

CHAPTER 6

DISPUTE SETTLEMENT

ARTICLE 6.1: OBJECTIVE

1. The objective of this Chapter is to avoid and settle any dispute between the Parties concerning the good faith application of the Turkey-Korea FTA and to arrive, where possible, at a mutually agreed solution.
2. The Parties shall at all times endeavour to agree on the interpretation and application of the Turkey-Korea FTA, and shall make every attempt through cooperation and consultations to avoid and settle disputes between the Parties and to arrive at a mutually satisfactory resolution of any matter that might affect the operation of the Turkey-Korea FTA.

ARTICLE 6.2: SCOPE

This Chapter shall apply to any dispute concerning the interpretation and application of the Turkey-Korea FTA, unless otherwise provided.

ARTICLE 6.3: CHOICE OF DISPUTE SETTLEMENT PROCEDURE

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.
2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Chapter or under the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, unless the forum selected fails for procedural or jurisdictional reasons, a Party shall not subsequently initiate dispute settlement proceedings in the other forum, if an obligation is identical under the Turkey-Korea FTA and under the WTO Agreement.
3. For the purposes of paragraph 2:
 - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU and are deemed to be concluded when the Dispute Settlement Body adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
 - (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 6.5.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Joint Committee under Article 6.10.3.

ARTICLE 6.4: CONSULTATIONS

1. Each Party may request consultations with respect to any matter relating to the interpretation and application of the Turkey-Korea FTA, pursuant to Article 6.2.
2. In order to initiate the consultation procedure, a Party shall deliver written notification to the other Party, stating the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint. A copy of the request for consultations shall be delivered to the Joint Committee.
3. The Party to which the request for consultations is made shall reply within 10 days of the date of receipt.
4. These consultations shall take place within 30 days of the date of receipt of the request for consultations. Consultations shall take place, unless the Parties agree otherwise, in the territory of the Party complained against.
5. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure at issue might affect the interpretation and application of the Turkey-Korea FTA, and give confidential treatment to the information exchanged during consultations.
6. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

ARTICLE 6.5: ESTABLISHMENT OF THE ARBITRATION PANEL

1. If the Parties do not reach a mutually satisfactory solution within 30 days of the date of receipt of the request for the consultations, the complaining Party may request the establishment of an arbitration panel.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Joint Committee. The complaining Party shall identify in its request, the specific measure at issue, the legal basis of the complaint including any provision of the Turkey-Korea FTA, and the factual basis for the complaint.
3. The establishment of an arbitration panel shall not be requested on any matter relating to a proposed measure.

ARTICLE 6.6: TERMS OF REFERENCE OF THE ARBITRATION PANEL

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

“To examine, in the light of the relevant provisions of the Turkey-Korea FTA, the matter referred to in the request for the establishment of an arbitration panel

pursuant to Article 6.5, to make findings together with the reasons on the compatibility of the measure with the Turkey-Korea FTA, and to issue a written report containing the reasons for the findings for the resolution of the dispute.”

ARTICLE 6.7: 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, within 20 days of the date of receipt of the request for the establishment of the arbitration panel. The Parties shall agree on and appoint the third arbitrator, who shall be the chairperson 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 list established pursuant to paragraph 4. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the third arbitrator shall be chosen within seven days by lot from the list established pursuant to paragraph 4. The selection shall be done by the chairperson of the Joint Committee, in the presence of representatives of each Party.
3. The date of establishment of an arbitration panel shall be the date on which the three arbitrators are appointed.
4. The Joint Committee shall, in its first meeting, establish a list of 10 individuals who are willing and able to serve as third arbitrator. The Joint Committee shall ensure that the list always contains 10 individuals at any point in time. These individuals shall not be a national of either Party, nor have his or her permanent place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
5. All arbitrators shall have specialised knowledge or experience in law, international trade or other matters relating to the Turkey-Korea FTA, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organisation related to the dispute, and shall comply with Annex 6-B.
6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 6-B, the Parties shall consult and, if so agreed, the Parties shall replace that arbitrator in accordance with paragraph 7.
7. If an arbitrator appointed under this Article becomes unable to participate in the proceeding or resigns, or is to be replaced according to paragraph 6, a successor shall be selected within 10 days in accordance with the selection procedure followed to select that arbitrator. 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 becomes unable to participate in the proceeding, resigns, 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 6.8: PROCEEDINGS OF THE ARBITRATION PANEL

1. The arbitration panel shall meet in closed session, unless the Parties decide otherwise.
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 or written submissions submitted 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 the Turkey-Korea FTA shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under the Turkey-Korea FTA 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 aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.
6. On request of a Party or on its own initiative and subject to such terms and conditions as the Parties may agree within 10 days of the date of establishment of the arbitration panel, 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.
7. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.
8. Notwithstanding paragraph 7, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions submitted 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.
9. Each Party shall bear its own expenses and the cost of the arbitrator it appoints pursuant to Article 6.7.2. The cost of the chairperson of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares. The costs and expenses of the arbitrators shall normally conform to WTO standards.

