

Dispute Settlement

[ds_prov] Does this agreement include provisions for solving disputes?

0	No
1	Yes

Explanation: There does not need to be an explicit article; provisions could be found under chapters such as “fulfilment of obligations” or “joint committee”. When coded as 0 all other variables in this section are also coded as 0.

[ds_del_con] Is there a provision on consultation?

0	No
1	Yes

Explanation: Only consultation requirements in respect to problems and disputes are coded as 1. If disputes are referred to joint committees and they have the explicit duty to engage in consultations for the proper implementation that is coded 1.

[ds_del_med] Is there a provision on mediation?

0	No
1	Yes

Explanation: Mediation means recourse to a “third party”, discussion of the case in the joint Committee is not sufficient to be coded as mediation. Other expressions are “good office” or “conciliation”.

[ds_del_arb] Is there a provision on arbitration?

0	No
1	Yes

Explanation: Usually in form of “ad hoc panels” with 3 or 5 members. If the joint committee can delegate to specialized expert groups to make binding recommendations to settle disputes, we also code 1.

[ds_del_sb] Is there a provision on the creation of a standing body with delegated powers?

0	No
1	Yes

Explanation: A standing body with delegated powers, e.g. the European Court of Justice.

[ds_del_ext] Is there a reference to external DS institutions?

0	No
1	Yes

Explanation: We code when other courts are explicitly mentioned and referred to (e.g., WTO, ICJ). It is sufficient to have explicit reference to the WTO and that parties have rights to bring cases in that fora.

[**ds_forum**] Is there a provision on the choice of DS fora?

0	No
1	Yes

Explanation: Are there any provisions on the choice of forum.

[**ds_forum_complain**] Does the ultimate option for forum choice foresee the complainant to choose the forum?

0	No
1	Yes

Explanation: We code only the ultimate option. This variable is always 0 if [ds_forum_parties] is coded as 1.

[**ds_forum_parties**] Does the ultimate option for forum choice foresee the parties to chose the forum jointly?

0	No
1	Yes

Explanation: We code only the ultimate option. This variable is always coded as 0 if [ds_forum_complain] is coded as 1.

[**ds_forum_restrict**] Are there restrictions/limits to the use of multiple fora?

0	No restriction (non-exclusive)
1	Restriction to one forum (exclusive)

Explanation: When there is no restriction we code 0. We code 1 if it excluded to use another forum once the first one is used.

[**ds_binding_prov**] Is there a provision on bindingness?

0	No
1	Yes

[**ds_binding_exp_yes**] Is it explicitly mentioned that provisions on DS are binding?

0	No
1	Yes

Explanation: Here we code whether parties are explicitly bound or not. We code 1 when following statements are made: “The ruling of the arbitral tribunal shall be final and binding,” or “on receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which shall be in conformity with the determinations and the recommendations, if any, of the panel, unless otherwise agreed by the Parties,” or “the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.”

[ds_binding_exp_no] Is it explicitly mentioned that provisions on DS are NOT binding?

0	No
1	Yes

Explanation: Here we code whether parties are explicitly bound or not. We code 1 if it is mentioned that the arbitral decision is non-binding.

Forms of Sanctions/Retaliation

[ds_sanc_prov] Are there any provisions related to retaliation in case of non-implementation?

0	No
1	Yes

Explanation: We code provisions that foresee the implementation of retaliation or compensation measures. A special case are treaties that foresee the use of trade remedies against sudden imports either as safeguard measures, measures against dumping or countervailing duties, which we code as 0. We only code the use of measures to “retaliate” against unfair practices as 1 if there is also a “fulfillment of obligations” article that gives states the option to take unilateral action (which is similar to a sanction/retaliation).

[ds_sanc_dp] Do both parties select jointly the appropriate level of retaliation/compensation/sanctions?

0	No
1	Yes

Explanation: Joint selection also can occur in the form of agreeing on compensation (e.g., “if the Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period as the Parties may agree, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with a view to agreeing to compensation.”)

[ds_sanc_compl] Does the complainant select the appropriate level of retaliation/compensation/sanctions?

0	No
1	Yes

Explanation: Explicit mentioning that the complainant selects the amount.

[ds_sanc_tp] Does a third part select the appropriate level of retaliation/compensation/sanctions?

0	No
1	Yes

Explanation: The third party in most cases is the original panel that is asked to decide (e.g., “at the request of any of the Parties, the original arbitration panel shall rule ... whether the suspension of benefits should be terminated or modified.”)

[ds_sanc_seq] Is there an order in the process of selecting appropriate levels of retaliation/compensation/sanctions?

0	No
1	Yes (sequencing)

Explanation: If we code at least two out of the three previous variables, then we code 1 here. This illustrates sequencing.

[ds_sanc_sect] Are there provisions on retaliation in the same sector?

0	No
1	Yes

Explanation: We code 1 when there are provisions that suggest retaliation to be pursued in the same sector where the original measure which breached the contract occurred.

[ds_sanc_cross] Is cross-retaliation possible (sanctions in other sector)?

0	No
1	Yes

Explanation: We code 1 when there are provisions allowing retaliation to be pursued in a different sector than where the original measure which breached the contract occurred.

