

Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement Sustainable Garment and Textile

As per 1 December 2019

Definitions

Article 1

Definitions:

- 1.1 *AGT Secretariat*: the Secretariat to The Agreement assisting the Steering Group.
- 1.2 *The Agreement*: the Agreement on Sustainable Garments and Textile, dated 4 July 2016.
- 1.3 *Complaint*: issue between a Stakeholder and an Enterprise concerning an injury, loss or (environmental) damage of material significance due to a violation of The Agreement, suffered by a Stakeholder individually or a group to which the Stakeholder belongs.
- 1.4 *The Committee*¹: independent body appointed by the parties to The Agreement tasked with ruling on Complaints and Disputes arising under The Agreement.
- 1.5 *Dispute*: an issue between the Steering Group and an Enterprise concerning (the quality of) its action plan and/or progress report, the decision of the AGT Secretariat on (the quality of) the action plan and/or progress report or an issue between Parties to The Agreement concerning The Agreement which has not been resolved through decision of the Steering Group.
- 1.6 *Enterprise*: a company that has signed the 'Declaration by Enterprises concerning the Agreement on Sustainable Garments and Textile' to The Agreement.
- 1.7 *Mandated Party*: a natural or legal person mandated by the Stakeholder to represent the Stakeholder throughout the proceedings.
- 1.8 *OECD Guidelines*: the OECD Guidelines for Multinational Enterprises as amended in 2011 and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector (2017).
- 1.9 *Party to the Agreement*: signatory to The Agreement representing the sector associations, NGO's, Trade Unions, or national government of The Netherlands.
- 1.10 *Stakeholder*: anyone who has suffered damage due to a violation of The Agreement caused or contributed to by an Enterprise, or caused or contributed

¹ In the Agreement the Committee is referred to as 'Complaints and Disputes Committee'.

to by another entity to which the Enterprise is directly linked.² Legal entities can be considered Stakeholders when the interests that they specifically represent, according to the factual actions and objects clause found in the articles of association, have been damaged due to a violation of The Agreement.

- 1.11 *Steering Group*: governing body of The Agreement consisting of equal representation of five groups, namely industry organisations, participating enterprises which are members of an industry organisation, trade unions, civil society organisation and the Dutch government. The Steering Group is tasked with overseeing compliance with The Agreement and supervision of its implementation.
- 1.12 *UNGPs*: the United Nations Guiding Principles on Business and Human Rights, published in 2011.

Composition and task

Article 2

1. The Committee consists of three members.
2. An independent chair will be appointed unanimously by all parties to The Agreement. The other two members will consist of one member with entrepreneurial expertise in the garment and textile industry, appointed by the industry organisations, and one member with expertise in the garment and textile chain, appointed by all the trade unions and civil-society organisations involved in The Agreement.
3. For each of the three members of The Committee an alternate can be appointed. The alternates are tasked with functioning as substitutes for the members of the Committee when necessary.
4. The members of The Committee and the alternate members of The Committee will be appointed for a three-year term and may be reappointed twice after their first term.
5. The members of the Committee and the alternate members of the Committee can be discharged during their term based upon unanimous decision by the Steering Group or at their request.
6. The alternate members will be appointed in the same manner as the regular members of The Committee as laid down in subsection 2 of this article.

Article 3

The Committee will resolve Complaints and Disputes arising under The Agreement.

Article 4

The Committee will be assisted by a secretary when executing its tasks.

² According to the Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, a business enterprises can "cause", "contribute to" or "be directly linked to" adverse human rights impacts.

Jurisdiction

Article 5

1. The Committee has jurisdiction to decide upon Complaints and Disputes arising out of The Agreement.
2. The Committee has no jurisdiction to decide on issues as stated under subsection 1, if the issue has already been settled/decided via/through an equivalent grievance mechanism, as defined in article 6, or there is such a mechanism with the power to decide on the issue. Instead, the Complaint will be referred to that equivalent grievance mechanism. The Committee will substantiate its decision to refer the Complaint.
3. When the equivalent mechanism deems the Complaint inadmissible or does not decide on the merits of the Complaint, it can be re-submitted to The Committee.

