

## **CHAPTER EIGHT DISPUTE SETTLEMENT**

### **Article 8.1: Definitions**

For purposes of this Chapter:

**arbitration panel** means a panel established under Article 8.7;

**arbitrator** means a member of an arbitration panel established under Article 8.7;

**candidate** means an individual who is under consideration for appointment as the third arbitrator under Article 8.9;

**complaining Party** means a Party that requests the establishment of an arbitration panel under Article 8.7; and

**Party complained against** means the Party that is alleged to be in violation of this Agreement, as referred to in Article 8.3.

### **Article 8.2: 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 8.3: Scope**

1. Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement wherever a Party considers that:

- (a) a measure adopted by 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.

2. This Chapter shall not apply to Chapter Six (Economic Cooperation), Section B (Anti-Dumping and Countervailing Duties) in Chapter Five (Trade Remedies), Article 2.15 (Sanitary and Phytosanitary Measures) and Article 7.6 (Cooperation on Promoting Increased Transparency and Combating Corruption), and Annex 3-B (Treatment for Certain Goods).

#### **Article 8.4: Choice of Forum**

1. Where a dispute arises under this Agreement and under any other agreement to which both Parties are party, including the WTO agreement, the complaining Party may have recourse to dispute settlement procedures available under any of such agreements 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.

#### **Article 8.5: Consultations**

1. Either Party may request consultations with the other Party with respect to any matter relating to the interpretation and application of this Agreement, pursuant to Article 8.3.1.
2. The Party requesting consultations shall make the request in writing and shall give the reasons for the request, including the identification of the specific measure at issue and an indication of the factual and legal basis for the complaint.
3. The Party complained against shall reply within 10 days from the date of the receipt of the request for consultations.
4. The Parties shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within 30 days or within 15 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for consultations. Unless the Parties otherwise agree, consultations shall take place in the territory of the Party complained against.
5. During consultations, the Parties shall provide sufficient information to enable a full examination of how the measure at issue might affect the implementation and application of this Agreement. The Parties shall treat any confidential information exchanged in the course of consultations on the same

basis as the Party providing the information.

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

#### **Article 8.6: Good Offices, Conciliation, or Mediation**

1. Good offices, conciliation, and mediation are procedures that are undertaken voluntarily if the Parties so agree.

2. Good offices, conciliation, or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties and be terminated at any time upon request of either Party.

3. 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.

4. 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.

#### **Article 8.7: Establishment of the Arbitration Panel**

1. The complaining Party that made a request for consultations under Article 8.5 may request the establishment of an arbitration panel if:

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

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request, the specific measure at issue, and the factual and legal basis for the complaint sufficient to present the problem clearly.

### **Article 8.8: Terms of Reference of the Arbitration Panel**

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of an arbitration panel, the terms of reference of the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 8.7, to make findings, determinations, and, if applicable, recommendations and to present written reports as provided in Articles 8.12 and 8.13.”

### **Article 8.9: Composition of the Arbitration Panel**

1. Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.
2. The complaining Party and the Party complained against shall, within 30 days from the date of receipt of the request for the establishment of the arbitration panel, each appoint one arbitrator, who may be its national, and propose up to three candidates for appointment as the third arbitrator who shall be the chair of the arbitration panel. The candidates for the third arbitrator 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.
3. The Parties shall endeavor to agree on and appoint the third arbitrator within 30 days of the appointment of the second arbitrator pursuant to paragraph 2, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within this period, the Parties shall meet within the next seven days and select the chair by lot from the list of candidates proposed by both Parties.
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 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. Each arbitrator shall 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, and shall comply with Annex 8-B.

6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 8-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 8.10: Proceedings of the Arbitration Panel**

1. 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.

2. 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.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

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

5. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international law including the *Vienna Convention on the Law of Treaties*.

6. The arbitration panel shall make its decisions, including its reports, by consensus, provided that where an arbitration panel is unable to reach consensus, the decisions may be made by majority vote.

7. 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 technical advice on certain aspects of the matter. Before doing so, the arbitration panel shall seek the views of the Parties, without prejudice to its right to seek information. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

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

9. 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 from a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

10. 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.

11. The reports of the arbitration panel shall contain both the descriptive parts summarizing the submissions or arguments of the Parties, and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its reports. 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.

12. The venue 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 8.11: 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 the work of the arbitration panel has been continuously suspended for more than 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of an arbitration panel by jointly so 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 8.12: Interim Report**

1. Unless the Parties otherwise agree, the arbitration panel shall, within 90 days from the date of the establishment of the arbitration panel, issue to the Parties an interim report containing the descriptive parts, the findings and determinations, and, if applicable, any recommendations as to:

- (a) whether the measure at issue is inconsistent with the obligations of this Agreement; or
- (b) whether a Party has otherwise failed to carry out its obligations under this Agreement,

as well as the applicability of the relevant provisions and the basic rationale behind any findings.

2. Where the arbitration panel considers that the deadline for interim 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 panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.

3. Either Party may submit written comments to the arbitration panel on its interim report within 15 days from the issuance of the report. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate.

#### **Article 8.13: Final Report**

1. Unless the Parties otherwise agree, the arbitration panel shall issue a

final report to the Parties within 30 days from the date of issuance of the interim report.

2. 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 panel plans to issue its final report. Under no circumstances should the final report be issued later than 150 days after the date of the establishment of the arbitration panel.

3. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under Articles 8.12.1 and 8.13.1.

#### **Article 8.14: Implementation of the Final Report**

1. The determinations of the final report of the arbitration panel shall be final and binding on the Parties.

2. 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, unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity immediately, or if this is not practicable, within a reasonable period of time.

