

ANNEX TO THE PTA D-8
ON DISPUTE SETTLEMENT MECHANISM

Drafting Note: Indonesia proposes to use the term Annex in line with the PTA.

The Governments of the People's Republic of Bangladesh, the Arab Republic of Egypt, the Republic of Indonesia, the Islamic Republic of Iran, Malaysia, the Federal Republic of Nigeria, the Islamic Republic of Pakistan, and the Republic of Turkey (hereinafter referred to as the "Members"),

Drafting Note: Indonesia proposes to include all PTA Signatories as parties to the Annex regardless of the fact that several signatories have not ratified the PTA.

RECALLING Article 26 on Dispute Settlement Mechanism of the Preferential Trade Agreement among the D-8 Member States (hereinafter referred to as "the Agreement");

RECOGNIZING the need to establish a more comprehensive dispute settlement mechanism beyond procedures of Arbitration Panel under paragraph 4 of Article 26 of the Agreement;

HAVE AGREED as follows:

Article 1
Objective

The objective of this Annex is to provide an effective and efficient process for consultations and settlement of disputes arising under the Agreement and to arrive at, where possible, a mutually agreed solution.

Article 2
Scope

1. [Except as otherwise provided in the ~~is~~ Agreement,] This Annex shall apply to the settlement of disputes between the Members regarding the interpretation, ~~and~~ application of, ~~and~~/or non-compliance with the provisions of the ~~is~~ Agreement.

Drafting Note: Need to clarify which articles the reference "except as otherwise provided in this Agreement" refers to.

2. For greater certainty, disputes as referred to in paragraph 1 shall not include disputes arising under non-violation complaints.

Drafting Note: Indonesia proposed to include clarification on exclusion of non-violation complaints.

Article 3 Choice of Forum

1. Where a dispute regarding the same matter arises under the Agreement and under another agreement to which the disputing Members are party, the complaining Member may select the dispute settlement procedure in which to settle the dispute.
2. The complaining Member shall notify the other Member in writing of its intention to select a particular forum before doing so.
3. Once the complaining Member has requested the establishment of, or referred a matter to a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other.

Drafting Note: Indonesia proposes to include the word “establishment of” to reflect Article 7. Indonesia proposes to include the words “or referred a matter to” to reflect Article XXIII:2 of GATT which reads “... the matter may be referred to...”.

Article 3bis General Provisions

1. Unless otherwise specified, any time periods provided for in this Annex may be modified by agreement between the parties to the dispute.

Article 4 Consultations

1. Each Member may request consultations with any other Member with respect to any matter relating to the interpretation, ~~and~~ application of, ~~and/or~~ non-compliance with the provisions of the Agreement pursuant to Article 2.
2. The requesting Member shall ~~deliver~~ submit a written notification to the other Member, stating the reasons for the request, including the identification of the measure at issue and an indication of legal basis for the complaint and provide sufficient information to enable an examination of the matter. A copy of the request for consultations shall be ~~delivered~~ submitted to the Supervisory Committee.

Drafting Note: Indonesia proposes to change “delivered” to “submitted” to make it consistent with paragraph 4 (i.e. date of submission).

3. The Member to which the request for consultations is reply within ~~25~~10 days of its receipt.

Drafting Note:

1. Indonesia proposes to have “10” days instead of “25” days to make it more consistent with the DSU.

4. These consultations shall take place within 30 days of the date of receipt of the request for consultations, and shall be concluded 60 days after the date of submission of the request. ~~Consultations shall take place, unless the Members agree otherwise, in the territory of the Member complained against.~~

Drafting Note:

1. Indonesia proposes to include “and shall be concluded 60 days after the date of submission of the request” to make it consistent with paragraph 5 on consultations on perishable goods. Indonesia proposes 60 days in line with the DSU.
2. Indonesia proposes the second sentence to be a separate paragraph (i.e. paragraph 4bis).

4bis. Consultations shall take place, unless the consulting Members agree otherwise, in the territory of the Member complained against.

5. Consultations on matters of urgency, including those regarding perishable goods, shall be held within 15 days of the date of submission of the request, and shall be concluded 30 days after the date of submission of the request.

6. Upon initiation of consultations, the consulting Members shall provide information to enable the examination of how the measure at issue might affect the interpretation, ~~and~~ application of, and/or non-compliance with the provisions of the Agreement, and give confidential treatment to the information exchanged during consultations.

7. Consultations under this Article shall be confidential and without prejudice to the rights of either Member in any further proceedings.

Article 5 Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to voluntary undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. They may begin at any time and be terminated at any time.

