

## **CHAPTER TWENTY DISPUTE SETTLEMENT**

### **Article 20.1: Objective**

1. The objective of this Chapter is to provide an effective, efficient, and transparent process for the avoidance and settlement of disputes arising under this Agreement.
2. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter raised in accordance with this Chapter.

### **Article 20.2: Scope**

1. Except as otherwise provided for in this Agreement or agreed by the Parties, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement wherever a Party considers that:
  - (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
  - (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
  - (c) benefit the Party could reasonably have expected to accrue to it under Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin and Origin Procedures), Four (Customs Procedures and Trade Facilitation), Fourteen (Government Procurement), Eight (Cross-border Trade in Services) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this subparagraph with respect to any measure subject to an exception under Article 21.1 (General Exceptions); or
  - (d) any other matter agreed by the Parties.

### **Article 20.3: Choice of Forum**

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement, or any other trade agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora, unless the forum selected fails for procedural or jurisdictional reasons to initiate a dispute settlement proceeding.

### **Article 20.4: Consultations**

1. Either Party may request consultations with the other Party regarding any matter relating to the interpretation and application of this Agreement, referred to Article 20.2.1.

2. A request for consultations shall be submitted in writing and shall give the reasons for the request, including the identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. If a request for consultations is made, the responding Party shall reply to the request within 10 days of receipt of such a request in writing and shall enter into consultations in good faith with a view to reaching a mutually satisfactory solution within a period of no more than:

- (a) 15 days after the date of receipt of the request for urgent matters, including those concerning perishable goods; or
- (b) 30 days after the date of receipt of the request for all other matters.

Consultations shall take place in person or by any other technological means agreed by the Parties. If in person, consultations shall take place in the territory of the Party complained against, unless agreed otherwise.

4. Each Party shall:

- (a) provide sufficient information in the consultations to enable a full examination of the matter subject to consultations, including how the measure at issue might affect the operation

or application of this Agreement; and

- (b) treat any information exchanged in the course of consultations which is designated by the other Party as confidential, on the same basis as the Party providing the information.

5. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

#### **Article 20.5: Intervention of the Joint Committee**

1. Either Party may make a written request for the intervention of the Joint Committee in any of the following cases:

- (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency, including those concerning perishable goods, after the date of receipt of the request for such consultations; or
- (b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency, including those concerning perishable goods, after the date of receipt of the request for such consultations.

2. The written request shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint.

3. Unless the Parties agree otherwise, the Joint Committee shall meet within 10 days of receipt of the request, and it shall endeavor to reach a mutually satisfactory resolution on the subject matter of the consultations within 60 days of receipt of the request. To this end, the Joint Committee may:

- (a) call on technical advisers or create working groups on the subject as it deems necessary;
- (b) have recourse to good offices, conciliation, mediation, or other alternative dispute resolution mechanisms; or
- (c) make recommendations.

4. The Joint Committee may convene in person or by any technological

means available to the Parties.

#### **Article 20.6: Good Offices, Conciliation, or Mediation**

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution such as good offices, conciliation, and mediation. Proceedings under this Article may be terminated at any time upon request of either Party.
2. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.
3. Proceedings involving good offices, conciliation, or mediation, and, in particular, positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

#### **Article 20.7: Establishment of the Arbitration Panel**

1. The complaining Party may request in writing the establishment of an arbitration panel to the Party complained against,
  - (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency, including those concerning perishable goods, after the date of receipt of the request for such consultations; or
  - (b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency, including those concerning perishable goods, after the date of receipt of the request for such consultations; or
  - (c) if the Joint Committee has not convened within 10 days of the delivery of the request for intervention or was not able to reach a mutually satisfactory resolution on the subject matter within 60 days of receipt of the request, pursuant to Article 20.5.3; or
  - (d) if the complaining Party that referred the matter to the Joint Committee considers, once the period indicated by the Joint Committee has expired, that the measures aimed at complying with the agreement reached pursuant to Article 20.5, were not

adopted.

