

DRAFT PROTOCOL ON DISPUTE SETTLEMENT

The following issues (put in square brackets in the text) will be discussed bilaterally:

- the institutional body responsible for trade and the co-chairing of this body,
- the time-limits of the procedure,
- the questions on transparency,
- the question of urgency in certain provisions,
- cross-retaliation
- the scope of the Protocol,
- the language of submissions.

Considering that the increase in trade requires the adoption of a clear and streamlined mechanism to resolve trade disputes,

Determined to reach this objective by establishing an efficient dispute settlement mechanism specifically applicable to the trade domain,

Reaffirming that, throughout the proceedings described in this Protocol, the Association Council may adopt a decision to settle any dispute between the Parties,

Have agreed as follows:

CHAPTER I OBJECTIVE AND SCOPE

Article 1 Objective

The objective of this Protocol is to avoid and settle any trade dispute between the Parties with a view to arrive at, where possible, a mutually agreed solution.

Article 2 Scope

The provisions of this Protocol apply with respect to any difference concerning the interpretation and application of the [scope to be discussed on the basis of the trade provisions in each bilateral Association Agreement], ~~including where a Party considers that a measure of the other Party is in breach of these provisions,~~ except as otherwise expressly provided. Article [X] of the Association Agreement applies to disputes relating to the application ~~or and~~ interpretation of other provisions of the Association Agreement.

CHAPTER II CONSULTATIONS AND MEDIATION

Article 3 Consultations

1. The Parties shall endeavour to resolve any difference regarding the interpretation and application of the provisions referred to in Article 2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the [institutional body responsible for trade matters], identifying any measure at issue and the provisions of the Association Agreement that it considers applicable.
3. Consultations shall be held within [40] days of the date of the submission of the request and take place, unless the Parties agree otherwise, on the territory of the Party complained against. The consultations shall be deemed concluded within [60] days of the date of the submission of the request, unless both Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.
- [4.] [Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within [15] days of the date of the submission of the request, and shall be deemed concluded within [30] days of the date of the submission of the request.]
5. If consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 5.

Article 4 Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by mutual agreement, seek recourse to a mediator. Any request for mediation must be made in writing to the [institutional body responsible for trade matters] and state any measure which has been the subject of consultations as well as the mutually agreed terms of reference for the mediation.
2. Unless the Parties agree on a mediator within five days of the date of the submission of the request for mediation, the chair~~person~~ of the [institutional body responsible for trade matters], or the chair's delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 20 and are not nationals of either Party. The selection shall be made within [10] days of the date of the submission of the request for mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than [30] days after being selected. The mediator shall receive the submissions of each Party no later than [15] days before the meeting and may obtain additional information from any other

source before the meeting with the Parties. The mediator shall notify an opinion no later than [45] days after having been selected.

3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions referred to in Article 2. The mediator's opinion is non-binding.
4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.
5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.
6. If the Parties agree, procedures for mediation may continue while the arbitration procedure proceeds.

CHAPTER III DISPUTE SETTLEMENT PROCEDURES

SECTION I – ARBITRATION PROCEDURE

Article 5

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3, or by recourse to mediation as provided for in Article 4, the complaining Party may request the establishment of an arbitration panel.
2. The request for the set-up-establishment of an arbitration panel shall be made in writing to the Party complained against and the [institutional body responsible for trade matters]. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 2.

Article 6

Establishment of the arbitration panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the [institutional body responsible for trade matters], the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on its composition within the time frame laid down in paragraph 2, either party may request the chairperson of the [institutional body responsible for trade matters], or ~~her or his~~ the chair's delegate, to select all three members by lot from the list established under Article 20, one among

the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. The chairperson of the [institutional body responsible for trade matters], or ~~her or his~~ the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 by either Party and in the presence of a representative of each Party.
5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

Article 7

Interim panel ~~ruling~~report

The arbitration panel shall notify to the Parties an ~~initial ruling~~ interim report containing both the descriptive sections and the panel's findings and conclusions ~~to the Parties~~, as a general rule not later than [120] days from the date of establishment of the arbitration panel. Any Party may submit written comments to the arbitration panel on precise aspects of the interim report ~~its initial ruling~~ within [15] days of its notification.

