

Article 6
Composition of Arbitral Panels

1. Unless otherwise provided in this Agreement or agreed by the parties to the dispute, an arbitral panel shall consist of three (3) members.

2. Each party to the dispute shall appoint one member of the arbitral panel within thirty (30) days after the date of receipt of the request under Article 5. If any party to the dispute fails to appoint a member of the arbitral panel within such period, then the member of the arbitral panel appointed by the other party to the dispute shall act as the sole member of the arbitral panel, notwithstanding paragraph 1.

3. The parties to the dispute shall endeavour to agree on the third member who shall serve as the chair of the arbitral panel within thirty (30) days of the appointment of the second member. If the parties to the dispute are unable to agree on the chair within this period, the chair shall be jointly appointed, by the members of the arbitral panel who have been appointed under paragraph 2, within a further period of thirty (30) days. If the members of the arbitral panel fail to appoint the chair within the aforesaid period, the chair shall be appointed at the request of the members of the arbitral panel by the Director-General of the WTO within thirty (30) days after the date of receipt of the request. In the event that the Director-General is a national of one of the parties to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of any party to the dispute shall be requested to appoint the chair.²

4. The date of establishment of the arbitral panel shall be the date on which the chair is appointed under paragraph 3 or, the 30th day after the date of receipt of the request under Article 5 where only a sole member of the arbitral panel is available.

5. If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the original member and the successor member shall have all the powers and duties of the original member. The work of the arbitral panel shall be suspended until the successor member is appointed.

² In appointing a chair, the Director-General of the WTO or an officer next in seniority in case of his or her unavailability, shall endeavour to appoint an individual who is not a national of, or does not have his/her usual place of residence in the territory of, or is not employed by, any of the Parties.

6. Any person appointed as a member of an arbitral panel shall have expertise or experience in law, international trade, other matters covered by the covered agreements or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral panel proceedings. If a party to the dispute believes that a member is in violation of the basis stated above, the parties to the dispute shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not be a national of any party to the dispute and shall not have his or her usual place of residence in the territory of, nor be employed by, any party to the dispute nor have dealt with the referred matter in any capacity.

7. Where the original arbitral panel is required for a matter as provided in this Agreement but cannot hear the matter for any reason, a new arbitral panel shall be established in accordance with this Article. The same timeframe which would have applied, had the original arbitral panel heard the matter, shall apply for the newly established arbitral panel.