Drafting Note: Indonesia proposes additional language to clarify the voluntary character of good offices, conciliation and mediation.

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an Arbitration Panel under Article 7.

2bis. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

Drafting Note: Indonesia proposes this new paragraph to clarify the Parties' right to terminate good offices, conciliation and mediation at any time.

3. Proceedings involving good offices, mediation and conciliation and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Parties in any ~~further~~ other proceedings.

Drafting Note: Indonesia proposes the use of the term "other" instead of "further" to avoid any hierarchy of proceedings interpretation.

Article 6 Supervisory Committee Intervention

~~1. If the Members fail to reach a mutually satisfactory solution during the consultations pursuant to Article 3, the complaining Member may request in writing that the Supervisory Committee meet to deal with the issue.~~

1. The complaining Member may request in writing that the Supervisory Committee convene to deal with the issue if:

- a. the Member to which the request for consultation is made under Article 4 does not reply within 10 days after the receipt of the request, or
- b. the Member to which the request for consultation is made does not enter into consultations within a period of no more than 30 days after the receipt of the request, or after a period otherwise mutually agreed by the consulting Members, or if consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations; or
- c. in cases of urgency, including those which concern perishable goods, the Member to which the request for consultation is made under Article 4 does not enter into consultations within a period of no more than 15 days after the receipt of the request, or if consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations.

Drafting Note: Indonesia proposes a new approach that addresses the possibility that: (a) the requesting Member does not respond to the request; or (b) the requesting Member does not enter into consultations.

2. This written request shall also include reasons for the request, ~~the~~ sufficient information to enable an examination of the measure at issue, and the legal basis in relation with the dispute.

3. The Supervisory Committee shall meet within thirty (30) days after all the Signatory Members have received the request referred to in paragraph 2. Unless the Members agree otherwise, the Supervisory Committee meeting shall take place at the D-8 Secretariat.

4. For the purposes of calculating the period referred to in the previous paragraph, the Members shall immediately acknowledge receipt of the request.

5. Should it be impossible to hold the meeting of the Supervisory Committee within the period stipulated in this article, the Members may extend, by consensus, the timeline of the meeting under paragraph 3 for a further ~~time~~ period of 30 days.

6. The Supervisory Committee shall evaluate the dispute and allow the consulting Members an opportunity to inform ~~it about~~ their positions and, if necessary, to provide additional information in order to reach a mutually satisfactory solution.

7. The Supervisory Committee shall endeavour to resolve the dispute promptly by means of a decision and, if the Members to the dispute agree, may make recommendations regarding the implementing measures to be taken by the Member concerned, and the timeframe for doing so.

8. The Supervisory Committee may call on such technical advisers or create such working groups or expert groups as it deems necessary; or as may assist the consulting Members to reach a mutually satisfactory resolution of the dispute. ~~The Members may agree to suspend further proceedings provided in the following articles during the activities envisaged in this paragraph.~~

Drafting Note: Indonesia proposes the second sentence to be a separate paragraph because of their distinct substance.

8bis. The Members may agree to suspend further proceedings provided in the following articles during the activities envisaged in this paragraph.

Drafting Note: Indonesia proposes that need further clarification of this paragraph

9. If the Supervisory Committee does not convene within the timeframe laid down in Paragraph 3 [or 5], or no agreement has been reached on a mutually acceptable solution within the thirty (30) days as from the date of the [first] Committee meeting, the complaining Member may request the establishment of an Arbitration Panel, by means of a written notice addressed to the responding Member, in accordance with Article 7 of this Annex.

Drafting Note: Indonesia proposes additional text for further clarification in relation with paragraph 5 and additional text to linkage this article and the following article on.

ARTICLE 7 Establishment of Arbitration Panel

1. The complaining Member shall identify in the request for the establishment of an Arbitration Panel, the specific measure at issue, the legal basis of the complaint including any provision of the Agreement alleged to have been breached and any other relevant provisions and the factual basis for the complaint and shall indicate whether a consultation under Article 4 or whether a Supervisory Committee meeting under Article 6 were held.

Drafting Note: Indonesia proposes additional text to clarify that the complaining Member should indicate whether a consultation and a Supervisory Committee meeting were held.

2. The Arbitration Panel shall be composed of three arbitrators. Each Party to the dispute shall appoint one arbitrator, whose se may be its national, within 30 days of the date of the receipt of the request for the establishment of the Panel. The Parties to the dispute shall agree on and appoint the third arbitrator, who shall be the chairperson of the Arbitration Panel, within 45 days of the date of the request for the establishment of the Arbitration Panel. If the chairperson of the Arbitration Panel has not been designated by the Parties to the dispute within 15 days of the appointment of the second arbitrator, either Party to the dispute may request the Supervisory Committee to appoint the third arbitrator to chair the Arbitration Panel. The Secretariat shall establish and maintain a roster of arbitrators which the ~~Members~~ Parties to the dispute and the Supervisory Committee shall take into account during the process of selection.

