

EUROPEAN ENERGY CHARTER

CONFERENCE SECRETARIAT

Room Document

WG II, 14-18 Dec 92

Brussels, 17 December 1992

Basic Agreement - Article 24

The Sub-Group on Article 24 recommends the following:

CHARTER CONFERENCE SECRETARIAT

c/o CEC - DG XVII, rue de la Loi 200, 1049 Brussels, Belgium

Fax: (32-2-) 296 6261

ARTICLE 24

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Agreement through diplomatic channels.
- (2) If the dispute has not been settled in accordance with paragraph (1) above within a reasonable time, except as otherwise provided for in this Agreement or unless the parties otherwise agree in writing, either Contracting Party may, upon 60 days written notice to the other Contracting Party of its intention to do so, submit the matter to an ad hoc arbitral Tribunal under this Article.
- (3) such an ad hoc arbitral tribunal shall be constituted as follows :
 - (a) The Contracting Party instituting the proceedings shall appoint one member of the Tribunal;
 - (b) Within 30 days of the receipt of notification of that appointment, the other Contracting Party to the dispute shall, in turn, appoint one member. If the appointment is not made within the time limit prescribed, the Contracting 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 Contracting Party to the dispute, shall then be appointed between the Contracting Parties to the dispute. That member shall be the President of the Tribunal. If, within 180 days of the receipt of the ^{written request} request referred to in paragraph (b) above, the Contracting 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 Contracting Party submitted within 30 days of the expiry of the 180 day period provided for in this paragraph;

2
↓

(d) Appointments pursuant to sub-paragraphs (b) or (c) above shall be made by the Secretary-General of the Permanent Court of Arbitration 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 Contracting Party to the dispute, the appointments shall be made by the xxxxxxxxxxxxxxxxxxxxxx. If the latter, in turn, is prevented from discharging this task or is a national or citizen of a Contracting Party, the appointments shall be made by the most senior xxxxxxxxxxxxxxxxxxxxxx who is not a national or citizen of a Contracting 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) In the absence of an agreement between the Parties to the contrary, the Arbitration rules of the United Nation Commission on International Trade Law (UNCTRAL) shall govern, except to the extent modified by the Contracting Parties to the dispute or by the arbitrators. The Tribunal shall take its decisions by a majority vote of its members.

(g) The Tribunal shall decide the dispute in accordance with this Agreement and International Law.

- (h) The arbitral award shall be final and binding upon the Contracting Parties to the dispute.
- (i) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute. The Tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute.
- (j) Unless the parties agree otherwise, the Tribunal shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration.
- (k) A copy of the award shall be deposited with the Secretariat who shall make it generally available.

Art 24

Para. (3) from the ~~mutual~~ demand

- | | | | |
|------------|---------|---------|---------------|
| a) initial | written | demand. | |
| b) first | | | request |
| c) | | | communication |

d) initial statement of the problem

~~CANADA~~ e) a reasonable period.

f) from which one of the parties invokes the Article.

last part: (3)

SC Art 24 ~~is~~ heretofore - dual des desfr the und desfr, und des auferes i de relevante Artikelen.

Damb. Hubs der lares und desfrs, skal de "hjemles" i Art 24, for itlike ad for problem

~~Stop better CP~~

24.1 state > c state \Rightarrow Art 24

para (1)

US: Amstaten euten $\left\{ \begin{array}{l} \text{fusen Htd} \\ \text{100 desz - ubegrundet} \end{array} \right.$

CND a reasonable period / e Para (1) skal endevort if possib

RUP

The requesting CP may

If the disp cannot be settled in accordance

with para (1) above [the requesting CP
may ~~submit~~ the disp to an ad hoc arbitral tribunal]
~~if one of the CP's to the disp.~~

shall
be
submitted

~~to requests for work, submit the disp to
resolution under para [] below,~~

~~[exp as otherwise agreed by between the CP's]~~

[exp as ~~agreed~~ provided for in this
the

shall give written notice of
its intention to submit
the matter to Arbitration
under this Article

the requesting CP may ~~except~~ as otherwise agreed
provided for in this agreement

ans:

Art 5 forbyr GATT-systemet på banen.
på Annex 24(5) stilles hele GATT-systemet ned: BA.
Zy. 5 skal følge anvendelsen af systemet.