[ds_sanc_money] Are monetary sanctions (compensation) possible?

0	No
1	Yes

Explanation: This can occur in different areas, e.g. labor, environment.

Exemptions

[ds_exempt] Are there any exemptions from DS?

0	No
1	Yes

[**ds_exempt_pos**] Is there an explicit positive list of areas covered under the DSM of the PTA?

0	No
1	Yes

Explanation: We list those areas that are explicitly mentioned in the dispute settlement chapter or for which there is theme-specific DS mechanism (for areas, see appendix). Additional requirements (e.g., consultations before using the usual chapter of DS) are not coded as positive list; there needs to be a substantial difference in how disputes are resolved. If parties refer to other dispute settlement provisions (e.g., for internet domain names), this is sufficient to be coded as 1.

[**ds_pos_count**] We count the number of areas mentioned (see appendix)

[**ds_exempt_neg**] Is there an explicit negative list of exemptions from DS?

0	No
1	Yes

Explanation: We list areas that are partially or totally exempt from dispute settlement. General exceptions (restrictions on grounds of morality, public policy or public security) are not listed.

[**ds_neg_count**] We count the number of areas mentioned (see appendix)

[**ds_priv_standing**] Is there a provision allowing private actors to bring a case against the other party breaching the agreement?

0	No
1	Yes

Explanation: We also code 1 if there is an investment chapter with an investor-state arbitration clause. We also code 1 if companies have a right of access to national regulating bodies or courts to solve disputes, such as in the areas of telecommunication.

[**ds_chain**] Is there a provision requiring for a Joint Committee or (Association) Commission to address the dispute before the establishment of the arbitral panel?

0	No
1	Yes

[**ds_time_frames**] Does the treaty list time frames related to stages and implementation of dispute settlement decisions?

0	No
1	Yes

Explanation: We do not differentiate between pre-award and post-award time frames; we code 1 when parties foresee time frames for implementation.

[**ds_interim**] Does the panel issue an initial/draft/interim report prior to the issuance of the final report?

0	No
1	Yes

[**ds_chairman_slct_cons**] What is the ultimate procedure by means of which the chairman of the arbitral panel is selected? The chairman is selected by consultation of parties.

0	No
1	Yes

Explanation: This is one of 4 different possibilities ([ds_chairman_slct_cons],[ds_chairman_slct_joint],[ds_chairman_slct_lot],[ds_chairman_slct_third]) We code only the ultimate option. All variables are set to 0 if the selection procedure is not specified.

[**ds_chairman_slct_joint**] What is the ultimate procedure by means of which the chairman of the arbitral panel is selected? The chairman is selected by arbitrators jointly.

0	No
1	Yes

Explanation: See [ds_chairman_slct_cons]

[**ds_chairman_slct_lot**] What is the ultimate procedure by means of which the chairman of the arbitral panel is selected? The chairman is selected by lot.

0	No
1	Yes

Explanation: See [ds_chairman_slct_cons]

[**ds_chairman_slct_third**] What is the ultimate procedure by means of which the chairman of the arbitral panel is selected? The chairman is selected a third party (e.g. WTO DG).

0	No
1	Yes

Explanation: See [ds_chairman_slct_cons]

[**ds_separate_ops**] Does the process allow for separate opinions to be included in the panel report?

0	No
1	Yes

Explanation: the question is whether members of the panel are allowed to form and draft separate opinions that are to be included in the panel report (e.g., “panelists may furnish separate opinions on matters not unanimously agreed.”)

[**ds_mas_count_pre**] How many times do parties evoke the concept of “mutually agreeable solution” (MAS) throughout the text of the DS chapter until the award is out?

[**ds_mas_count_post**] How many times do parties evoke the concept of MAS throughout the text of the DS chapter post award?

Explanation: We distinguish between amicable solutions prior to the award and after the award. In the post award period we also code when there is reference to “mutually satisfactory compensation”, but not if they

agree on the reasonable time to implement. In the pre award phase we also code as MAS when there is a possibility to suspend or terminate the proceedings by agreement (both suspension and termination are coded 1 each). The same applies to the post-award. If it is stated the MAS can occur any time in the process, we decided to code 2 pre and 2 post award to weight this general statement. If a specific mediation process is included, we count every substantive reference to a MAS and count this for the pre-award period

Appendix: Abbreviations for “negative” and “positive list”

1	Sanitary and Phytosanitary Measures
2	Technical Barriers to Trade (includes Regulation)
3	Services (3a: Telecom, 3b: Financial Services, 3c: Temporary Movement, 3d: Air Transport, 3e: Electronic Commerce)
4	Competition Policy
5	Investment
6	Intellectual Property Rights (6a: Domain Names)
7	Public Procurement
8	Trade Remedies (AD and CVD)
9	Safeguards
10	Business Environment
11	Balance of Payments
12	Regulatory Cooperation
13	Labor
14	Environment
15	Goods (15a: Cars, 15b: Agricultural Goods)
16	Rules of Origin
17	Economic Cooperation
18	Tax
19	Subsidies
20	Energy
21	Public Companies
22	Trade Facilitation