2. The request to establish an arbitration panel shall identify the measure or other matter at issue and the factual and legal basis for the complaint sufficient to present the problem clearly.
3. A Party may not request the establishment of the arbitration panel to examine a proposed measure.

#### **Article 20.8: Terms of Reference of the Arbitration Panel**

1. Unless the Parties otherwise agree within 20 days of the date of receipt of the request for the establishment of an arbitration panel, the terms of reference of the arbitration panel shall be:
  - (a) “To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the request for the establishment of the arbitration panel, to make findings, determinations, and recommendations as provided in Article 20.12.1 and 20.12.2, and to present the written reports referred to in Article 20.12.1 and 20.12.6.”

#### **Article 20.9: Composition of the Arbitration Panel**

1. An arbitration panel shall consist of three arbitrators.
2. Each Party shall appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator, who shall be the chair of the arbitration panel, within 30 days of the date of receipt of the request for the establishment of the arbitration panel. The Parties shall endeavor to agree on and appoint the third arbitrator who shall serve as the chair of the arbitration panel within 45 days of the date of receipt of the request for the establishment of the arbitration panel, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the Parties shall meet in the territory of the Party complained against within seven days and select the chair by lot from the list of candidates proposed by both Parties.
3. The candidates for the third arbitrator referred to in paragraph 2 shall not be nationals of either Party, nor have their usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.

5. All arbitrators shall:

- (a) have expertise or experience in law, international trade, or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements;
- (b) be independent, serve in his or her individual capacities and not be affiliated with, nor take instructions from, either Party or organization related to the dispute;
- (c) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment; and
- (d) comply with Annex 20-B.

6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 20-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.

7. If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceeding, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

#### **Article 20.10: Proceedings of the Arbitration Panel**

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure for Arbitration set out in Annex 20-A. The Parties, in consultation with the Arbitration Panel, may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2. The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.

3. The Parties shall be given the opportunity to provide at least one

written submission and to attend any of the presentations, statements, or rebuttals in the proceedings. All information provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

4. A Party asserting that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement, or that a benefit the Party could reasonably have expected to accrue is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, shall have the burden of proving its assertions. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

5. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

6. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international laws, including the *Vienna Convention on the Law of Treaties*, taking due account of the interpretation adopted by the Joint Committee in accordance with Article 22.2.3(d) and of the fact that the Parties shall perform this Agreement in good faith and avoid circumvention of their obligations.

7. The arbitration panel shall make its decisions by consensus, provided that where an arbitration panel is unable to reach consensus, the decisions may be made by majority vote. The arbitration panel shall not disclose which arbitrators are associated with majority or minority opinions.

8. Upon request of a Party, or on its own initiative, the arbitration panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

9. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

10. Notwithstanding paragraph 8, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions delivered by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be

confidential, that Party shall, within 20 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

11. The reports of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

12. The venue<sup>1</sup> for the arbitration panel proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitration panel proceedings to be held in the capital of the Party complained against.

#### **Article 20.11: Suspension or Termination of Proceedings**

1. Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon request of a Party, the arbitration panel proceedings shall be resumed after such suspension. In the event of such suspension, the timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If, in any case, each period of suspension of the work of the arbitration panel exceeds 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree. This lapse shall not prejudice the rights of the complaining Party to request, at a later stage, the establishment of an arbitration panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of an arbitration panel by jointly notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties.

3. Before the arbitration panel makes its decision, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

#### **Article 20.12: Panel Report**

1. Unless the Parties otherwise agree, the arbitration panel shall, within

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<sup>1</sup> If the Parties agree the arbitration panel proceedings can be held by technological means.



90 days of the date of the establishment of the arbitration panel, issue to the Parties an initial report containing findings of fact and its determination as to:

- (a)
  - (i) whether the measure at issue is inconsistent with the obligations of this Agreement;
  - (ii) whether a Party has otherwise failed to carry out its obligations under this Agreement; or
  - (iii) whether the measure at issue is causing nullification or impairment in the sense of Article 20.2(c); and
- (b) any other matter that the Parties to the dispute have jointly requested that the panel address,

as well as the applicability of the relevant provisions, the basic rationale behind any findings and determinations, and any recommendations, if applicable.