Article 8

Arbitration panel ruling

1. The arbitration panel shall notify its ruling to the Parties and to the [institutional body responsible for trade matters] within [150] days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the [institutional body responsible for trade matters] in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than [180] days from the date of the establishment of the arbitration panel.
- [2.] [In cases of urgency, including those involving perishable ~~and or~~ seasonal goods, the arbitration panel shall make every effort to notify its ruling within [75] days from the date of its establishment. Under no circumstance should it take longer than [90] days from its establishment. The arbitration panel may give a preliminary ruling within [10] days of its establishment on whether it deems the case to be urgent.]
- ~~3. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period not exceeding 12 months. Once the period of 12 months has been exceeded, the authority for the establishment of the arbitration panel will lapse, without prejudice to the right of the complaining Party to request the establishment of an arbitration panel on the same measure at a later stage.~~

SECTION II – COMPLIANCE

Article 9

Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

Article 10

The reasonable period of time for compliance

1. No later than [30] days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the [institutional body responsible for trade matters] of the time it will require for compliance (reasonable period of time).
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within [20] days of the notification made under paragraph 1 by the Party complained against, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other party and to the [institutional body responsible for trade matters]. The arbitration panel shall notify its ruling to the Parties and to the [institutional body responsible for trade matters] within [30] days from the date of the submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 6 shall apply. The time limit for notifying the ruling shall be [45] days from the date of the submission of the request referred to in paragraph 2.
4. The reasonable period of time may be extended by mutual agreement of the Parties.

Article 11

Review of any measure taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the other Party and the [institutional body responsible for trade matters] before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the existence or the compatibility-consistency of any measure notified under paragraph 1, with the provisions referred to in Article 2, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions referred to in Article 2. The arbitration panel shall notify its ruling within [90] days of the date of the submission of the request. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall notify its ruling within [45] days of the date of the submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 6 shall apply. The time limit for notifying

the ruling shall be [105] days from the date of the submission of the request referred to in paragraph 2.

Article 12

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 11 paragraph 1 is ~~not in conformity inconsistent~~ with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within [30] days of the end of the reasonable period of time or of the arbitration panel ruling under Article 11 that a measure taken to comply is ~~not in conformity inconsistent~~ with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the [institutional body responsible for trade matters], to suspend ~~the application of benefits granted under obligations arising from -the[any]~~ provisions referred to in Article 2 at a level equivalent to the ~~adverse economic impact~~nullification or impairment caused by the violation. The complaining Party may implement the suspension [10] days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 3.
3. If the Party complained against considers that the level of suspension is not equivalent to the ~~adverse economic impact~~nullification or impairment caused by the violation, it may request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to [institutional body responsible for trade matters] before the expiry of the [10] day period referred to in paragraph 2. The arbitration panel shall notify its ruling on the level of the suspension of ~~benefits obligations~~ to the Parties and to the [institutional body responsible for trade matters] within [30] days of the date of the submission of the request. ~~Benefits-Obligations~~ shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.
4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 6 shall apply. The period for notifying the ruling shall be [45] days from the date of the submission of the request referred to in paragraph 3.
5. The suspension of ~~benefits-obligations~~ shall be temporary and shall be applied only until any measure found to ~~violate be inconsistent with~~ the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 13, or until the Parties have agreed to settle the dispute.

Article 13

Review of any measure taken to comply after the suspension of
~~benefits~~obligations

1. The Party complained against shall notify the other Party and the [institutional body responsible for trade matters] of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of ~~benefits~~obligations applied by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 2 within [30] days of the date of the submission of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the [institutional body responsible for trade matters]. The arbitration panel ruling shall be notified to the Parties and to the [institutional body responsible for trade matters] within [45] days of the date of the submission of the request. ~~If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions referred to in Article 2, the arbitration panel will determine whether the complaining Party can continue the suspension of benefits at the original or at a different level.~~ If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of ~~benefits~~obligations shall be terminated.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 6 shall apply. The period for notifying the ruling shall be [60] days from the date of the submission of the request referred to in paragraph 2.

SECTION III – COMMON PROVISIONS

Article 14

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Protocol at any time. They shall notify the [institutional body responsible for trade matters] of any such solution. Upon notification of the mutually agreed solution, the procedure shall be terminated.

Article 15

Rules of Procedure

1. Dispute settlement procedures under Chapter III of this Protocol shall be governed by the Rules of Procedure annexed to this Protocol.
2. Any meeting of the arbitration panel shall be [EC: open] to the public in accordance with the Rules of Procedure, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties.

Article 16
Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceeding. The arbitration also has the right to seek the relevant opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. EC: Interested parties are authorised to submit amicus curiae briefs to the arbitration panels in accordance with the Rules of Procedure.]

Article 17
Languages of the submissions

The written and oral submissions of the [country concerned] shall be made in [...], and those of the European Communities in any of the official languages of the European Union.

Article 18
Rules of interpretation

Any arbitration panel shall interpret the provisions referred to in Article 2 in accordance with customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 2.

