

TITLE VI

DISPUTE AVOIDANCE AND SETTLEMENT

CHAPTER 1

OBJECTIVE AND SCOPE

ARTICLE 66

Objective

The objective of this Title is to avoid and settle any dispute between the Parties with a view to arriving, where possible, at a mutually agreed solution.

ARTICLE 67

Scope

1. This Title shall apply to any dispute relating to the interpretation or application of this Agreement, except where specifically provided otherwise.
2. Notwithstanding paragraph 1, the procedure provided for in Article 98 of the Cotonou Agreement shall be applicable in the case of disputes relating to development finance cooperation as defined in the Cotonou Agreement.

CHAPTER 2

CONSULTATIONS AND MEDIATION

ARTICLE 68

Consultations

1. The Parties shall endeavour to resolve disputes under this Agreement by entering into good faith consultations with the aim of reaching a mutually acceptable solution.
2. A Party seeking consultations shall do so by means of a written request to the other Party, copied to the EPA Committee, identifying the measure at issue and the provisions of the Agreement with which it considers the measure not to be in conformity.
3. The consultations shall be held within 40 days of the date on which the request is submitted. The consultations shall be deemed concluded within 60 days of the date of submission of the request unless both Parties agree to continue. All information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods, shall be held within 15 days of the date of submission of the request, and shall be deemed concluded within 30 days of the date of submission of the request.

5. If consultations are not held within the time limits laid down in paragraph 3 or paragraph 4 respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request that an arbitration panel be established in accordance with Article 70.

ARTICLE 69

Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.
2. Unless the Parties agree on a mediator within 15 days of submission of the mediation request, the EPA Committee shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 85 and are not nationals of either Party. The selection shall be made within 20 days of submission of the mediation request and in the presence of a representative of each Party. The mediator shall convene a meeting with the Parties no later than 30 days after being selected. The mediator shall receive the submissions of each Party no later than 15 days before the meeting and communicate an opinion no later than 45 days after having been selected.
3. The mediator's opinion may include recommendations on how to resolve the dispute in accordance with the provisions of this Agreement. The mediator's opinion is non-binding.

4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits at the request of any of the Parties or on his own initiative, based on the particular difficulties experienced by the Party concerned or the complexity of the case.

5. The mediation proceedings, and in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.

CHAPTER 3

PROCEDURES FOR THE SETTLEMENT OF DISPUTES

SECTION I

ARBITRATION PROCEDURE

ARTICLE 70

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 68, or by recourse to mediation as provided for in Article 69, the complaining Party may request that an arbitration panel be established.

2. A request for the establishment of an arbitration panel shall be addressed in writing to the Party which is the subject of the complaint and to the EPA Committee. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measures constitute a breach of the provisions referred to in Article 67.

ARTICLE 71

Establishment of an arbitration panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date on which the request for the establishment of an arbitration panel is submitted, the Parties shall consult each other in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the panel's composition within the time limit laid down in paragraph 2, either Party may request that the chairperson of the EPA Committee, or his or her delegate, select all three members by lot from the list drawn up under Article 85: one from among the individuals proposed by the complaining Party, one from among the individuals proposed by the Party complained against and one from among the individuals selected by both Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. The chairperson of the EPA Committee, or his or her delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 being submitted by either Party and in the presence of a representative of each Party.

5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

ARTICLE 72

Interim report by the panel

The arbitration panel shall submit to the Parties an interim report containing both the descriptive sections and the panel's findings and conclusions, as a general rule not later than 120 days from the date of establishment of the arbitration panel. Any Party may submit written comments to the arbitration panel on specific aspects of its interim report within 15 days of submission of the report.

ARTICLE 73

Arbitration panel ruling

1. The arbitration panel shall notify the Parties and the EPA Committee of its ruling within 150 days from the date on which the arbitration panel is established. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the EPA Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 180 days from the date of establishment of the arbitration panel.

2. In urgent cases, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its ruling within 75 days of the date of its establishment. Under no circumstance should it take longer than 90 days from the date of its establishment to issue the ruling. The arbitration panel may give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.
3. Either Party may ask an arbitration panel to make recommendations on how the Party complained against could comply.

SECTION II

Compliance

ARTICLE 74

Compliance with the arbitration panel ruling

Each Party or, as appropriate, the signatory Central African States, shall take any measure necessary to implement the arbitration panel ruling, and the Parties shall endeavour to agree on a deadline for compliance with the ruling.

ARTICLE 75

Reasonable period of time for compliance

1. No later than 30 days after the Parties have been notified of the arbitration panel ruling, the Party complained against shall notify the complaining Party and the EPA Committee of the time it will require for compliance (reasonable period of time).
2. In the event of disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made under paragraph 1 by the Party complained against, request in writing that the arbitration panel determine the length of the reasonable period of time. This request shall be communicated simultaneously to the other Party and to the EPA Committee. The arbitration panel shall notify the Parties and the EPA Committee of its ruling within 30 days of the date of submission of the request.
3. In determining the length of the reasonable period of time, the arbitration panel shall take into consideration the length of time that it should take the Party complained against or, as appropriate, the signatory Central African States, to adopt comparable legislative or administrative measures to those identified by the Party complained against or, as appropriate, the signatory Central African States, as being necessary to ensure compliance. The arbitration panel may also take into consideration demonstrable capacity constraints which may affect the adoption of the necessary measures by the Party complained against.
4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 71 shall apply. The deadline for issuing a ruling shall be 45 days from the date of submission of the request referred to in paragraph 2 of this Article.
5. The reasonable period may be extended by mutual agreement of the Parties.

