of either Party or of the Trade Committee. They shall be co-chaired by representatives of Korea and the European Union. Working groups shall agree on their meeting schedule and set their agenda.

4. Working groups shall inform the Trade Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Trade Committee on their activities at each regular meeting of the Trade Committee. The creation or existence of a working group shall not prevent either Party from bringing any matter directly to the Trade Committee.

5. The Trade Committee may decide to change or undertake the task assigned to a working group or dissolve any working group.

Article 15.4

Decision-making

1. The Trade Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take

decisions in respect of all matters in the cases provided by this Agreement.

2. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken. The Trade Committee may also make appropriate recommendations.

3. The Trade Committee shall draw up its decisions and recommendations by agreement between the Parties.

Article 15.5

Amendments

1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

2. Notwithstanding paragraph 1, the Trade Committee may decide to amend the Annexes, Appendices, Protocols and Notes to this Agreement. The Parties may adopt the decision subject to their respective applicable legal requirements and procedures.

Article 15.6

Contact points

1. In order to facilitate communication and to ensure the effective implementation of this Agreement, the Parties shall designate coordinators upon the entry into force of this Agreement. The designation of coordinators is without prejudice to the specific designation of competent authorities under specific chapters of this Agreement.

2. On the request of either Party, the coordinator of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.

3. To the extent possible under its legislation, each Party shall provide information through its coordinators on the request of the other Party and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.

Article 15.7

Taxation

1. This Agreement shall only apply to taxation measures in so far as such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention between Korea and the respective Member States of the European Union. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between Korea and the respective Member States of the European Union, the competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

3. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

4. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

Article 15.8

Balance-of-payments exceptions

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, services and establishment.

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

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

3. Any Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

4. Where the restrictions are adopted or maintained, consultation shall be held promptly in the Trade Committee. Such consultation shall assess the balance-of-payments situation of the concerned Party and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:

- (a) the nature and extent of the balance-of-payments and the external financial difficulties;

- (b) the external economic and trading environment; or

- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Funds (hereinafter referred to as the 'IMF') relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the IMF of the balance of payments and the external financial situation of the concerned Party.

Article 15.9

Security exceptions

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

- (i) connected with the production of or trade in arms, munitions or war material or relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

- (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

- (iii) taken in time of war or other emergency in international relations; or

- (c) to prevent any Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

Article 15.10

Entry into force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.

2. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

3. Notwithstanding paragraphs 2 and 5, the Parties shall apply the Protocol on Cultural Cooperation from the first day of the third month following the date when Korea has deposited its instrument of ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005 (hereinafter referred to as the 'UNESCO Convention') to the UNESCO Secretariat in Paris unless Korea has deposited its instrument of ratification of the UNESCO Convention before the exchange of notifications referred to in paragraphs 2 or 5.

4. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of Korea, or its successor.

5. (a) This Agreement shall be provisionally applied from the first day of the month following the date on which the EU Party and Korea have notified each other of the completion of their respective relevant procedures.

(b) In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied. Notwithstanding subparagraph (a), provided the other Party has completed the necessary procedures and does not object to provisional application within 10 days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied the first day of the month following the notification.

(c) A Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the month following notification.

(d) Where this Agreement, or certain provisions thereof, is provisionally applied, the term 'entry into force of this Agreement' shall be understood to mean the date of provisional application.

Article 15.11

Duration

1. This Agreement shall be valid indefinitely.
2. Either Party may notify in writing the other Party of its intention to denounce this Agreement.
3. The denunciation shall take effect six months after the notification under paragraph 2.

Article 15.12

Fulfilment of obligations

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

2. Either Party may immediately take appropriate measures in accordance with international law in case of denunciation of this Agreement not sanctioned by the general rules of international law.

Article 15.13

Annexes, appendices, protocols and notes

The Annexes, Appendices, Protocols and Notes to this Agreement shall form an integral part thereof.

Article 15.14

Relation with other agreements

1. Unless specified otherwise, previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and Korea are not superseded or terminated by this Agreement.
2. The present Agreement shall be an integral part of the overall bilateral relations as governed by the Framework Agreement. It constitutes a specific Agreement giving effect to the trade provisions within the meaning of the Framework Agreement.
3. The Protocol on Mutual Administrative Assistance in Customs Matters supersedes the Customs Agreement with regard to the provisions concerning mutual administrative assistance.
4. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

Article 15.15

Territorial application

1. This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties, and, on the other hand, to the territory of Korea. References to 'territory' in this Agreement shall be understood in this sense, unless explicitly stated otherwise.
2. As regards those provisions concerning the tariff treatment of goods, this Agreement shall also apply to those areas of the EU customs territory not covered by paragraph 1.

Article 15.16

Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Korean languages, each of these texts being equally authentic.