

SPECIALTY CROP TRADE COUNCIL

Arbitration Procedures

The Board of Directors of the Specialty Crop Trade Council (“SCTC”) has adopted the following rules and procedures to govern arbitrations of disputes regarding export sales pursuant to a written agreement to arbitrate disputes in accordance with these procedures. These procedures apply only to export sales.

Article I

Procedure to Initiate Arbitration

Section 1. Any member of SCTC, or any non-member who has an agreement with a member of SCTC to arbitrate disputes¹ pursuant to these SCTC arbitration procedures, may deliver to the Executive Director of SCTC a “Demand for Arbitration”, which shall be in substantially the form of Attachment A to these procedures, and which shall include but not be limited to the following:

- a. The name and contact information of the person or entity requesting the arbitration (“Applicant”), and whether the Applicant is a member of SCTC.
- b. The name and contact information of the person or (“Responding Party”) with whom the Applicant has a dispute, and whether that entity is a member of SCTC.
- c. A copy of the contract which requires the Applicant or the other party to submit to arbitration pursuant to these procedures.
- d. A detailed description of the nature of the dispute to be arbitrated.

Section 2. The Executive Director receiving the Request shall make a finding as to whether the controversy and the parties are properly subject to arbitration by SCTC. The Executive Director shall take into account the Arbitration section (Section 30) of the “SCTC Contract Terms and Conditions for Dried Fruit, Tree Nuts and Kindred Products”, if applicable.

If the Executive Director finds that the controversy and/or the parties are not properly subject to a request for arbitration, he/she shall so notify the SCTC Board Secretary. The

¹ An “agreement to arbitrate” includes but is not necessarily limited to 1) a hardcopy paper agreement signed by both parties, 2) an electronic agreement in which electronic signatures are inserted, 3) an email, text, or other electronic communication exchange in which it is clear to a reasonable person that the parties have agreed to be subject to the SCTC Arbitration Procedures, or 4) a written agreement offered by the seller that includes an SCTC arbitration requirement, which the buyer doesn’t sign but which the buyer responds to and/or performs on to an extent that a reasonable person would believe the buyer had agreed to the seller’s terms, including SCTC arbitration of disputes.

Board Secretary shall review the Request and if the Board Secretary finds that the controversy and/or the parties are not properly subject to a request for arbitration, the Executive Director shall so notify the Applicant and the matter shall be deemed closed. An Applicant who believes that the Board Secretary has incorrectly denied arbitration may appeal the Board Secretary's decision to the SCTC Board of Directors by sending a letter to the Executive Director within thirty (30) days of notification outlining the reasons why the request for arbitration should be reconsidered. The Board will consider and vote on the appeal as soon as is practicable.

If the Executive Director finds, based on the Demand for Arbitration and supporting documents, that the controversy and the parties are properly subject to arbitration, he/she shall notify the Applicant and request that the Applicant submit the required arbitration fee to SCTC. The arbitration fee must be received by SCTC in order to begin the arbitration process. The Applicant will have ninety (90) days to submit the arbitration fee from the time the request for arbitration was approved. If the arbitration fee is not received within ninety (90) days, the case shall be deemed closed. Once the arbitration fee has been received from the Applicant, the Executive Director shall send written notice to the Applicant and the Responding Party that the controversy is properly subject to arbitration. The Executive Director's written notice shall specify that the arbitration process will begin and will request that the Responding Party remit payment of its share of required arbitration fees. The Executive Director shall request that the Responding Party respond in writing and remit arbitration fees due within twenty (20) days of receipt of the notice. In the event either party refuses to accept notice, or has changed addresses without notifying SCTC, the notice shall be deemed to have been delivered, and the response period shall begin, five (5) days after the date delivery of mailing of the Executive Director's notice.

If the Executive Director is absent or unable to perform the obligations described in these Procedures, his/her designee will handle all aspects of the SCTC Arbitration Procedures.