Article 6

The Committee will determine whether an existing grievance mechanism is equivalent by looking at the following list of elements (which is not exhaustive):

- a. The binding nature of the mechanism;³
- b. Relevance of the mechanism in light of the nature of the Complaint;
- c. Accessibility of the mechanism to the Stakeholder;
- d. Conformity of the mechanism with art. 31 of the UNGPs;
- e. Ability to rule upon Complaints concerning infringements elsewhere in the (supply) chain;
- f. If public information on the result of the procedure will be provided after the Complaint has been settled.

Admissibility

Disputes

Article 7

1. A Dispute submitted by the Steering Group is admissible if it is submitted within two months after the decision to submit a Dispute by the Steering Group.
2. A Dispute submitted by an Enterprise is admissible if it is submitted within two months after a decision by the AGT Secretariat on the Enterprise's original action plan, modified action plan, progress report or modified progress report.
3. A Dispute concerning The Agreement submitted by a Party, or Parties, to the Agreement is admissible if it is submitted within two months after the Steering Group has not resolved the dispute between Parties to The Agreement by unanimous decision.
4. The Dispute is inadmissible when it is manifestly unfounded.

Article 8

1. A Dispute should be submitted to The Committee via e-mail, as published on the website of The Agreement⁴. The submission should at least contain the following

³ In anticipation of an amendment to the Agreement, the Steering Group has unanimously decided to add the binding nature of the mechanism as a requirement for an alternate mechanism to qualify as an equivalent grievance mechanism.

⁴ <https://www.imvoconvenanten.nl/en/garments-textile/agreement/complaints>

information:

- a. Date of submission;
 - b. Name of the defendant (Enterprise, Steering Group, Party or Parties to The Agreement) and, in case the defendant is an Enterprise, the office address;
 - c. Description and substantiation of the Dispute.
2. Alternatively, other written means to submit the Dispute may be considered admissible by The Committee. The Committee has the opportunity to request follow-up information from the party submitting the Dispute, when the initial submission of the claim does not meet the required information for an admissible Dispute. A failure to provide the requested information within the timeframe set by The Committee will result in inadmissibility of the Dispute.

Complaints

Article 9

1. Prior to submitting a Complaint parties should attempt to resolve the issue amicably.
2. A Complaint is admissible when it is submitted within reasonable time after the occurrence of the issue and when the issue concerned is of material significance to the Stakeholder individually or to the group to which he belongs, and can be substantiated both in relation to the Enterprise concerned and on the basis of the contents of The Agreement, including the OECD Guidelines and the UNGPs. The Complaint has to be substantiated in such a manner that it enables the Committee to understand its nature.
3. The Complaint is admissible when it meets the criterion of subsection 2 of this article as well as the criteria set out in article 10.
4. The Complaint is inadmissible when it is manifestly unfounded.

Article 10

1. A Complaint should be submitted to The Committee via e-mail, as published on the website of The Agreement⁵. The e-mail should at least contain the following information:
 - a. Date of submission;
 - b. Name of the accused Enterprise;
 - c. The name of the Stakeholder and, if the Stakeholder is a legal entity a copy of its articles of association;
 - d. If the Complaint is submitted by a Mandated Party, proof of mandate granted by the Stakeholder and if possible, the contact details of the Stakeholder;
 - e. Country and place of residence of the Stakeholder;
 - f. Description and substantiation of the Complaint;
 - g. Name of the site of the alleged violation.
2. Alternatively, other written means to submit the Complaint may be considered admissible by The Committee. The Committee has the opportunity to request follow-up information from the Stakeholder, when the initial submission of the claim does not meet the required information for an admissible Complaint. A

⁵ <https://www.imvoconvenanten.nl/en/garments-textile/agreement/complaints>

failure to provide the requested information within the timeframe set by The Committee will result in inadmissibility of the Complaint.

3. If the Stakeholder is unable to communicate in Dutch or English, the Committee will suggest the use of a Mandated Party to the Stakeholder.

