

**ANNEX XX
DISPUTE SETTLEMENT**

Proposals of Indonesia were submitted on 16.2.16

**ARTICLE 1
Objective**

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

[Ind: proposed to delete because it's beyond the mandate under article 26.4]

**ARTICLE 2
Scope**

Except as otherwise provided in this 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 this Agreement.

[Ind: Arbitration panel established under Article 26 of the PTA shall follow the following procedures]

Drafting note: Indonesia's proposal is to follow the limited mandate under article 26.4 which limits the annex only to arbitration panel procedures.

**ARTICLE 3
Choice of Forum**

1. Where a dispute regarding the same matter arises under this 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 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 delete this article because it's beyond the mandate under article 26.4 . In addition, Indonesia would like to remind that Para 3 still implies a complaining member has the authority to establish a panel while actually it is the SC which has the authority.

ARTICLE 4
Consultations

1. Each Member may request consultations with respect to any matter relating to the interpretation and application and/or non-compliance with the provisions of this Agreement pursuant to Article 2.
2. The requesting Member shall deliver 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 to the Supervisory Committee.
3. The Member to which the request for consultations is made shall reply within 25 days of its receipt.
4. These consultations shall take place within 30 days of the date of receipt of the request for consultations. Consultations shall take place, unless the 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 Members shall provide information to enable the examination of how the measure at issue might affect the interpretation and application and/or non-compliance with the provisions of this 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.

Drafting note: Indonesia proposes to delete this article because it's beyond the mandate under article 26.4

ARTICLE 5
Good offices, conciliation and mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.
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.

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 proceedings.

Drafting note: Indonesia proposes to delete this article because it's beyond the mandate under article 26.4

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.
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 for a consensus for a further time of 30 days.
6. The Supervisory Committee shall evaluate the dispute and allow the Members an opportunity to inform it about their positions and, if necessary, 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 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.
9. If the Supervisory Committee does not convene within the timeframe laid down in Paragraph 3, 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 in accordance with Article 7 of this Annex.

[Revised draft of Para 9: "If the Supervisory Committee does not convene within the timeframe laid down in Paragraph 3, 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 supervisory committee, upon the request of the complaining Member, shall refer the dispute to the Arbitration Panel which is established in accordance with Article 7 of this Annex."]

Drafting note: Indonesia proposes to delete this article because it's beyond the mandate under article 26.4 of the PTA.

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 this Agreement alleged to have been breached and any other relevant provisions and the factual basis for the complaint.
2. The Arbitration Panel shall be composed of three arbitrators. Each Party to the dispute shall appoint one arbitrator, who 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 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 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 party 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 parties to the dispute 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 president of DSB to be the appointing authority because of his apolitical status

3. The chairperson of the Arbitration Panel shall not be a national of a Party to the dispute nor a resident nor an employee of any of the members 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 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 this 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' rights and obligations stipulated under the provisions of this Agreement.

Article 9 Functions and Proceedings of the Arbitration Panel

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 Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it.
2. Arbitration Panels shall interpret this 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 party to the dispute decide otherwise.

Drafting note: The WG suggests to provide consistency on the use of the term 'Members party to the dispute', complaining member and responding member 16/02/16

4. The Members 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 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.
5. A Member asserting that a measure of the other Member is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Member asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
6. The Arbitration Panel should consult with the Members 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 or on its own initiative and subject to such terms and conditions as the Members 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 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 on the information or technical advice.
9. The Arbitration Panel may, after consulting the Members, 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.

Drafting note: Indonesia shall provide an additional para on language and translation.

Article 9bis
Interim Report Stage

The Arbitration Panel shall issue an interim report to the Members 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 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.

Commented [TK1]: The number of the Article now should be Article 10. And the rest of numbers of the Articles should be adjusted accordingly.

Commented [TK2]: In order not to have a conflicting time frames, I think we should specify a date below three months instead of 120 days in brackets. Considering the article 10 para 1 I think 75 would serve the purposes..

Drafting note: Indonesia will provide a proposal on article on suspension or termination of arbitral panel proceedings.

ARTICLE 10

Arbitration Panel Report

1. The Arbitration Panel shall submit its report containing its findings and conclusions to the Members, as a general rule not later than three months from the date of establishment of the Arbitration Panel. If the Arbitration Panel cannot submit its report 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 within one and half month in cases of urgency, it shall inform the Members in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case the circulation of the report to the Members shall exceed two months.
3. The report of the Arbitration Panel shall be final and binding on the Members.
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

[Ind: proposed to delete because it's beyond the mandate under article 26.4]

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

ARTICLE 12

Compensation and Suspension of Concessions

[Ind: proposed to delete because it's beyond the mandate under article 26.4]

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 this Agreement or a mutually satisfactory solution is reached.
2. If the Member complained against has failed to eliminate the non-conformity within the reasonable period of time, the Member complained against shall, if so requested, enter into negotiations with the complaining Member 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 may suspend the application to the Member complained against of concessions or other obligations under this Agreement, after giving notification 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 suspension shall be equivalent to the level of the nullification or impairment, as determined in the Arbitration Panel report.
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 do not agree on reasonable period of time, the level of suspension, either Member 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]

Commented [TK3]: Since this paragraph already moved to new paragraph 1 I think it is better to delete.

Commented [TK4]: Should ve Article 13

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 in equal shares.