Article 19
Arbitration panel decisions and rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to ~~individuals~~ physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of the Association Agreement and the basic rationale behind any findings and conclusions that it makes. [The institutional body responsible for trade matters] shall make the arbitration panel rulings publicly available in its entirety unless it decides not to do so.

CHAPTER IV
GENERAL PROVISIONS

Article 20
List of arbitrators

1. The [institutional body responsible for trade matters] shall, no later than six months after the entry into force of this Protocol, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select-propose five individuals to serve as arbitrators. The two Parties shall also ~~agree on select~~ five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The [institutional body responsible for trade matters] will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Protocol.
3. The [institutional body responsible for trade matters] may establish additional lists of 15 individuals having a sectoral expertise in specific matters covered by the Association Agreement. When recourse is made to the selection procedure of Article 6 paragraph 2, the chairperson of the [institutional body responsible for trade] may use ~~such~~ a sectoral list upon agreement of both Parties.

Article 21

Relation with WTO obligations

- ~~1. Arbitration bodies set up under this Protocol shall not adjudicate disputes on each Party's rights and obligations under the Agreement establishing the World Trade Organisation (WTO).~~
- ~~1.2.~~ Recourse to the dispute settlement provisions of this Protocol shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 5(1) of this Protocol or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.
- ~~2.3.~~ Nothing in this Protocol shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. Nothing in the WTO Agreement shall preclude a Party~~ies~~ from suspending ~~benefits-obligations~~ under this Protocol.

Article 22

Time limits

1. All time limits laid down in this Protocol, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limit referred to in this Protocol may be extended by mutual agreement of the Parties.

Article 23

Modification of the Protocol

The Association Council may decide to modify this Protocol and its annexes.

Article 24
Entry into force

This Protocol will be approved by the Parties in accordance with their own procedures. This Protocol shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in this Article have been completed.

**RULES OF PROCEDURE
AND
CODE OF CONDUCT**

ANNEX I
RULES OF PROCEDURE
FOR ARBITRATION

GENERAL PROVISIONS

1. In the Protocol and under these rules:

“adviser” means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article 5 of this Protocol;

“Party complained against” means the Party that is alleged to be in violation ~~of the provisions~~ of the provisions referred to in Article 2 of this Protocol;

“arbitration panel” means a panel established under Article 6 of this Protocol;

“representative of a Party” means an employee or any person appointed by a government department or agency or any other public entity of a Party;

“day” means a calendar day.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, both Parties shall share the expenses derived from organizational matters, including the expenses of the arbitrators.

NOTIFICATIONS

3. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

4. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

5. All notifications shall be addressed to the foreign ministry of [the country concerned] and to the Directorate-General for Trade of the European Commission, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on a legal holiday of [the country concerned] or of the Community, the document may be delivered on the next business day.

COMMENCING THE ARBITRATION

8. (a) If pursuant to Article 6 of the Protocol, the members of the arbitration panel are selected by lot, representatives of both Parties shall be present when lots are drawn.

(b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which will be in accordance with WTO standards.

9. (a) Unless the Parties agree otherwise, within five days from the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

“to examine, in the light of the relevant provisions of the Association Agreement, the matter referred to ~~the [institutional body responsible for trade matters]~~ in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 2 of the Protocol and to make a ruling in accordance with Article 8 of the Protocol on Dispute Settlement.”

(b) The Parties must notify the agreed terms of reference to the arbitration panel within three days of their agreement.

INITIAL SUBMISSIONS

10. The complaining Party shall deliver its initial written submission no later than [20] days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than [20] days after the date of delivery of the initial written submission.

WORKING OF ARBITRATION PANELS

11. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

12. Unless otherwise provided in this Protocol, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

13. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

14. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.

15. Where a procedural question arises that is not covered by the provisions of this Protocol and its annexes, an arbitration panel may adopt an appropriate procedure that is compatible with those provisions.

16. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed. The time limits of Article 8 paragraph 2 of the Protocol shall not be modified.

REPLACEMENT

17. If an arbitrator is unable to participate in the proceeding, ~~or~~ withdraws, or must be replaced, a replacement shall be selected in accordance with Article 6 paragraph 3.

18. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 6 paragraph 3 of the Protocol.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall select a new arbitrator by lot among the pool of individuals referred to under Article 20 paragraph (1) of the Protocol of which the original arbitrator was a Member. If the original arbitrator was chosen by the Parties pursuant to Article 6 paragraph 2 of the Protocol, the replacement shall be selected by lot among the pools of individuals that have been proposed by the complaining Party and by the Party complained against under Article 20 paragraph (1) of the Protocol. The selection of the new arbitrator shall be done in the presence of the Parties and within five days of the date of the submission of the request to the chairperson of the arbitration panel.

19. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 6 paragraph 3 of the Protocol.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals selected to act as chairpersons under Article 20 paragraph (1) of the Protocol. Her or his name shall be drawn by lot, in the presence of the Parties, by the chair of the [institutional body responsible for trade matters], or ~~their~~ the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides ~~the decision is~~ that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall select a new chairperson by lot among the remaining pool of individuals referred to under Article 20 paragraph (1) of the Protocol who may act as chairpersons. This selection of the new chairperson shall be done in the presence of the Parties and within five days of the date of the submission of the request referred to in this paragraph.

20. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 17, 18 and 19.

Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party should notify the other Party within [15] days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

HEARINGS

21. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings if the hearing is open to the public. Unless the Parties disagree, the arbitration panel may decide not to convene a hearing.

22. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is [the country concerned] and in [the country concerned] if the complaining Party is the Community or the Community and its Member States.

23. The arbitration panel may convene additional hearings if the Parties so agree.

24. All arbitrators shall be present during the entirety of any hearings.

25. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

26. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

[27]. **[EC:** The hearings of the arbitration panels shall be open to the public, unless the Parties decide otherwise. If the Parties decide that the hearing is closed to the public, part of the hearing may, however, be open to the public if the arbitration panel, on application by the Parties, so decides. However the arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential commercial information.]

28. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

- (a) argument of the complaining Party
- (b) argument of the Party complained against

Rebuttal Argument

- (a) argument of the complaining Party
- (b) counter-reply of the Party complained against

29. The arbitration panel may direct questions to either Party at any time during the hearing.

30. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

31. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within [10] days of the date of the hearing.

QUESTIONS IN WRITING

32. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.

33. A Party shall also provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of delivery.

CONFIDENTIALITY

34. The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with paragraph ~~26~~27. Each Party shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than [15] days after the date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

EX PARTE CONTACTS

35. The arbitration panel shall not meet or contact a Party in the absence of the other Party.

36. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

[EC: AMICUS CURIAE SUBMISSIONS]

[37. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within [10] days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual and legal issue under consideration by the arbitration panel.

38. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of their activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Article 17 of this Protocol.

39. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its ruling the factual or legal arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for their comments.]

URGENT CASES

40. In cases of urgency referred to in this Protocol, the arbitration panel shall adjust the time limits referred to in these rules as appropriate.

TRANSLATION AND INTERPRETATION

41. Each Party shall, within a reasonable period of time before it delivers its initial written submission in the arbitration panel proceeding, advise the other Party and the arbitration panel in writing of the language in which its written and oral submissions will be made.

[42]. [Each Party shall expeditiously arrange for and bear its own costs of the translation of its written submissions into the language chosen by the other Party.]

43. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

44. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties.

45. The costs incurred for translation of an arbitration ruling shall be borne equally by the Parties.

46. Any Party may provide comments on any translated version of a document drawn up in accordance with these rules.

CALCULATION OF TIME-LIMITS

47. Where, by reason of the application of paragraph 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

OTHER PROCEDURES

48. These Rules of Procedure are also applicable to procedures established under Article 10(2), 11(2), 12(3) and 13(2) of this Protocol. However, the time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

ANNEX II

CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS

Definitions

1. In this Code of Conduct:

(a) "member" or "arbitrator" means a member of an arbitration panel effectively established under Article 6 of this Protocol;

(b) "mediator" means a person who conducts a mediation in accordance with Article 4 of this Protocol;

~~(cb)~~ "candidate" means an individual whose name is on the list of arbitrators referred to in Article 20 of this Protocol and who is under consideration for selection as a member of an arbitration panel under Article 6 of this Protocol;

~~(de)~~ "assistant" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;

~~(ed)~~ "proceeding", unless otherwise specified, means an arbitration panel proceeding under this Protocol;

~~(fe)~~ "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

Responsibilities to the process

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of her or his selection as a member of the arbitration panel under this Protocol, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or member shall only communicate matters concerning actual or potential violations of this Code of Conduct to the [institutional body responsible for trade matters] for consideration by the Parties.

5. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the [institutional body responsible for trade matters], in writing, for consideration by the Parties.

Duties of members

6. Upon selection a member shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

7. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

8. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. A member shall not engage in ex parte contacts concerning the proceeding.

Independence and impartiality of members

10. A member must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

11. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.

12. A member may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.

13. A member may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.

14. A member must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former members

15. All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

Confidentiality

16. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Protocol.

18. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

Mediators

19. The disciplines described in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.

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