Article 11

A Complaint by an organisation which is not a Stakeholder itself is admissible if the requirements of article 9 and article 10 are met by the organisation(s) representing the Stakeholders or by the Stakeholders represented.

General

Article 12

The Committee will rule on admissibility of the Complaint or Dispute within one month.

Article 13

When a Dispute or Complaint is admissible under the articles of this chapter, The Committee will deal with and decide on the Dispute or Complaint.

Complaints and Dispute procedure

Article 14

1. When The Committee has deemed a Dispute or Complaint admissible, it will subsequently notify the opposing party of the Dispute or Complaint in writing and send a copy of the Dispute or Complaint to that party. The opposing party will simultaneously be notified by The Committee that said party has a period of one month to submit a memorandum of defence and exhibits regarding the Complaint or Dispute. The term can be shortened or extended at the discretion of The Committee or may be granted by The Committee at the request of (one of) the parties.
2. A copy of the memorandum of defence and the exhibits submitted to The Committee will be sent to the party who has filed the Complaint.

Article 15

The Committee can decide to join cases when the Complaints are similar and concern the same:

- a. Enterprise;
- b. Violation;
- c. Location of the violation.

The Committee will notify all parties involved on a decision to join cases in writing.

Article 16

Parties have the right to representation by third parties throughout the procedure.

Article 17

1. In the case of a Complaint, The Committee will summon the parties to an oral hearing.
2. In the case of a Dispute, The Committee has the discretion to summon parties to an oral hearing. The Committee can only refrain from holding an oral hearing with the parties consent.
3. The hearing will take place within one month after the date set for submission of the memorandum of defence as mentioned in article 14, subsection 1. The Committee will determine the location, date and time and will notify the parties thereof. The Committee may at its discretion extend the one month period.
4. Minutes of all hearings can be made available upon request of the parties.

Article 18

At least 10 days prior to the hearing, the parties must exchange copies of all exhibits they intend to introduce at the hearing. The Committee may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. The Committee may exclude exhibits that a party fails to exchange in a timely manner.

Article 19

At The Committee's discretion, the parties can be summoned to additional hearings when this is warranted by the nature of the Complaint or Dispute.

Article 20

The Committee may, at its discretion, advise the parties to engage in mediation or negotiations facilitated by a neutral party at all times during the complaint proceedings. The AGT Secretariat will administer a list of mediators/facilitators parties might engage. Parties are free to engage other mediators/facilitators.

Article 21

At The Committee's discretion or at (one of the) the parties request The Committee can decide to allow additional written submissions.

Article 22

The Committee will grant all parties an equal and adequate opportunity to present their case. The Committee decides on the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the Complaint or Dispute.

Article 23

1. If one or more Stakeholders reside in a foreign country and are unable to physically attend the oral hearing, The Committee can utilize different means to establish a connection such as, but not limited to, a phone call or video-conferencing. The Committee may also choose to establish a connection when the Stakeholder is represented during the hearing (see article 16) but is unable to attend the hearing himself.
2. If The Committee decides it is not feasible to establish a connection with the Stakeholder during the hearing, The Committee can establish this connection at a different time when it is deemed necessary to hear one or more Stakeholder(s). The Enterprise will be notified of the alternative hearing and at The Committee's discretion will either be allowed to be present during the hearing or will be provided with minutes of the hearing after.
3. At the request of a party, The Committee can decide to hear third parties, other than the Stakeholder, residing in a foreign country and unable to physically attend the hearing. The Committee can decide on safeguarding the anonymity of the third party. The Committee therefore has the discretion to hear the third party during the hearing or at a different time. The Stakeholder or Mandated Party will be notified of the alternative hearing and will at The Committee's discretion either be allowed to be present during the hearing or will be provided with minutes of the hearing after.