2. The arbitration panel may, on the joint request of the Parties, make recommendations for the resolution of the dispute.

3. If in its report, the arbitration panel finds that a Party's measure does not conform with this Agreement or is causing nullification or impairment in the sense of Article 20.2, it shall include in its findings and determinations a requirement to remove the non-conformity or address the nullification or impairment.

4. When the arbitration panel considers that it cannot provide its report within 90 days, it shall inform the Parties to the dispute in writing of the reasons for the delay, together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 120 days.

5. Each Party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties to the dispute on the initial report, the arbitration panel may modify its report and make any further examination it considers appropriate.

6. The arbitration panel shall present a final report to the Parties within 30 days of the presentation of the initial report, unless the Parties to the dispute otherwise agree. Where the arbitration panel considers that the deadline for its final report cannot be met, it may extend the period with the consent of the

Parties with the written notification stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. Under no circumstances should the final report be issued later than 165 days after the date of the establishment of the arbitration panel.

7. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its initial and final reports within half of the respective time periods under Articles 20.12.1, 20.12.4 and 20.12.6. In terms of Article 20.12.5, the time period will be shortened to 10 days.

8. The determinations of the final report of the arbitration panel shall be final and binding on the Parties and shall not be subject to appeal.

9. The findings and determinations and, if applicable, any recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

10. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

### **Article 20.13: Implementation of the Final Report**

1. If, in its final report, the arbitration panel determines that the Party complained against has not conformed to its obligations under the relevant provisions of this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.2.1(c), unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity or the nullification or impairment immediately, or if this is not practicable, within a reasonable period of time.

2. The reasonable period of time referred to in paragraph 1 shall be mutually agreed by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the date of the issuance of the final report of the arbitration panel, either Party may refer the matter to the original arbitration panel, which shall determine the reasonable period of time.

3. The Party complained against shall notify to the complaining Party of the implementing measures that it has taken to comply with the determinations of the arbitration panel before the expiry of the reasonable period of time agreed by the Parties or determined by the original arbitration panel in accordance with paragraph 2. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity or the nullification, or impairment within the reasonable period of

time as determined pursuant to paragraph 2, either Party may refer the matter to the original arbitration panel.

4. The arbitration panel that is established for purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 20.9. The arbitration panel shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

#### **Article 20.14: Compensation and Suspension of Benefits in Case of Non-Compliance**

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies to the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to Article 20.13.3 determines that the Party complained against has failed to: eliminate the non-conformity or the nullification or impairment within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days of the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time, provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement. The complaining Party may begin suspending concessions or other obligations 30 days after the notification of such suspension.

3. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to begin suspending concessions or other obligations under paragraph 2 where:

(a) an examination is being undertaken pursuant to paragraph 6;  
or

(b) a mutually agreed solution has been reached.

4. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full compliance with the findings and determinations in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity or the nullification or impairment is fully eliminated or a mutually satisfactory solution is reached.

5. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that affected by the measure or other matter that the arbitration panel has found to be not in conformity with this Agreement or to have caused nullification or impairment; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based; and

(c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2 through 5 have not been met, it may refer the matter to an arbitration panel.

7. The arbitration panel that is established for purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 20.9. The arbitration panel established under this Article shall issue its report to the Parties within 45 days after the date on which the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

### **Article 20.15: Expenses**

1. Unless the Parties otherwise agree, each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs.
2. Unless the Parties otherwise agree, the costs of the chair of the arbitration panel and other expenses associated with the conduct of its proceedings shall be borne in equal shares by the Parties.

### **Article 20.16: Annexes**

Annexes 20-A and 20-B shall form an integral part of this Chapter.