ARTICLE 76

Review of measures taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the other Party and the EPA Committee, before the end of the reasonable period of time, of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event of disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request in writing that the arbitration panel rule on the matter. Such request shall identify the specific measure at issue and explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall issue its ruling within 90 days of the date of submission of the request. In urgent cases, including those involving perishable or seasonal goods, the arbitration panel shall issue its ruling within 45 days of the date of submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 71 shall apply. The period for issuing the ruling shall be 105 days from the date of submission of the request referred to in paragraph 2 of this Article.

ARTICLE 77

Temporary provisions in case of non-compliance

1. If the Party complained against fails to give notification of any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measures notified under Article 76(1) are not compatible with that Party's obligations under the provisions of this Agreement, the Party complained against or, as appropriate, the signatory Central African State concerned shall, if so requested by the complaining Party, present an offer for temporary compensation. This compensation may include or consist of financial compensation. However, nothing in this Agreement shall oblige the Party complained against or, as appropriate, the signatory Central African State concerned, to offer such financial compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel's ruling under Article 76 that a measure taken to comply is not compatible with the provisions of this Agreement, the complaining Party shall be entitled, after notifying the other Party, to adopt appropriate measures. These measures may be adopted by the complaining Party or, as appropriate, the signatory Central African State concerned.
3. In adopting these measures, the complaining Party or, as appropriate, the signatory Central African State concerned, shall aim to select measures proportionate to the infringement which least affect the achievement of this Agreement's objectives and take into consideration their impact on the economy of the Party complained against and on the various signatory Central African States.

4. The EC Party shall show restraint when asking for compensation or adopting appropriate measures in accordance with paragraph 1 or 2 of this Article.

5. The compensation or appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.

ARTICLE 78

Review of measures taken to comply following the adoption of appropriate measures

1. The Party complained against shall notify the other Party and the EPA Committee of any measure it has taken to comply with the arbitration panel ruling and, in that notification, request an end to the application of appropriate measures by the complaining Party or, as appropriate, the signatory Central African State concerned.

2. If the Parties do not reach an agreement, within 30 days of the date of submission of the notification, on the compatibility of the notified measures with the provisions of this Agreement, the complaining Party shall request in writing that the arbitration panel rule on the matter. The other Party and the EPA Committee shall be notified of the request. The Parties and the EPA Committee shall be notified of the arbitration panel ruling within 45 days of submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the relevant provisions of this Agreement, the arbitration panel shall determine whether the complaining Party or, as appropriate, the signatory Central African State concerned may continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 67, the appropriate measures shall be terminated.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 71 shall apply. The period for issuing the ruling shall be 60 days from the date of submission of the request referred to in paragraph 2 of this Article.

SECTION III

COMMON PROVISIONS

ARTICLE 79

Mutually agreed solution

Under this Title the Parties may at any time reach a mutually agreed solution to a dispute. They shall notify the EPA Committee of any such solution. When a mutually agreed solution is adopted, the procedure must be terminated.

ARTICLE 80

Rules of procedure and code of conduct

1. Dispute settlement procedures under Chapter 3 shall be governed by the rules of procedure and code of conduct to be adopted by the EPA Committee.
2. Meetings of the arbitration panel shall be open to the public in accordance with the rules of procedure, which also provide for the protection of confidential business information.

ARTICLE 81

Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, which it deems appropriate for the arbitration procedure. The arbitration panel also has the right to seek the opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. Interested parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with the rules of procedure.

ARTICLE 82

Languages for communications

The written and oral submissions of the Central Africa Party shall be made in French and English, and those of the European Communities in any of the official languages of the institutions of the European Union.

ARTICLE 83

Rules of interpretation

Any arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

ARTICLE 84

Arbitration panel rulings

1. The arbitration panel shall make every effort to reach its decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, under no circumstances shall the dissenting opinions of arbitrators be published.
2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions of the arbitration panel. The EPA Committee shall make the arbitration panel ruling publicly available unless it decides not to do so.

CHAPTER 4

GENERAL PROVISIONS

ARTICLE 85

List of arbitrators

1. The EPA Committee shall, no later than six months after this Agreement's entry into force, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The two Parties shall also agree on five individuals who are not nationals of either Party and who may be called upon to act as chairperson to the arbitration panel. The EPA Committee shall ensure that a full list is always maintained.
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 or be affiliated with the government of any of the Parties, and shall comply with the code of conduct adopted by the EPA Committee.
3. The EPA Committee may draw up an additional list of 15 individuals with sectoral expertise in specific matters covered by the Agreement. Where recourse is made to the selection procedure under Article 71(2), the chairperson of the EPA Committee may use this type of sectoral list with the agreement of both Parties.

ARTICLE 86

Relationship to WTO obligations

1. Arbitration bodies set up under this Agreement shall not adjudicate disputes concerning each Party's rights and obligations under the Agreement establishing the WTO.
2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party or, as appropriate, the signatory Central African States has/have instituted a dispute settlement proceeding with regard to a particular measure, either under Article 70(1) or under the WTO Agreement, it/they may not institute a dispute settlement proceeding with regard to the same measure in the other forum until the first proceeding has ended. For the purposes of this paragraph, dispute settlement proceedings under the WTO Agreement shall be deemed to be initiated by the request of a Party or, as appropriate, of the signatory Central African States for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.
3. Nothing in this Agreement shall preclude a Party or, as appropriate, the signatory Central African States from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

ARTICLE 87

Time limits

1. All time limits laid down in this Title, including the deadlines for the arbitration panels to issue their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limit provided for in this Title may be extended by mutual agreement of the Parties.

ARTICLE 88

Amendment of Title VI

The EPA Committee may decide to amend this Title and its Annexes.