Article 24

1. Under exceptional circumstances the Committee may appoint an independent facilitator in the following situations to hear Stakeholders and/or witnesses:
 - a) If the Stakeholder(s) reside(s) in a foreign country and is(are) unable to attend the hearing physically or otherwise or to provide the necessary information through a Mandated Party;
 - b) When during the investigation The Committee deems it necessary to speak to (a) local witness(es) in order to acquire more information.
2. The Committee will appoint the facilitator after consulting both parties on the person of the facilitator as well as the issues and questions that will be communicated by the facilitator to the Stakeholder(s) and/or witness(es).
3. The Committee will draw up a written assignment for the facilitator. A copy of the assignment will be sent to both parties.
4. The Committee can decide on safeguarding the anonymity of the persons mentioned under subsections 1, a) and 1, b).
5. Upon request of one of the parties, The Committee can hear the facilitator alone or together with the Stakeholder or Mandated Party and/or other witnesses when deemed necessary. This hearing can take place before or during the oral hearing. If the hearing of the facilitator takes place during the oral hearing The Committee as well as both parties may question the facilitator. If the hearing takes place before the oral hearing the parties will be sent a list of questions prior to the hearing of the facilitator. Parties will be granted the opportunity to add questions to the list.
6. Parties will be sent minutes of the hearing. Under exceptional circumstances such as significant safety concerns, The Committee can decide not to provide the parties with the complete minutes of the hearing of the facilitator.

Article 25

1. If additional information from the production site of the alleged violation is deemed necessary to decide the Complaint, The Committee can order the Enterprise to provide such evidence as specified by The Committee.
2. If the requested party deems the requested information confidential, the alternate chairman of The Committee will inspect the relevant information and rule on the confidentiality. The alternate chairman can issue the following rulings:
 - a) When the alternate chairman deems the information confidential and irrelevant for the decision of the Dispute or Complaint, the requested party will no longer be obligated to provide the requested information;
 - b) When the alternate chairman deems the information confidential but essential to decide the Dispute or Complaint, The Committee may only inspect the information with the permission of the requested party. If the permission is withheld The Committee may infer from this refusal the consequence it deems fit;
 - c) When the alternate chairman deems the information to be non- confidential, the information will be disclosed to The Committee and the parties, unless the disclosing party objects. If permission is withheld, The Committee may infer the consequence it sees fit.

Article 26

1. Upon request of one of the parties the Committee can grant parties' requests to call witnesses and/or experts for the oral hearing. The Committee as well as both parties may question the witnesses and/or experts. Names and addresses of the witnesses and/or experts must be submitted to The Committee no less than one week prior to the hearing.
2. Parties are allowed to attend the expert hearings.
3. Parties are allowed to attend the witness hearings, unless the Committee holds a closed hearing due to privacy or safety concerns. In case of a closed hearing the parties will be sent a list of questions that the Committee envisages to ask the witness(es) prior to the hearing. Parties will be granted the opportunity to add questions to the list. After the closed hearing the Committee will provide the parties with minutes of the hearing. When necessary, sensitive information regarding privacy may be omitted from the minutes. The minutes may also be in anonymous form altogether.

Article 27

1. An expert can be appointed at the reasonable discretion of The Committee, to conduct research deemed necessary to decide the Complaint or Dispute.
2. The Committee will appoint the expert after consulting both parties.
3. The Committee will draw up a written assignment containing points of research for the expert. A copy of the assignment will be sent to both parties.
4. The Committee will send a copy of the expert's report to the parties who can submit a written response to the report within a two week period. The Committee can extend or shorten the two week period.

Article 28

The Committee can appoint an independent translator if a Stakeholder and/or facilitator and/or witness and/or expert is unable to communicate in English or Dutch.

Article 29

1. The parties may offer evidence in any form as long as it is relevant and material to the Complaint or Dispute. Evidence that is deemed not relevant and material to the Complaint or Dispute by The Committee will not be accepted in the proceedings and will therefore not be a part of the decision-making by The Committee.
2. The Committee may order the parties to produce additional information that is regarded necessary to decide the Complaint or Dispute. In the event that the requested party deems the requested information confidential, the procedure as laid down in article 25, subsection 2 will be utilized to determine the confidentiality of the requested information.

Article 30

The Committee can pause the proceedings to explore the possibility of resolving the issue through an amicable solution.