US: løse spørg. om hvorvidt sagen er dækket af det ene eller
det andet. Dette skal så løses under Art. 24. (hvis
de er ulovlige) ~~TRISOMAC~~.

~~Need to be reported in the system~~

if disagreement
Before GATT have to go to tribunal.

art. 5. kaldes på GATT m. mindre men hvor
lignende om andet i BA.

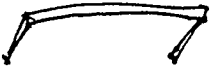
1. GATT → GATT.

2. Fast. Short.

3. Wait for BA-resolution. Jo hvor sagen skal gå

Beats: Let other party know, that the case will be
brought up under BA. (system for that).

4 to 5



dispute whole and
can be brought under the GATT

if dispute null. GATT → GATT.

prob. for di. visse gatt - general behaviour and rules in SA
and under GATT - as det. as while not prob., se.
large GATT-market references of GATT.

formal in 24 as at stage GATT-procedure for day same
like before GATT - men BA.

Basic.

Where the provision that would be applicable under GATT

Dispute between two CIPs where applicable
shall be determined by the treaty.

Questions concerning
shall

pending the decision

shall not constitute

A party that has GATT dispute settlement ... shall
market. shall

Bankers' article 2

If the party

Dispute concerning
disagreement

In the event ^{of} a disagreement ^{concerning applicability} between as to
~~whether~~ ^{of} 24 BTS ~~applies to a dispute~~

~~the~~ any ~~request~~ CP concerned may request

+

52

Aug

within

~~submitted to ad hoc arbitral~~

~~upon 60 days notice of to the offer of~~
~~of it's detention to do so,~~

The most serious member of the roster of
the Court

could. per "Court" + 3(d)

If they have a line of succession.

US employ the UNCITRAL rules

The UNIS

The Arbitration Rules of the UNIS Commission on
International Trade Law (UNCITRAL) shall govern,
except to the extent made inapplicable by the

can tracing the Parties in the Arbitration - - he is. Arbitration

US

or unless the parties otherwise agree in writing,

~~dispute shall be submitted to~~

~~arbitration provided for in this
/ except as otherwise agreed,~~

~~either IP~~

After the expiration of 60 days

of

either

cannot

these endeavors do not succeed.

has not

within [days]

- a reasonable time

or if it is not settled within ⁶⁰ [days]

is not resolved within
has

3(d)

(d) Unless the ^{Parties} ~~Parties~~ agree otherwise, the Tribunal shall ~~sit~~ ^{meet} in The Hague and will use the ~~facilities~~ ^{facilities and the} of the Permanent Court of Arbitration.

Disputes arising among the CP's that are also parties to ^{the} GATT on matters related to GATT and that are not otherwise dealt with in this Agreement shall be referred to GATT dispute settlement.

In case parties to the dispute disagree as to the applicability of this Treaty, the matter should be settled without this article.

The ~~disputing~~ Party ^{pending the decision of} will not launch legalis' contr.

the matter to GATT

17/12/92

Basic Agreement - Article 24

~~Revisions~~ of Sub Group on Article 24.
Conceptual Approach

The Sub-Group on Article 24 (composed of
CDN, EC, IEA, POL, RUF and USA) suggests consideration
of the following:

Addition of
A. ~~the following~~ the following ~~words~~ language to the
~~Article~~ beginning of Article 5:

"Except as otherwise provided in this Agreement."

^{Revised}
B. Article 24 as ~~attached~~ attached.