Drafting Note: Indonesia suggests that working group consider including provisions regarding the possibility if the responding member does not appoint the second arbitrator. In addition, Indonesia also is not yet confirmed whether the supervisory committee should be the appointing authority in the event the Disputing Members do not agree on the appointment of the chair of the arbitration panel. Indonesia would rather have, e.g. the president of the PCA or the WTO DG to be the appointing authority because of his apolitical status.

3. The chairperson of the Arbitration Panel shall not be a national of any Party to the dispute nor a resident nor an employee of any ~~of the members~~ Party to the dispute ~~having dispute before the Arbitration Panel~~ and must not have dealt with the matter before in any capacity, whatsoever.

4. The appointments provided for in this Article shall be notified to the ~~parties~~ Parties to the dispute and to the Secretariat.

5. All arbitrators shall have specialized knowledge or experience in law and international trade or other matters relating to the Agreement or in the resolution of disputes arising under international trade agreements. They shall be independent, serve in their individual capacities and not take instructions from any organization or government, or be affiliated with the government of any of the Member States.

6. After accepting their appointment and before beginning their work, the arbitrators shall sign the Statement of Agreement contained in Appendix 1 (Code of Conduct for Arbitrators of the Arbitration Panel).

7. The date of establishment of the Arbitration Panel shall be the date as of when the Statements of Agreement have been signed by the three arbitrators.

8. If an arbitrator appointed under this Article becomes unable to participate in the proceeding or resigns, a successor shall be selected within 10 days in accordance with the selection procedure followed to select that arbitrator.

Article 8 Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.
2. Any action taken under paragraph 1 shall be without prejudice to the ~~members'~~ Members' rights and obligations stipulated under the provisions of ~~this~~ the Agreement.

Article 9 Functions and Proceedings of the Arbitration Panel

Drafting Note: Indonesia proposes to use the term Parties to the dispute instead of Members to establish a distinction between the Members which are Parties to the dispute and Member States which in general.

1. The function of an Arbitration Panel is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with ~~this~~ the Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it.
2. Arbitration Panels shall interpret the Agreement in accordance with customary rules of interpretation of public international law.
3. Arbitration Panel meetings shall be closed to the public, unless the ~~Members~~ Parties to the dispute decide otherwise.
4. ~~The Members~~ Each Party to the dispute shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a ~~Member~~ Party to the dispute to the Arbitration Panel, including any comments on the interim report and responses to questions put by the Arbitration Panel, shall be made available to the other ~~Member~~ Party to the dispute .
5. A ~~Member~~ Party to the dispute asserting that a measure of the other ~~Member~~ Party to the dispute is inconsistent with the Agreement shall have the burden of establishing such inconsistency. A ~~Member~~ Party to the dispute asserting that a measure is subject to an exception under the Agreement shall have the burden of establishing that the exception applies.
6. The Arbitration Panel should consult with the ~~Members~~ Parties to the dispute as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.
7. An Arbitration Panel shall take its decisions by consensus. In the event that an Arbitration Panel is unable to reach consensus it may take its decisions by majority vote.

8. On request of a [Member Party to the dispute](#) or on its own initiative and subject to such terms and conditions as the [Members Parties to the dispute](#) may agree within 10 days of the date of establishment of the Arbitration Panel, the Arbitration Panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The Arbitration Panel shall provide the [Members Parties to the dispute](#) with a copy of any advice or opinion obtained and an opportunity to provide comments. Where the Arbitration Panel takes the information or technical advice into account in the preparation of its report, it shall also address any comments by the [Members Parties to the dispute](#) on the information or technical advice.

9. The Arbitration Panel may, after consulting the [Members Parties to the dispute](#), adopt additional rules of procedure not inconsistent with the rules adopted by the Supervisory Committee.

10. The Arbitration Panel shall apply the Rules of Procedure, which include the rights to hearings and the exchange of written submissions as well as deadlines and timetables for ensuring expediency, as set out in Appendix 2. The Rules of Procedure shall be modified or amended subject to the agreement of the Member States thereto.