ARTICLE 6.9: SUSPENSION OR TERMINATION OF PROCEEDINGS

1. The Parties may agree that the arbitration panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If in any case, the suspension of the work of the arbitration panel exceeds 12 months, the authority for the establishment of the arbitration panel shall lapse unless the Parties agree otherwise. This lapse shall not prejudice to 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 the 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.

ARTICLE 6.10: ARBITRATION PANEL REPORT

1. The arbitration panel shall issue to the Parties an interim report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings within 90 days of the date of establishment of the arbitration panel. If the Parties agree, the interim report may also contain recommendations. Where the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Joint Committee in writing, 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.
2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 14 days of the issuance of the interim 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.
3. The arbitration panel shall issue its final report to the Parties and to the Joint Committee within 120 days of the date of the establishment of the arbitration panel. Where the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Joint Committee in writing, stating the reasons for the delay and the date on which the panel plans to issue its ruling. Under no circumstances should the ruling be issued later than 150 days after the date of the establishment of the arbitration panel.
4. The report 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 the Turkey-Korea FTA, and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.
5. Arbitration panels shall interpret the Turkey-Korea FTA, in accordance with customary rules of interpretation of public international law and due account being taken of the fact that the Parties shall perform the Turkey-Korea FTA, in good faith and avoid circumvention of their obligations.

6. On matters of urgency, including those regarding perishable goods, the arbitration panel shall make every effort to issue its interim and final reports to the Parties within half of the respective time periods under paragraphs 1 and 3. The arbitration panel may issue a preliminary report on whether a case is urgent.

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

8. The report of the arbitration panel shall contain both the descriptive part summarizing the submissions and 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 report. 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 in the Turkey-Korea FTA.

ARTICLE 6.11: IMPLEMENTATION OF THE REPORT

1. Unless the Parties agree otherwise, the Party complained against shall eliminate the non-conformity as determined in the report of the arbitration panel 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 determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the date of issuance of the final report of the arbitration panel referred to in Article 6.10, the complaining Party may refer the matter to an arbitration panel, which shall determine the reasonable period of time.

3. The Party complained against shall notify to the complaining Party the implementing measures that it has taken to comply with the determinations and, if any, recommendations of the arbitration panel, before the expiry of the reasonable period of time agreed by the Parties or determined by the 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 as determined in the report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 2, either Party may refer the matter to an arbitration panel.

ARTICLE 6.12: 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 the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to Article 6.11.3 rules 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 by the complaining Party, 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 suspend the application to the Party complained against of concessions or other obligations under the Turkey-Korea FTA, after giving notification of such suspension 30 days in advance. Such notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.

3. 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.

4. 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(s) as that in which the report of the arbitration panel referred to in Article 6.10 has found a failure to comply with the obligations under the Turkey-Korea FTA;
- (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(s), 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. In the selection of the benefits to suspend, the complaining Party will take into consideration those which least disturb the functioning of the Turkey-Korea FTA; and
- (c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

5. 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, or 4 have not been met, it may refer the matter to an arbitration panel. Concessions or other obligations shall not be suspended until the arbitration panel has issued its ruling.

6. The arbitration panel that is established for the purposes of this Article or Article 6.11 shall have, to the extent possible, 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 the purposes of this Article or Article 6.11 shall be appointed pursuant to Article 6.7. The arbitration panel established under this Article or Article 6.11 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 final and binding on the Parties.

ARTICLE 6.13: RULES OF PROCEDURE

1. Dispute settlement procedures under this Chapter shall be governed by Annex 6-A. Arbitration panels may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the Turkey-Korea FTA.
2. Any time period or other rules and procedures for arbitration panels provided for in this Chapter may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

ANNEX 6-A
RULES OF PROCEDURE FOR ARBITRATION

Definitions

1. 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;

arbitration panel means a panel established under Article 6.5;

arbitrator means a member of an arbitration panel established under Article 6.5;

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

complaining Party means a Party that requests the establishment of an arbitration panel under Article 6.5;

Party complained against means the Party that is alleged to be in violation of the Turkey-Korea FTA, as referred to in Article 6.2;

representative of a Party means any person appointed by a Party according to its domestic legislation;

Logistical Administration

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed.

Notifications

3. Any request, notice, written submissions or other document 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.

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 Economy of the Republic of Turkey and to the Ministry of Foreign Affairs and Trade of Korea, respectively.