C. ~~Article 24 BIS~~ Addition of ~~an~~ Articles
24 BIS ^{and 24 TER} ~~as attached~~ attached.

Type 24 BIS
and
24 TER
see
attached

ARTICLE 24

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Agreement through diplomatic channels.
- (2) If the dispute has not been settled in accordance with paragraph (1) above within a reasonable time, except as otherwise provided for in this Agreement or unless the parties otherwise agree in writing, either Contracting Party may, upon 60 days written notice to the other Contracting Party of its intention to do so, submit the matter to an ad hoc arbitral Tribunal under this Article.
- (3) Such an ad hoc arbitral tribunal shall be constituted as follows :
 - (a) The Contracting Party instituting the proceedings shall appoint one member of the Tribunal;
 - (b) Within 30 days of the receipt of notification of that appointment, the other Contracting Party to the dispute shall, in turn, appoint one member. If the appointment is not made within the time limit prescribed, the Contracting 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 Contracting Party to the dispute, shall then be appointed between the Contracting 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 (1) above, ² the Contracting 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 Contracting 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 Secretary-General of the Permanent Court of Arbitration 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 Contracting Party to the dispute, the appointments shall be made by the xxxxxxxxxxxxxxxxxxxxxxx. If the latter, in turn, is prevented from discharging this task or is a national or citizen of a Contracting Party, the appointments shall be made by the most senior xxxxxxxxxxxxxxxxxxxxxxx who is not a national or citizen of a Contracting 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) In the absence of an agreement between the Parties to the contrary, the Arbitration rules of the United Nation Commission on International Trade Law (UNCTRAL) shall govern, except to the extent modified by the Contracting Parties to the dispute or by the arbitrators. The Tribunal shall take its decisions by a majority vote of its members.

(g) The Tribunal shall decide the dispute in accordance with this Agreement and International Law.

- (h) The arbitral award shall be final and binding upon the Contracting Parties to the dispute.
- (i) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute. The Tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute.
- (j) Unless the parties agree otherwise, the Tribunal shall sit in the Hague, and will use the premises and facilities of the Permanent Court of Arbitration.
- (k) A copy of the award shall be deposited with the Secretariat who shall make it generally available.

Conceptual text.

Art. 5 [Except as otherwise provided in this Agreement]

24 As ~~is~~ B (1) to (3)

ARTICLE 24 BIS

~~24 bis~~ A dispute between CPs concerning the application of ^{provision of} ~~the~~ ~~Agreement~~

or a related instrument made applicable by referred to in

~~Article 5~~ of this Agreement may be settled in the GATT and shall not be settled under article 24.

ARTICLE 24 TER

~~24 ter~~ (1) ~~If a dispute~~ If a disagreement arises ^{over} ~~whether~~ a C.P. does not agree that article 24 ~~bis~~ applies to a dispute between ~~the~~ and ~~another~~ CPs it may request that an ad hoc tribunal determine whether article 24 ~~bis~~ applies. Such ~~tribunal~~ ^{tribunal} shall be constituted

ARTICLE 24

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Agreement through diplomatic channels.
- (2) If the dispute cannot be settled in accordance with paragraph (1) above the requesting Contracting Party shall give written notice of its intention to submit the matter to arbitration under this Article.
- (3) Where the dispute between the Contracting 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 contracting 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 Contracting Party instituting the proceedings shall appoint one member of the Tribunal;

(b) Within ¹⁰~~20~~ days of the receipt of notification of that appointment, the other Contracting Party to the dispute shall, in turn, appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within a further period of ¹⁰~~20~~ days request that the appointment be made in accordance with sub-paragraph (d) below;

within 10 days from the delivery of its request

(g) unless otherwise agreed by the Contracting Parties, the Tribunal shall render its decision within 30 days from the date on which the third member of the Tribunal is appointed;