### **Article 20.17: Definitions**

For the purposes of this Chapter:

**arbitration panel** means a panel established under Article 20.7;

**arbitrator** means a member of an arbitration panel established under Article 20.7;

**candidate** means an individual who is under consideration for appointment as the third arbitrator under Article 20.9;

**complaining Party** means a Party that requests the establishment of an arbitration panel under Article 20.7;

**Party complained against** means the Party that is alleged to be in violation of This Agreement, as referred to in Article 20.2; and

**proceeding**, unless otherwise specified, means an arbitration panel proceeding under this Chapter.

**Annex 20-A**  
**Rules of Procedure for Arbitration**

*Logistical Administration*

1. In case the arbitration panel proceedings are held in the territory of a Party, that Party shall be in charge of the logistical administration of arbitration proceedings, in particular the organization of hearings, unless the Parties otherwise agree.

*Notifications*

2. Any request, notice, written submissions, or other documents delivered by either Party or the arbitration panel shall be transmitted 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.

3. 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.

4. All notifications shall be made and delivered to the Ministry of Trade, Industry, and Energy of Korea and, to the Ministry of Production, Foreign Trade, Investment, and Fisheries of Ecuador, respectively.

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

6. If the last day for delivery<sup>2</sup> of a document falls on a legal holiday of either Party, the document may be delivered on the next business day.

*First Submissions*

7. The complaining Party shall deliver its first written submission no later than 30 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no

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<sup>2</sup> For greater certainty, for the purposes of this Annex, the delivery date is the date on which documents that have been submitted arrive at the intended place.

later than 30 days after the date of receipt of the complaining Party's first written submission.

#### *Operation of Arbitration Panels*

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

9. Except as otherwise provided for in this Chapter, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions, or computer links.

10. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants of the arbitrators to be present during such deliberations.

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

12. Where a procedural question arises that is not covered by this Chapter, the arbitration panel, after consulting with the Parties, may adopt an appropriate procedure that is not inconsistent with this Chapter.

13. When the arbitration panel considers that there is a need to modify any time period set out in this Chapter applicable in the proceedings or to make any other procedural or administrative adjustment in the proceedings, it shall inform the Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

14. Unless the Parties otherwise agree, the remuneration and expenses to be paid to the arbitrators will normally conform to WTO standards.

#### *Hearings*

15. Unless the Parties otherwise agree, at least one hearing shall be held. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chair of the arbitration panel shall notify the Parties of the date, time, and location of the hearing in writing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding, when the Parties decide to make the hearings open to the public in accordance with paragraph 20 of this Annex.

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

17. All arbitrators shall be present during the entirety of any hearing.

18. Representatives of a Party, advisers to a Party, experts, administration staff, interpreters, translators, court reporters, and assistants of the arbitrators may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Unless otherwise decided by the arbitration panel, only the representatives and advisers of a Party may address the arbitration panel.

19. 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 those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of representatives, advisers, interpreters, and translators of that Party who will be attending the hearing.

20. The hearings of the arbitration panels shall be closed to the public. The Parties may decide to open the hearings partially or completely to the public.

21. 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; and
- (b) argument of the Party complained against.

*rebuttal argument*

- (a) reply of the complaining Party; and
- (b) counter-reply of the Party complained against.

22. The arbitration panel may direct questions to either Party or experts at any time during a hearing.

23. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of



the transcript to the Parties. The Parties may comment on the transcript, and the arbitration panel will decide whether to reflect those comments.

24. Within 10 days of the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arises during the hearing.

#### *Questions in Writing*

25. The arbitration panel may at any time during the proceedings address questions in writing to a Party or both Parties. The arbitration panel shall deliver the written questions to the Party whom the questions are addressed and shall send a copy of the questions to the other Party.

26. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitration panel. Each Party shall be given the opportunity to provide written comments on the reply within seven days of the date of receipt.

#### *Ex Parte Communications*

27. There shall be no *ex parte* communications with the arbitration panel concerning matters under consideration by the arbitration panel.

