

## ANNEX 14-C

### **CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS**

#### ARTICLE 1

##### **Definitions**

For the purposes of this Annex:

- (a) **member** or **arbitrator** means a member of an arbitration panel established under Article 14.5;
- (b) **mediator** means a person who conducts a mediation procedure in accordance with Annex 14-A;
- (c) **candidate** means an individual whose name is on the list of arbitrators referred to in Article 14.18 and who is under consideration for selection as a member of an arbitration panel under Article 14.5;
- (d) **assistant** means a person who, under the terms of appointment of a member, conducts researches or provides assistance to the member;
- (e) **proceeding**, unless otherwise specified, means an arbitration panel proceeding under this Agreement; and
- (f) **staff**, in respect of a member, means persons under the direction and control of the member, other than assistants.

#### ARTICLE 2

##### **Responsibilities to the Process**

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 Articles 6 and 7 of this Annex.

#### ARTICLE 3

##### **Disclosure Obligations**

1. Prior to confirmation of his or her selection as a member of the arbitration panel

under this Agreement, 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.

2. A candidate or member shall only communicate matters concerning actual or potential violations of this Annex to the Trade Committee for consideration by the Parties.

3. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 1 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 Trade Committee, in writing, for consideration by the Parties.

#### ARTICLE 4

##### **Duties of Members**

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

2. 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.

3. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, Articles 2, 3 and 7 of this Annex.

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

#### ARTICLE 5

##### **Independence and Impartiality of Members**

1. 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, loyalty to a Party or fear of criticism.

2. 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 his or her duties.

3. A member may not use his or her 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 him or her.

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

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

## ARTICLE 6

### **Obligations of Former Members**

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.

## ARTICLE 7

### **Confidentiality**

1. Neither a member nor a 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, 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.

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

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

## ARTICLE 8

### **Mediators**

The disciplines described in this Annex as applying to members or former members shall apply, *mutatis mutandis*, to mediators.