Section 3. If a member or non-member of SCTC has signed an agreement with the Applicant to arbitrate disputes pursuant to SCTC procedures, but refuses to participate in arbitration or fails to respond to the Demand for Arbitration, the arbitration nevertheless may proceed in his/her/its absence. The arbitrators will review and consider the sufficiency of the evidence submitted by the participating party, and an arbitration award may be issued based on such party's evidence. Any award made shall be based on the evidence and arguments submitted by the participating party, and will not be based solely upon the other party's default or other refusal to participate in the arbitration. Additionally, if any member of SCTC refuses to arbitrate, that member may be subject to suspension or expulsion proceedings pursuant to the Bylaws of SCTC, as applicable.

Section 4. Whether or not the responding party responds to the Demand for Arbitration in Section 2 above within the 20-day deadline, the Executive Director will send written notice to each party within a reasonable time after the 20-day deadline passes requesting that both parties provide any documentation or evidence they would like to have considered in the arbitration. The Executive Director shall request that both parties respond in writing within thirty (30) days after receipt of the request for documents/evidence.

Upon receipt of the documentation/evidence from the parties, the Executive Director will assemble the documentation/evidence and send copies to each party so that each party can prepare their response the other party's arguments for the arbitration. Upon response from each party, the Executive Director will proceed with the selection of arbitrators as described below.

Article II

Selection of Arbitrators

Section 1. For any arbitration conducted pursuant to these procedures, the Executive Director shall select and appoint three disinterested members of SCTC to act as the arbitrators. It shall be the duty of any member so appointed to serve as an arbitrator. "Disinterested" means that no person shall serve as an arbitrator in any controversy in which he/she or any firm with which he/she is connected has any interest, or in any controversy in which their past or present connections with either party are such as to imperil the impartiality of their decision. In the event a question should arise concerning the qualification of any arbitrator, he/she shall be disqualified if both of the other two arbitrators so hold. If any person appointed to act as an arbitrator shall for any reason be disqualified, fail or be unable to act, the Executive Director shall select another qualified, disinterested member to act in his/her place.

Article III

Evidence and Procedure

Section 1. The arbitrators may request, receive and consider any evidence they deem material and proper. Evidence may be submitted in the form of statements, affidavits or any other form deemed acceptable by the arbitrators. The arbitrators may require that any unverified statements be verified by the parties making them or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The arbitrators may receive oral testimony if in their opinion it is necessary or desirable in order to obtain a full and complete understanding of the facts. The arbitrators may determine what personal appearances shall be made by the parties and regulate the holding of hearings. Except under extraordinary circumstances, as determined by the arbitrators, copies of all evidence received from any party shall be provided to the other party for its review.

Section 2. The arbitrators, in cooperation with the Executive Director, shall set the date, time, and place for the hearing. All hearings shall be held in the State of California, USA, in whatever specific location is chosen by the arbitrators. Parties to the arbitration shall be provided at least ten (10) days notice of any hearing at which their appearance is requested. Each party may decide whether to appear in person at the hearing or by telephone, or the party may choose to allow the arbitrators to make a decision based solely on the documents provided. Any party may be represented by counsel or other authorized representative at a hearing, either in person or via telephone. Each party shall notify the Executive Director in writing by the date specified by the Executive Director

regarding whether they plan to attend in person, by phone, or allow the decision to be based solely on the documents, and whether the party will have an attorney or other representative present or in place of the party.

Section 3. Each party (or its representative) will have a reasonable opportunity to state its case during the evidentiary portion of the hearing. During this portion of the hearing, the arbitrators may also ask for clarification regarding evidence submitted. If neither party appears at the hearing in person or by telephone, the arbitrators will simply review the documentary evidence submitted by the parties. The arbitrators shall have the power to manage and control the proceedings at the hearing in their sole discretion, including, but not limited to, the power to regulate the length of the hearing, the power to exclude evidence, and the power to require the exclusion of any person from a hearing during the testimony of any other witness.

