

EUROPEAN ENERGY CHARTER

CONFERENCE SECRETARIAT

ANNEXE 2
Room Document 28 CL-159
Working Group II

Brussels, 18 June 1992

Basic Agreement - Article 24

Latest compromise version

CHARTER CONFERENCE SECRETARIAT

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[ARTICLE 24]⁽¹⁾

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Disputes between Contracting Parties concerning the Interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
- (2) If such a dispute can be brought under the provisions of a bilateral agreement between Contracting Parties, those provisions shall prevail in relation to dispute settlement.
- (3) Subject to paragraph (2) above, if the dispute cannot be settled in accordance with paragraph (1) above [within 180 days],⁽²⁾ except as otherwise provided in this Agreement, it shall, if one of the parties to the dispute so requests in writing, be submitted to dispute resolution under paragraph (4) below, unless otherwise agreed between such parties.
- (4) Where the dispute between the parties has not been settled according to paragraph (1) above, and has not been submitted to dispute resolution within 60 days of the request referred to in paragraph (3) above, it shall be submitted, if one of the parties to the dispute so requests in writing, to an ad hoc arbitral tribunal. Such an ad hoc arbitral tribunal shall be constituted as follows :
 - (a) The party instituting the proceedings shall appoint one member of the Tribunal, who may be its national or citizen;
 - (b) Within 30 days of the receipt of notification of that appointment, the other party to the dispute shall, in turn, appoint one member, who may be its national or citizen. If the

appointment is not made within the time limit prescribed, the Party having instituted the proceedings may, within a further period of 30 days request that the appointment be made in accordance with sub-paragraph (d) below;

- (c) A third member, who may not be a national or citizen of a party to the dispute, shall then be appointed between the parties to the dispute. That member shall be the President of the Tribunal. If, within 180 days of the receipt of the request referred to in paragraph (3) above, the parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with sub-paragraph (d) below, at the request of any party submitted within 30 days of the expiry of the 180 day period provided for in this paragraph;
- (d) Appointments pursuant to sub-paragraphs (b) or (c) above shall be made by the President of the International Court of Justice within 30 days of the receipt of a request to do so. If he is prevented from discharging this task or is a national or citizen of a party to the dispute, the appointments shall be made by the Vice-President. If the latter, in turn, is prevented from discharging this task or is a national or citizen of a party, the appointments shall be made by the most senior judge of the Court who is not a national or citizen of a party;
- (e) Appointments made in accordance with sub-paragraphs (a), (b), (c) and (d) above shall have regard to the qualifications and experience, particularly in matters covered by this Agreement, of the members to be appointed;
- (f) The Tribunal shall establish its own rules of procedure, unless otherwise agreed by the parties to the dispute, and shall take its decisions by a majority vote of its members;

- (g) The arbitral award shall be final and binding upon the parties to the dispute;
 - (h) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the parties to the dispute.
- (5) (3) Notwithstanding paragraphs (3) and (4) above, in the event of a dispute between Contracting Parties who are also parties to the GATT or a GATT-related Instrument, which could also be brought under the provisions of the GATT or the GATT-related Instrument concerned, the parties to the dispute, except where they have agreed to an alternative procedure, shall, without prejudice to the initial application of paragraph (1) above, settle the dispute [according to the procedures provided for]⁽⁴⁾ in the GATT or the GATT-related Instrument concerned. Should a Contracting Party who is not a party to the GATT or to a relevant GATT-related Instrument but who has made or received a written request under paragraph (3) above become a party to the GATT or that GATT-related Instrument, the dispute in question shall be resolved in accordance with paragraph (3) above except where the parties agree to an alternative procedure.

General comments

CDN believes that consideration should be given to measures for :

- a) settlement of disputes involving more than one Contracting Party;
- b) Intervention in dispute settlement by a Contracting Party not party to the dispute; and

- c) ensuring the consistency of Interpretation given to provisions of the Basic Agreement in dispute resolution.

The question regarding disputes arising from Protocols is deferred until discussion of Article 28.

Specific comments

- 24.1: Subject to scrutiny by all delegations. CDN scrutiny reserve also concerns relationship between this article and Article 27.
- 24.2: EC and RO reserve.
- 24.3: Finalisation of this paragraph awaits consideration of the trade related provisions. USA delegation notes that it may be preferable to address the trade disputes through a dispute settlement procedure as indicated in Room Document 18 of 16 June 1992.
- 24.4: AUS asks for deletion.