(c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall then be appointed between the Contracting Parties to the dispute. That member shall be the President of the Tribunal. If, within ~~100~~³⁰ days of the receipt of the request ^{for Arbitration,} ~~referred to in paragraph (2) above,~~ the Contracting 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 Contracting Party submitted within 30 days of the expiry of the ~~30~~³⁰ 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 Contracting 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 Contracting Party, the appointments shall be made by the most senior judge of the Court who is not a national or citizen of a Contracting 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 Contracting Parties to the dispute, and shall take its decisions by a majority vote of its members;

(g) The arbitral ~~award~~^{decision} shall be final and binding upon the Contracting Parties to the dispute;

(h) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute [add proviso allowing other division].

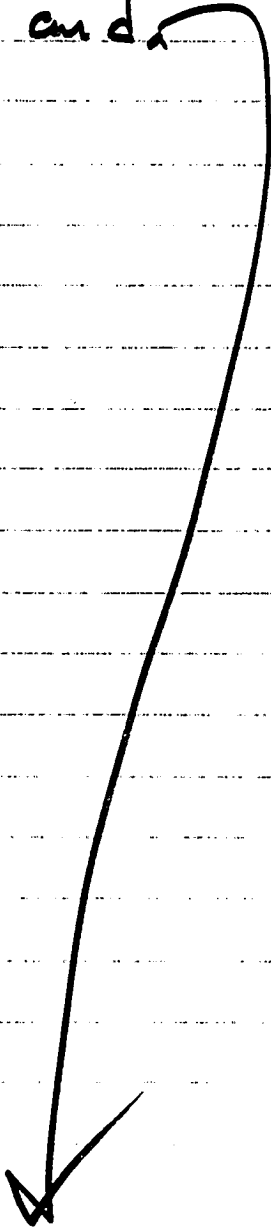
Article

(1) A dispute between Contracting Parties that are both Contracting Parties to the GATT, which concerns the application or interpretation of this Agreement, and arises only under provisions made applicable by this Agreement that are identical with provisions of the GATT, or of GATT related instruments to which they both are Contracting Parties, [may be initiated under the GATT or the relevant GATT related instrument, but] shall not be submitted to dispute resolution under ^{GATT} Article 24, unless the Contracting Parties agree otherwise.

(2) Before making a request under Article 24(3) for submittal to dispute resolution under Article 24, a Contracting Party shall ~~inquire~~ ^{inquire} whether the other disputing Contracting Party agrees ~~to submit~~ that the dispute qualifies for submittal under Article 24. In the event that the other Contracting Party ~~disagrees~~ ^{disagrees} in ~~submitting~~

within 30 days of such inquiry

~~facts~~ either fails to answer ^{this question} or
delivers to the other Contracting
Party its written opinion that
the dispute does not qualify
for submittal under Article 24,
either Contracting Party may
thereafter ~~submit the question~~
request in ~~an~~ writing the
arbitration ~~submittal~~ of this question
by ~~an~~ an ad hoc ~~arbitral~~
tribunal, and



ARTICLE 24

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

- (1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Agreement through diplomatic channels.
- (2) If the dispute cannot be settled in accordance with paragraph (1) above the requesting Contracting Party shall give written notice of its intention to submit the matter to arbitration under this Article.
- (3) Where the dispute between the Contracting 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 Contracting 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 Contracting Party instituting the proceedings shall appoint one member of the Tribunal;

(b) Within 10 days of the receipt of notification of that appointment, the other Contracting Party to the dispute shall, in turn, appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within a further period of 10 days request that the appointment be made in accordance with sub-paragraph (d) below;

within 10 days from the delivery of its request

(g) unless otherwise agreed by the Contracting Parties, the Tribunal shall render its decision within 30 days from the date on which the third member of the Tribunal is appointed;