3. The reasonable period of time referred to in paragraph 2 shall be mutually agreed by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days from the date of 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.

4. The Party complained against shall notify to the complaining Party any 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 3. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the final report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to the original arbitration panel.

#### **Article 8.15: Non-Implementation, Compensation and Suspension of Concessions or Other Obligations**



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 8.14.4 determines that the Party complained against has failed to eliminate the non-conformity 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 from the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time thereafter, 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 shall have the right to begin suspending concessions or other obligations 30 days after the notification of such suspension. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

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.

For greater certainty, the complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitration panel's determination pursuant to this Article.

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 elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity 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 in which the report of the arbitration panel referred to in Article 8.13 has found a failure to comply

with the obligations under this Agreement;

- (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 paragraph 2, 3, 4, or 5 have not been met, it may refer the matter to the original arbitration panel.

7. The arbitration panel that is established for purposes of this Article or Article 8.14 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 or Article 8.14 shall be appointed pursuant to Article 8.9. The arbitration panel established under this Article or Article 8.14 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 8.16: Rules of Procedure**

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure set out in Annex 8-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. Any period of time or other rule of procedure for arbitration panel provided for in this Chapter and Annex 8-A may be modified by mutual consent of the Parties.

#### **Article 8.17: 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.

## **Annex 8-A**

### **Rules of Procedure for Arbitration**

#### *Definitions*

1. For purposes of this Annex:

**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

#### *Logistical Administration*

2. 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 the arbitration proceedings, in particular the organization of hearings, unless the Parties otherwise agree.

#### *Notifications*

3. 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 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 made and delivered to the Ministry of Trade, Industry and Energy of Korea, or its successor and, to the Ministry of Commerce of Cambodia, or its successor, respectively.
6. 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.

7. If the last day for delivery<sup>1</sup> of a document falls on a public holiday of either Party, the document may be delivered on the next business day.

#### *First Submissions*

8. The complaining Party shall deliver its first written submission no later than 20 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the complaining Party's first written submission.

#### *Operation of Arbitration Panels*

9. 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.

10. 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.

11. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may, in consultation with the Parties, permit assistants, interpreters, or translators to be present during such deliberations. Any person presents at such deliberations shall maintain the confidentiality of the arbitration panel proceedings unless such information is already made available to the public.

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

13. Where a procedural question arises that is not covered by this Chapter, the arbitration panel may adopt an appropriate procedure that is not inconsistent with this Chapter, unless it considers that the procedural question may affect in a meaningful manner the way in which it examines matters before it, in which case it shall consult with the Parties.

14. The arbitration panel may, in consultation with the Parties, modify any time period applicable in the arbitration panel proceedings and make such other procedural or administrative adjustments as may be required in the proceedings.

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<sup>1</sup> For greater certainty, for purposes of this Annex, the delivery date is the date on which documents that have been submitted arrive at the intended place.

15. Unless the Parties otherwise agree, the expenses of an arbitration panel, including the remuneration of the arbitrators, shall be borne by the Parties in equal shares.

### *Hearings*

16. Unless the Parties otherwise agree, the arbitration panel shall provide for at least one hearing for the Parties to present their case. 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 agree to make the hearing open to the public in accordance with paragraph 21 of this Annex.

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

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

19. Representatives of a Party, advisers to a Party, interpreters, translators, relevant administration staff, 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.

20. 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.

21. The hearings of the arbitration panel shall be closed to the public. The hearings can be open to the public partially or completely upon agreement by the Parties.

22. 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.

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

24. 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.

25. Within 20 days from 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*

26. 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.

27. 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 five days from the date of receipt.

*Confidentiality*

28. The Parties and their advisers shall, at all times, maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session. Each Party and its advisers 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 20 days after the date of either the request or the submission, whichever is later. Nothing in this paragraph shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when

making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

#### *Ex Parte Communications*

29. The arbitration panel shall not meet or contact a Party in the absence of the other Party. Neither Party shall contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators.

30. Neither arbitrator shall discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

#### *Interpretation and Translation*

31. Unless the Parties otherwise agree, 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.

32. 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*

33. 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.

34. Where, by reason of the operation of paragraph 7, 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*

35. In accordance with Articles 8.14.3, 8.14.4, 8.15.6, and 8.15.7, the referring Party shall deliver its first written submission within 15 days from the date the referral is made, and the Party complained against shall deliver its



written counter-submission within 15 days from the date of receipt of the first written submission.

36. 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 8.14, 8.15 and this Annex.

37. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 8.14 and 8.15.

38. The reasonable period of time established pursuant to Articles 8.14 and 8.15 normally should not exceed 15 months from the date of issuance of the arbitration panel's final report. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

## **Annex 8-B**

### **Code of Conduct for Arbitrator**

#### *Definitions*

1. For purposes of this Annex:

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

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

#### *Responsibilities to the Process*

2. 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 15 through 18.

#### *Disclosure Obligations*

3. Prior to confirmation of his or her appointment as an arbitrator under Article 8.9, a candidate shall disclose to the Parties any information which may give rise to justifiable doubts, including 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. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 3 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 at any stage of the proceedings. The arbitrator shall disclose such interests, relationships, or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

#### *Duties of Arbitrators*

5. Upon appointment, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings.

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

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

8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of and comply with paragraphs 2, 3, 4, 16, 17, and 18.

9. An arbitrator shall not engage in *ex parte* communications concerning the proceeding in accordance with paragraphs 29 and 30 of Annex 8-A.

#### *Independence and Impartiality of Members of an Arbitration Panel*

10. 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, and loyalty to a Party or fear of criticism.

11. 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.

12. 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.

13. 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.

14. 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*

15. 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*

16. 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 adversely affect the interest of others.

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

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