28. No arbitrator may discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

#### *Suspension of Time Periods on Request of Technical Advice*

29. The arbitration panel, consulting with the Parties and experts, may determine the time period that the experts are to submit their opinions or advice. If the experts cannot submit their opinions or advice within the period established pursuant to the first sentence of this paragraph, the arbitration panel, consulting with the Parties, may give additional time to experts. In no case this additional period exceeds the half of the period established pursuant to first sentence of this paragraph.

30. When a request is made for a written report of an expert, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitration panel.

### *Amicus Curiae Submissions*

31. Unless the Parties otherwise agree within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or juridical persons of the Parties, 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 factual and legal issues under consideration by the arbitration panel.

32. The submissions referred to in paragraph 31 shall contain a description of the person, whether natural or juridical, making the submission, including the nature of its activities and the source of its financing, and specify its nationality or place of establishment and the nature of the interest that person has in the arbitration proceedings. It shall be made in the common working language in accordance with paragraph 34.

33. The arbitration panel shall list in its ruling all the submissions that it has received and that conform to the paragraphs 31 and 32. The arbitration panel shall not be obliged to address, in its ruling, the arguments made in such submissions. Any submission obtained by the arbitration panel under paragraphs 31 through 33 shall be submitted to the Parties for their comments.

### *Interpretation and Translation*

34. Unless otherwise agreed during the consultations referred to in Article 20.4, and no later than the meeting referred to in paragraph 8, the common working language for the proceedings of the arbitration panel shall be English. If a Party decides to use interpretation during the proceedings, the arrangement and the cost shall be borne by that Party.

35. Any document submitted for use in any proceeding pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

### *Computation of Time*

36. All periods of time laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

37. Where, by reason of the operation of paragraph 6, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the last date of receipt of such document.

#### *Other Proceedings*

38. In accordance with Articles 20.10.2 through 20.10.4 and Articles 20.12.5 and 20.12.6, the referring Party shall deliver its first written submission within 15 days of the date the referral is made, and the Party complained against shall deliver its written counter-submission within 15 days of the date of receipt of the first written submission.

39. If appropriate, the arbitration panel shall fix the time periods for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time periods for arbitration panel proceedings set out in Articles 20.10 and 20.12 and this Annex.

40. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 20.10 and 20.12.

#### *Definitions*

41. For the purposes of this Chapter:

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

**assistant** means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

**representative of a Party** means any person appointed by a Party according to its domestic laws and regulations.

**Annex 20-B**  
**Code of Conduct for Arbitrators**

*Responsibilities to the Process*

1. Every candidate and arbitrator 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 proceeding are preserved. Former arbitrators must comply with the obligations established in paragraphs 14 through 17.

*Disclosure Obligations*

2. Prior to confirmation of his or her appointment as an arbitrator under Article 20.9, 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.

3. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 2 and shall disclose them. The obligation to disclose is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The arbitrator shall disclose such interests, relationships or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

*Duties*

4. Upon appointment, an arbitrator shall perform an arbitrator's duties thoroughly and expeditiously throughout the course of the proceedings.

5. An arbitrator shall carry out all duties fairly and diligently.

6. An arbitrator shall consider only those issues raised in the proceeding and necessary for a decision and shall not delegate the duty to decide to any other person.

7. An arbitrator shall take all appropriate steps to ensure that the

arbitrator's assistants and staff are aware of and comply with paragraphs 1 through 3, 15 through 17.

8. An arbitrator shall not engage in *ex parte* communications concerning the proceeding in accordance with paragraphs 20-A.27 and 20-A.28.

#### *Independence and Impartiality of Members of Arbitration Panels*

9. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner, shall avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party or fear of criticism.

10. An arbitrator 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 the arbitrator's duties.

11. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator.

12. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgement.

13. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

#### *Obligations of Former Arbitrators*

14. All former arbitrators 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*

15. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceedings, or acquired during the proceedings, except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or

advantage for others, or to affect adversely the interest of others.

16. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication.

17. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view.

*Definitions*

18. For the purposes of this Chapter:

**staff**, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.