Article 9bis Interim Report Stage

The Arbitration Panel shall issue an interim report to the [Members Parties to the dispute](#) setting out the findings of the fact, applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes, as a general rule, not later than [120] days from the date of establishment of the Arbitration Panel. Any [Member Party to the dispute](#) may submit a written request for the Arbitration Panel to review precise aspects of the interim report within 15 days of its notification. The findings of the final Arbitration Panel ruling shall include a discussion of the arguments made at the interim review stage.

Article 9ter Suspension and Termination of Proceedings

1. The Parties to the dispute may agree that the Arbitration Panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of any Party to the dispute. If the work of the Arbitration Panel has been continuously suspended for more than 12 months, the authority for establishment of the Arbitration Panel shall lapse unless the Parties to the dispute agree otherwise.

2. The Parties to the dispute may agree to terminate the proceedings of an Arbitration Panel in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the Arbitration Panel presents its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.

4. The Parties to the dispute shall notify the other Members that the Arbitration Panel has been suspended, terminated or its authority has lapsed pursuant to paragraph 1.

ARTICLE 10 **Arbitration Panel ~~Report~~ Award**

1. The Arbitration Panel shall ~~submit~~ issue its ~~report~~ award containing its findings and conclusions to the ~~Members~~ Parties to the dispute, as a general rule not later than three months from the date of establishment of the Arbitration Panel. If the Arbitration Panel cannot ~~submit~~ issue its ~~report~~ award within this period, it may extend that period to a maximum of five months from the date of establishment of the Arbitration Panel.

2. When the Arbitration Panel considers that it cannot issue its ~~report~~ award within one and half month in cases of urgency, it shall inform the ~~Members~~ Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will issue its ~~report~~ award. In no case the issuance of the award shall exceed two months ~~circulation of the report to the Members shall exceed two months.~~

3. The ~~report~~ award of the Arbitration Panel shall be final and binding on the ~~Members~~ Parties to the dispute.

4. The deliberations of the Arbitration Panel and the documents submitted to it shall be kept confidential.

5. 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. The vote of the Arbitration Panel shall be confidential and no dissenting opinion shall be expressed.

ARTICLE 11 **Implementation**

Unless the ~~Members~~ Parties to the dispute agree otherwise, the ~~Member~~ Party complained against shall eliminate the non-conformity as determined in the ~~report~~ award of the Arbitration Panel, immediately, or if this is not practicable, within a reasonable period of time, which will be determined by the ~~Members~~ Parties to the dispute.

ARTICLE 12 Compensation and Suspension of Concessions

1. Compensation and suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. It shall only be applied until such time as the measure found to be inconsistent with ~~the~~ Agreement or a mutually satisfactory solution is reached.
2. If the ~~Member~~ Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the ~~Member~~ Party complained against shall, if so requested, enter into negotiations with the complaining ~~Member~~ Party with a view to reaching mutually satisfactory compensation.
3. If there is no agreement on satisfactory compensation within 30 days after the date of receipt of the request mentioned in paragraph 2, the complaining ~~Member~~ Party may suspend the application ~~to the Member complained against~~ of concessions or other obligations under ~~the~~ Agreement to the Party complained against, after giving notification to the Party complained against of such suspension 30 days in advance. Such notification may only be given 30 days after the date of receipt of the request mentioned in paragraph 2. At the same time the decision for suspension should be forwarded to the non-complying member. The level of [compensation and] suspension shall be equivalent to the level of the nullification or impairment, as determined in the Arbitration Panel ~~report~~award.
- [4. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.]
5. If the ~~Members~~ Parties to the dispute do not agree on reasonable period of time, the level of suspension, either ~~Member~~ Party to the dispute may refer the matter to the Arbitration Panel, mentioned in Article [X]. The Arbitration Panel shall issue its report within 20 days relating to the reasonable period of time and within 45 days relating to the other matters, from the date of the written request.

Article 13 Expenses

The Parties to the dispute shall bear their own expenses and legal costs. The cost of the chairperson of an Arbitration Panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties to the dispute in equal shares.

Article 14 Relation with the Agreement

1. This Annex shall form an integral part of the Agreement.
2. In the event of an inconsistency between a provision of the Agreement and a provision of this Annex, the provision of this Annex shall prevail to the extent of the inconsistency.

Article 15
Entry into Force

1. This Annex shall enter into force 30 days following the date on which all signatory Members have notified the depository of their instruments of ratification.
2. Notification under paragraph 2 shall be effective only to the extent that the notifying Member has become a party to the Agreement.

Article 16
Withdrawal

1. In the case the Agreement is terminated, this Annex shall be considered as terminated.
2. Any Member that withdraws from the Agreement shall be considered as also having withdrawn from this Annex.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Annex.

DONE at [city]. [country], on [date], in the English language in one original copy.