

ANNEX XVII

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

- (a) ‘arbitrator’ means a member of an arbitration panel established under Article 352 of this Agreement;
- (b) ‘assistant’ means a person who, under the terms of appointment of an arbitrator, conducts, researches or provides assistance to the arbitrator;
- (c) ‘candidate’ means an individual whose name is on the list of arbitrators referred to in Article 370(1) of this Agreement and who is under consideration for selection as an arbitrator under Article 352 of this Agreement;
- (d) ‘mediator’ means a person who conducts a mediation procedure in accordance with Annex XV (Mediation Mechanism) to this Agreement;
- (e) ‘proceeding’, unless otherwise specified, means an arbitration panel proceeding under Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement;
- (f) ‘staff’, in respect of an arbitrator, means persons under the direction and control of an arbitrator, other than assistants.

Responsibilities to the process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former arbitrators must comply with the obligations established in rules 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of his/her selection as an arbitrator under Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his/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 an arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct only to the Political and Strategic Dialogue in Trade configuration, as set out in Article 375(3) of this Agreement, for consideration by the Parties.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in rule 3 of this Code of Conduct and shall disclose them. The disclosure obligation 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 informing the Political and Strategic Dialogue in Trade configuration, in writing, for consideration by the Parties.

Duties of arbitrators

6. An arbitrator included in the lists of arbitrators provided for in Article 370(1) of this Agreement may decline the appointment as an arbitrator only for justified reasons such as, for example, disease, participation in other court or panel proceedings or conflict of interest. Upon confirmation of his/her selection, an arbitrator shall be available to perform and shall perform his/her duties thoroughly and expeditiously throughout the proceeding, and with fairness and diligence.

7. An arbitrator 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. An arbitrator shall take all appropriate steps to ensure that his/her assistant and staff are aware of, and comply with, rules 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

Independence and impartiality of arbitrators

10. An arbitrator shall be independent and impartial, 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.

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 his/her duties.

12. An arbitrator shall not use his/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 him/her.

13. An arbitrator shall not allow financial, business, professional, personal, or social relationships or responsibilities to influence his/her conduct or judgement.

14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his/her impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former arbitrators

15. All former arbitrators shall 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 arbitrator or former arbitrator 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 interests of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement.

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

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his/her expenses, as well as the time and expenses of his/assistant and staff.

Mediators

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