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

7. If the last day for delivery of a document falls on a legal holiday of either Party, the document may be delivered on the next business day.

Preliminary Session

8. Unless the Parties otherwise agree, they shall meet with the arbitration panel within seven days of the date of the establishment of the arbitration panel in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses that shall be paid to the arbitrators.

First Submissions

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

Operation of Arbitration Panels

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

11. Except as otherwise provided in the Turkey-Korea FTA, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

12. 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.

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

14. Where a procedural question arises that is not covered by the Turkey-Korea FTA, an arbitration panel may adopt an appropriate procedure that is not inconsistent with the Turkey-Korea FTA.

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

Hearings

16. Unless the Parties otherwise agree, at least one hearing shall be held. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chairperson of the arbitration panel shall notify in writing to the Parties of the date, time and location of the hearing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding, when the hearing is open to the public.

17. Unless the Parties otherwise agree, the hearing shall be held in Seoul where the complaining Party is the Republic of Turkey, or in Ankara, where the complaining Party is the Republic of Korea.

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

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

20. Representatives of a Party, advisers to a Party, 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. Only the representative(s) and advisor(s) of a Party may address the arbitration panel.

21. 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 other representatives or advisers who will be attending the hearing.

22. 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. The arbitration panel shall meet in closed sessions when the submissions and arguments of a Party contain business confidential information.

23. 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.

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

25. 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.

26. 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

27. 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.

28. 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 of the date of delivery.

Ex Parte Contacts

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

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

Suspension of Time Periods on Request of Technical Advice

31. The arbitration panel, consulting with the Parties and technical experts, determine the time period that the technical experts are to submit their opinions or advice. If the technical 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 technical experts. In no case this additional period exceeds the half of the period established pursuant to first sentence of this paragraph.

32. When a request is made for a written report of an expert, any time period applicable to the arbitration panel proceeding 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

33. 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 the factual and legal issue under consideration by the arbitration panel.

34. The submission 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 proceeding. It shall be made in the common working language in accordance with paragraph 36.

35. The arbitration panel shall list in its ruling all the submissions that it has received and that conform to the paragraphs 33 and 34. The arbitration panel shall not be obliged to address, in its ruling, the factual or legal arguments made in such submissions. Any submission obtained by the arbitration panel under paragraphs 33, 34 and 35 shall be submitted to the Parties for their comments.

Translation and Interpretation

36. Unless otherwise agreed during the consultations referred to in Article 6.4, 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.

Computation of Time

37. All time periods 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.

38. 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

39. If an arbitration panel is established for the purposes of Articles 6.11 and 6.12, the Party making a request under these Articles shall deliver its first written submission within 10 days of the date the request is submitted, and the responding Party shall deliver its written counter-submission within 10 days of the date of delivery of the first written submission.

40. If appropriate, the arbitration panel shall fix the time limit 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 limits for arbitration panel proceedings set out in Articles 6.11 and 6.12 and this Annex.

41. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 6.11 and 6.12.

ANNEX 6-B
CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS

Definitions

1. For the purposes of Chapter 6:

candidate means an individual whose name is on the list of arbitrators referred to in Article 6.7 and who is under consideration for appointment as an arbitrator under Article 6.7;

proceeding, unless otherwise specified, means an arbitration panel proceeding under Chapter 6;

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 process are preserved. Former arbitrators must comply with the obligations established in paragraphs 16, 17, 18 and 19.

Disclosure Obligations

3. Prior to confirmation of his or her selection as an arbitrator under Article 6.7, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, 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 and matters that may arise during any stage of the proceeding. The arbitrator shall disclose such interests, relationships and matters by communicating them in writing to the Joint Committee for consideration by the Parties.

Duties

5. Upon selection, an arbitrator shall perform an arbitrator's duties thoroughly and expeditiously throughout the course of the proceeding.
6. An arbitrator shall carry out all duties fairly and diligently.

7. 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.

8. An arbitrator shall take all reasonable steps to ensure that the arbitrator's assistant and staff comply with paragraphs 2, 3, 4, 17, 18 and 19.

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

10. A candidate or arbitrator shall not communicate matters concerning actual or potential violations of this Annex unless the communication is made to the Joint Committee in order to ascertain whether that candidate or arbitrator has violated, or may violate, this Annex.

Independence and Impartiality of Members of Arbitration Panels

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

12. 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.

13. 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.

14. 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.

15. 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

16. 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

17. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceeding, or acquired during the proceeding, except

for the purposes of the proceeding 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.

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

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

Responsibilities of Assistants and Staff

20. Paragraphs 2, 3, 4, 16, 17, 18 and 19 shall apply also *mutatis mutandis*, to assistants and staff.