

This Article does not prejudice the position of the regional organisations on the above issues.

## TITLE V

### DISPUTE AVOIDANCE AND SETTLEMENT

#### CHAPTER 1

##### ***Objective and scope***

###### *Article 45*

##### **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 46*

##### **Scope**

1. This Title shall apply to any dispute concerning the interpretation and application of this Agreement, with the exception of Title II and except where otherwise provided.
2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement, shall be applicable in the event of a dispute concerning development finance cooperation as provided for by the Cotonou Agreement.

#### CHAPTER 2

### ***Consultations and mediation***

###### *Article 47*

##### **Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 46 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations 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 which it considers the measure not to be in conformity with.
3. Consultations shall be held within 40 days of the date of the submission of the request. The consultations shall be deemed to be concluded within 60 days of the date of the submission of the request, unless both Parties agree to continue consultations. 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 the submission of the request, and shall be deemed to be concluded within 30 days of the date of the submission of the request.
5. If consultations are not held within the time frames laid down in paragraph 3 or in paragraph 4, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 49.

*Article 48***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 ten days of the date of the agreement to request mediation, the chairperson of the EPA Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 64 and are not nationals of either Party. The selection shall be made within 20 days of the date of the submission of the agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties not later than 30 days after being selected. The mediator shall receive the submissions of each Party not later than 15 days before the meeting and notify an opinion not later than 45 days after having been selected.
3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions referred to in Article 53. 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 upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.
5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings shall remain confidential.

*CHAPTER 3****Dispute settlement procedures****Section I***Arbitration procedure***Article 49***Initiation of the arbitration procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 47, or by recourse to mediation as provided for in Article 48, the complaining Party may request the establishment of an arbitration panel.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and 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 of this Agreement.

*Article 50***Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three arbitrators.
2. Within ten days of the date of the submission of the request for the establishment of an arbitration panel to the EPA Committee, the Parties shall consult 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 its composition within the time frame laid down in paragraph 2, either Party may request the chairperson of the EPA Committee, or her or his delegate, to select all three members by lot from the list established under Article 64, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the 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 her or his delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 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 51*

##### **Interim panel report**

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its 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 precise aspects of its interim report within 15 days of the notification of the report.

#### *Article 52*

##### **Arbitration panel ruling**

1. The arbitration panel shall notify its ruling to the Parties and to the EPA Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must 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 the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within 75 days from the date its establishment. Under no circumstance should it take longer than 90 days from its establishment. 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 request the arbitration panel to provide a recommendation as to how the Party complained against could bring itself into compliance.

#### *Section II*

##### **Compliance**

#### *Article 53*

##### **Compliance with the arbitration panel ruling**

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

#### *Article 54*

##### **The reasonable period of time for compliance**

1. Not later than 30 days after the notification of the arbitration panel ruling to the Parties, 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. If there is 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 by the Party complained against, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the EPA Committee. The arbitration panel shall notify its ruling to the Parties and to the EPA Committee within 30 days from the date of the submission of the request.
3. The arbitration panel will, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by the Party complained against as being necessary to ensure compliance. The arbitration panel may also take into consideration constraints which may affect the adoption by the Party complained against of the necessary measures.
4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 50 shall apply. The time-limit for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 2.
5. The reasonable period of time may be extended by agreement of the Parties.

#### *Article 55*

##### **Review of any measure 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 that there is 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 the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within 90 days of the date of the submission of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of the 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 50 shall apply. The time-limit for notifying the ruling shall be 105 days from the date of the submission of the request referred to in paragraph 2.

#### *Article 56*

##### **Temporary remedies in case of non-compliance**

1. If the Party complained against fails to notify 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 measure notified under Article 55(1) is not compatible with that Party's obligations under the provisions referred to in Article 53, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary 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 55 that a measure taken to comply is not compatible with the provisions referred to in Article 53, the complaining Party shall be entitled, upon notification to the other Party, to adopt appropriate measures. In adopting such measures the complaining Party shall endeavour to select measures that least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against.

Under no circumstance will the appropriate measures referred to in the present paragraph affect development assistance to Ghana.

3. The EC Party shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2 and will take account of the situation of developing country of the Ghanaian Party.
4. The appropriate measures or compensation shall be temporary and shall be applied only until any measure found to violate the provisions referred to in Article 53 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 57*

### **Review of any measure taken to comply after 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 ruling of the arbitration panel and of its request for an end to the application of appropriate measures by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days of the date of the submission of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the EPA Committee. The arbitration panel ruling shall be notified to the Parties and to the EPA Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel will determine whether the complaining Party can continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, 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 50 shall apply. The period for notifying the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

#### *Section III*

### **Common Provisions**

#### *Article 58*

### **Mutually agreed solution**

Within the present Title, the Parties may reach a mutually agreed solution to a dispute under this Title at any time. They shall notify the EPA Committee of any such solution. Upon adoption of the mutually agreed solution, the procedure shall be terminated.

#### *Article 59*

### **Rules of procedure**

1. Dispute settlement procedures under Chapter 3 of this Title shall be governed by the Rules of Procedure which shall be adopted by the EPA Committee within three month after its establishment.
2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless otherwise decided by the arbitration panel on its own initiative or further to the request of the Parties.

#### *Article 60*

### **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, it deems appropriate for the arbitration panel proceeding. The arbitration panel shall also have the right to seek the relevant opinion of experts as it deems appropriate. Interested parties are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments.

*Article 61***Languages of the submissions**

The written and oral submissions shall be made in any official language of the Parties. The Parties will however endeavour to the extent possible to adopt an official language common to both Parties as a working language and will notably take into account the situation of developing country of the Ghanaian Party, particularly as regards translation difficulties.

*Article 62***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 in the provisions of this Agreement.

*Article 63***Arbitration panel rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case shall 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 reasoning behind any findings and conclusions that it makes. The EPA Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.

*CHAPTER 4***General provisions***Article 64***List of arbitrators**

1. The EPA Committee shall, not later than three months after the provisional application of this Agreement, 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 shall act as chairperson to the arbitration panel. The EPA Committee will ensure that the list is always maintained at this level.
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 annexed to the Rules of Procedures.
3. The EPA Committee may establish an additional list of 15 individuals having a sectoral expertise in specific matters covered by the stepping stone EPA. When recourse is made to the selection procedure of Article 50(2), the chairperson of the EPA Committee may use such a sectoral list upon agreement of both Parties.

*Article 65***Relation with 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 has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 49(1) or under the Agreement establishing the WTO, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the Agreement establishing the WTO are deemed to be initiated by a Party request 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 from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

#### *Article 66*

#### **Time-limits**

1. All time-limits laid down in this Title, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.

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

#### *Article 67*

#### **Modification of Title V**

The EPA Committee and each Party may both take the initiative to request an amendment of this Title. The amendment requests will be examined by the EPA Committee. The amendment will enter into force only after approval by both Parties.

### TITLE VI

#### **GENERAL EXCEPTIONS**

#### *Article 68*

#### **General exception clause**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods, services or establishment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the Parties of measures which:

- (a) are necessary to protect public security, public morals or to maintain public order;
- (b) are necessary to protect human, animal or plant life or health;
- (c) are necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
  - (iv) customs enforcement; or
  - (v) protection of intellectual property rights;