

CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS

I. 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 mechanism is preserved. Former arbitrators shall comply with the obligations established in paragraphs 14, 15, 16 and 17 of this Annex.

II. DISCLOSURE OBLIGATIONS

2. Prior to the confirmation of her or his selection as an arbitrator under Article 21.9, a candidate shall disclose any interest, relationship or matter that is likely to affect her or his independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To that end, a candidate shall make all reasonable efforts to become aware of such interests, relationships and matters.
3. A candidate or arbitrator shall communicate matters concerning actual or potential violations of this Annex to the Trade Committee for consideration by the parties.

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 disclosure obligation is a continuing duty which requires an arbitrator to disclose such interests, relationships or matters that may arise during any stage of the proceedings. The arbitrator shall disclose such interests, relationships or matters by informing the Trade Committee, in writing, for consideration by the Parties.

III. DUTIES OF ARBITRATORS

5. Upon confirmation of her or his selection, an arbitrator shall be available to perform and shall perform her or his duties thoroughly and expeditiously throughout the course of the proceedings, including any proceedings under Articles 21.18 to 21.21, and with fairness and diligence.
6. An arbitrator shall consider only those issues raised in the proceedings and necessary for a ruling and shall not delegate this duty to any other person.
7. An arbitrator shall take all appropriate steps to ensure that her or his assistant and staff are aware of and comply with the relevant provisions of this Annex, *mutatis mutandis*.
8. An arbitrator shall not engage in *ex parte* contacts concerning the proceedings.

IV. INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

9. An arbitrator shall 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 opinion, loyalty to a Party or fear of criticism. An arbitrator shall not take instructions from any organisation or government or be affiliated to a government, including governmental organisation, of a Party.
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 her or his duties.
11. An arbitrator shall not use her or his position in 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 her or him.
12. An arbitrator shall not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
13. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

V. OBLIGATIONS OF FORMER MEMBERS

14. 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.

VI. CONFIDENTIALITY

15. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning proceedings or acquired during 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.
16. An arbitrator shall not disclose an arbitral award or parts thereof prior to its publication in accordance with Article 21.14(12).
17. An arbitrator or former arbitrator shall not disclose the deliberations of an arbitration panel, or any member's views at any time.

VII. EXPENSES

18. Each arbitrator shall keep a record and render a final account of her or his expenses, as well as the expenses of her or his assistant and staff.

VIII. MEDIATORS

19. The rules in this Annex applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators and, if applicable, to former mediators.

IX. EXPERTS

20. The following rules apply to the experts whose opinion is requested by the arbitration panel:
- (a) they shall disclose any interest, relationship or matter that could affect their independence or impartiality. Experts shall act in their own capacity and shall not accept or seek instructions from any government or organisation in delivering their opinion;
 - (b) they shall not engage in *ex parte* contacts in the course of the proceedings for which their opinion is requested;
 - (c) they shall not disclose or use any non-public information acquired during proceedings for which their opinion is requested, 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;
 - (d) unless otherwise agreed by the parties, they shall not disclose their opinion or parts thereof prior to the publication of the arbitral award; and
 - (e) they shall keep a record and render a final account of their expenses.

21. The opinions of experts presented to the arbitration panel shall be accompanied, or preceded, by a declaration by the expert confirming her or his commitment to abide by the obligations described in paragraph 20, as applicable.