Decision

Article 31

The Committee will decide on the Complaint or Dispute based on The Agreement, the UNGPs, the OECD Guidelines and the standards of reasonableness and fairness.

Article 32

1. The Committee will issue a decision within two months of the oral hearing. This term may be extended based on the complexity of the procedure and at the discretion of The Committee.
2. The Committee will issue a decision within three months after submission of a Dispute as mentioned in article 7 subsection 3 if no hearing is sought by either of the Parties to The Agreement. This three month's term may be extended with the consent of the Parties to The Agreement.

Article 33

1. The Committee will reach its decisions by a majority of votes.
2. The ruling of The Committee will be binding on all the parties involved in the procedure.
3. The ruling will be signed by the chairman of The Committee and the Secretary and shall be sent to the parties in writing.

Article 34

1. The Committee will rule on its jurisdiction, the admissibility of parties and the admissibility of the Complaint or Dispute.
2. The Committee will decide on the merits of the Complaint or Dispute by rendering one of the following decisions:
 - a) The Complaint or Dispute is unfounded;

- b) The Complaint or Dispute is partially unfounded and partially wellfounded;
 - c) The Complaint or Dispute is wellfounded.
3. If The Committee has ruled the Complaint or Dispute to be unfounded, it can include non-binding recommendations in the decision.
 4. If The Committee has ruled that the Complaint or Dispute is wellfounded, The Committee can include one or more of the following measures in the decision:
 - a) Binding recommendations for improvement;
 - b) A duty to remediate in accordance with the UNGPs and OECD Guidelines;
 - c) Non-binding recommendations.
 5. The Committee can only award financial compensation as a duty to remediate, as stated in subsection 4, under b, when the Enterprise has been found to cause or contribute to an adverse human rights impact and the Stakeholder or Mandated Party has proven causality between the violation of The Agreement by the Enterprise and the damage.

Article 35

1. Both parties carry their own costs.
2. When The Committee deems the violation in question a substantial violation of The Agreement, it can order the Enterprise to reimburse the costs on the side of the Stakeholder or Mandated Party as an exception to subsection 1.
3. When The Committee deems the Complaint brought by a Stakeholder or Mandated Party to be in bad faith, it can order the Stakeholder to reimburse the costs on the side of the Enterprise as an exception to subsection 1.

Article 36

The decision will be published on the website of The Agreement⁶. When warranted by privacy concerns The Committee can publish an anonymized version of the decision.

Article 37

1. The chairman of The Committee can, at his own discretion or at a request of a party, rectify a manifest error in the decision within two weeks after the dispatch of the binding decision.
2. A copy of the request as mentioned under subsection 1 will be sent to the other party to the proceedings and will suspend the possible execution of the decision until The Committee has decided upon the request.
3. The other party to the proceedings will be offered a two week term to respond to the request as mentioned under subsection 1.
4. Rectification will occur through a written notification to both parties.
5. The rectified decision will be published on the website of The Agreement.

⁶ <https://www.imvoconvenanten.nl/en/garments-textile/agreement/complaints>

Article 38

The Committee is authorized to decide on procedural issues not expressly addressed in these rules of procedure.

Confidentiality, challenge and recusal

Article 39

Committee hearings are closed and not open to the public.

Article 40

Members of The Committee are bound to confidentiality regarding all information presented to them in light of the proceedings and that has not been made public throughout the proceedings.

Article 41

Parties to a Dispute or Complaint are bound to confidentiality regarding all information presented to them in light of the proceedings and which has not been made public throughout the proceedings.

Article 42

1. Each of the members of The Committee, charged with handling the proceedings can be challenged by one or both of the parties when there are grounds to doubt their impartiality or independence. The Committee members can be challenged throughout the proceedings.
2. A request to challenge one of The Committee members must be submitted to the alternate chairman of The Committee in written form and contain substantiation of the request. The alternate chairman of The Committee will decide upon the request. The proceedings will be paused until the chairman has decided upon the request and, if necessary, The Committee member is replaced.
3. A member of The Committee can recuse himself from the proceedings at his own discretion. The proceedings will be paused until The Committee member is replaced.