Section 4. Any party desiring a stenographic record of a hearing shall make arrangements directly with a stenographer and shall notify the Executive Director of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrators to be, the official record of the proceeding, it must be made available to the arbitrators and to the other parties for inspection, at a date, time, and place determined by the arbitrators.

Section 5. Once the evidentiary portion of any hearing is completed, the arbitrators will deliberate on the evidence. Deliberations between the arbitrators shall be closed except for persons deemed necessary by the arbitrators. The arbitrators may, in their sole discretion, determine the propriety of the attendance of any other person during deliberations.

Section 6. The arbitrators for good cause shown may postpone any hearing upon the request of a party or upon the arbitrators' own initiative, and shall also grant such postponement when all of the parties agree thereto.

Section 7. An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the Executive Director to so advise the parties. The arbitrators shall set the date and time and the Executive Director shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties at the hearing and afford them an opportunity to comment.

Section 8. A party desiring the testimony of an expert witness, either by declaration or at a hearing, shall be solely responsible for arranging any appearance by the expert and for the payment of said expert's fees and costs.

Section 9. The arbitrators may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Section 10. There shall be no direct communication between the parties and the arbitrators other than at official hearings, unless both parties and the arbitrators agree otherwise in writing. Any other oral or written communication from the parties to the arbitrators shall be directed to the Executive Director for transmittal to the arbitrators.

Section 11. A hearing may be reopened on the arbitrators' initiative, or upon application of a party for good cause shown and with approval of the arbitrators, at any time before the award is made.

Section 12. A party who has entered into an agreement to arbitrate a dispute pursuant to these Procedures shall not be allowed to withdraw from the arbitration after the arbitration process has begun except with the written agreement of the other party, if any. However, SCTC retains discretion to cancel the arbitration proceeding upon a written request of the Applicant if the Responding Party has not appeared and participated in the arbitration. The failure of any party to participate in the arbitration process (i.e., failure to submit requested evidence or appear at a hearing) shall not terminate the arbitration. In that event, the arbitrators shall simply make their decision based on the information or testimony received from the other party. Provided however, that if neither party to the arbitration cooperates after agreeing to do so, the arbitrators may deem the arbitration terminated and notify the parties in writing that no decision will be rendered.

Article IV

Award

Section 1. The decision of the arbitrators and the award, if any, shall be made as soon as practical after the evidence is presented and considered. All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law. The decision and award shall be in writing and shall be signed by the arbitrators supporting the award. Any decision or award so signed shall be valid and binding. A copy of the decision and award shall be remitted to each of the parties to the controversy as soon as practicable after it is made.

Article V

Enforcement and Fees

Section 1. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Failure of a member of SCTC to comply with an award shall be grounds for suspension or expulsion pursuant to Sections 2.08 and 2.09 of SCTC's Bylaws.

Section 2. The fee in any arbitration pursuant to these procedures shall be set by the Executive Director based on the cost of arbitration. The Executive Director shall notify each party the amount of the required fee and that such fees must be remitted to SCTC prior to the commencement of arbitration. The arbitrators may in their award assess the

costs of the arbitration against either party, in any proportion, in which case one or both parties may be refunded some or all of its deposit.

Section 3. SCTC shall have no obligation to conduct or continue with an arbitration unless the requisite fees are paid by the parties.

Article VI

No Liability

Section 1. Neither SCTC nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these procedures.

Article VII

Publication of Arbitration Results

Section 1. The results or outcome of any arbitration proceeding conducted pursuant to these rules, as well as information relating to a party's compliance with or enforcement of an arbitration award, may be posted or otherwise published online on SCTC's web site. SCTC members may post such information on the SCTC web site pursuant to SCTC's Terms of Use then in effect for the use of its site. The SCTC Terms of Use may be viewed at www.shipsctc.org and are expressly referred to and incorporated herein by this reference.