(c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall then be appointed between the Contracting Parties to the dispute. That member shall be the President of the Tribunal. If, within ~~30~~ ³⁰ days of the receipt of the request ^{for Arbitration} ~~referred to in paragraph (b) above~~, the Contracting 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 Contracting Party submitted within 30 days of the expiry of the ~~30~~ ³⁰ 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 Contracting Party to the dispute, the appointments shall be made by the ~~Vice-President~~ ^{xxx}. If the latter, in turn, is prevented from discharging this task or is a national or citizen of a Contracting Party, the appointments shall be made by the most senior ~~judge of the Court~~ ^{xxx} who is not a national or citizen of a Contracting 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 Contracting Parties to the dispute, and shall take its decisions by a majority vote of its members;

(g) The arbitral ~~award~~ ^{decision} shall be final and binding upon the Contracting Parties to the dispute;

(h) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute [add proviso allowing other division].

X

gl. f-9

new

+ j-k

(3)

or continue

Neither Contracting Party shall initiate dispute settlement proceedings under the GATT or a GATT related instrument while consultations are occurring ~~in response to~~ or an arbitral proceeding is pending as described in paragraph (2) above.

Pend: the result of arbitration.

(3) Neither Contracting Party shall initiate dispute settlement proceedings under the GATT or a GATT related instrument while consultations are occurring ~~in response to~~ or an arbitral proceeding is pending as described in paragraph (2) above.

17/12/92

To replace (4) and (5):

(4) If the substance of a dispute between Contracting Parties concerning the interpretation or application of this Agreement can be brought under

(a) another Agreement between those Contracting Parties [which provides for final and binding resolution of the dispute], or

(b) the GATT or a GATT related instrument,

the dispute settlement provisions of this Article shall not apply to that dispute; provided, that the validity of a proceeding initiated in accordance with paragraph (3) above shall not be affected by ^{change in circumstances} ~~a subsequent event~~ ~~that would~~ ~~allow the dispute to be brought as specified in subparagraph (a) or (b) above.~~ that would allow the dispute to be brought as specified in subparagraph (a) or (b) above.

(h) The expenses of the Tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute.

(c) >

(4) 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.

(5) Notwithstanding paragraphs (3) and (4) above, in the event of a dispute between Contracting Parties who are also parties to the GATT and related instruments, which could also be brought under the provisions of the GATT and related instruments concerned, the Contracting 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 and related instruments concerned. Should a Contracting Party who is not a party to the GATT and related instruments but who has made or received a written request under paragraph (3) above become a party to the GATT and related instruments, the dispute in question shall be resolved in accordance with paragraph (3) above except where the Contracting Parties agree to an alternative procedure.

3 i) Unless the parties agree
otherwise, the Tribunal shall
sit ~~at~~ in the Hague, and will
use the premises and facilities
of ^{the} Permanent Court of Arbitration.

- (c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall then be appointed between the Contracting 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 Contracting 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 Contracting 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 Secretary-General of the Permanent Court of Arbitration 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 Contracting Party to the dispute, the appointments shall be made by the xxxxxxxxxxxxxxxxxxxxxxx. If the latter, in turn, is prevented from discharging this task or is a national or citizen of a Contracting Party, the appointments shall be made by the ^{most senior} xxxxxxxxxxxxxxxxxxxxxxxxxxx who is not a national or citizen of a Contracting 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) In the absence of an agreement between the Parties to the contrary, the Arbitration rules of the United Nation Commission on International Trade Law (UNCTRAL) shall govern, except to the extent modified by the CP's to the dispute or by the arbitrators, shall take its decisions by a majority vote of its members.
The Tribunal
- (g) The arbitral award shall be final and binding upon the Contracting Parties to the dispute;

3f.

~~The~~

In the absence of an agreement between the ~~to~~ Parties to the contrary, the Arbitration rules of the United Nations ~~to~~

Commission on International Trade Law (UNCITRAL)

Shall govern, except to the extent modified by the CP's to the dispute or by the arbitrators.

The Tribunal, [shall take its decision by majority vote of its members.]