

## ANNEX XXV TO CHAPTER 15

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

#### Definitions

1. In this Code of Conduct:

- (a) "arbitrator" means a member of an arbitration panel established under Article 307 of this Agreement;
- (b) "mediator" means a person who conducts a mediation procedure in accordance with Chapter 15 (Mediation Mechanism) of Title IV;
- (c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 323 of this Agreement and who is under consideration for selection as a member of an arbitration panel under Article 307 of this Agreement;
- (d) "assistant" means a person who, under the terms of appointment of an arbitrator or mediator, conducts research or provides assistance to the arbitrator or mediator;
- (e) "proceeding", unless otherwise specified, means an arbitration panel or mediation proceeding under this Agreement;
- (f) "staff", in respect of an arbitrator or mediator, means persons under the direction and control of the arbitrator or mediator, other than assistants.

#### Responsibilities to the process

2. Every candidate and arbitrator or mediator 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 candidates, arbitrators or mediators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

#### Disclosure obligations

3. Prior to confirmation of her or his selection as an arbitrator or as a mediator 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.
4. A candidate, arbitrator or mediator shall communicate matters concerning actual or potential violations of this Code of Conduct only to the Trade Committee for consideration by the Parties.
5. Once selected, an arbitrator or mediator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in

paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator or mediator 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.

#### **Duties of arbitrators or mediators**

6. Upon selection an arbitrator or mediator shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. An arbitrator or mediator 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 or mediator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. Without prejudice to Article 330 of this Agreement, an arbitrator or mediator shall not engage in ex parte contacts concerning the proceeding.

#### **Independence and impartiality of arbitrators or mediators**

10. An arbitrator or mediator 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, and loyalty to a Party or fear of criticism.
11. An arbitrator or mediator 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.
12. An arbitrator or mediator may not use her or his 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 her or him.
13. An arbitrator or mediator may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. An arbitrator or mediator must 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.

#### **Obligations of former arbitrators or mediators**

15. All former arbitrators or mediators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from any decision or ruling of the arbitration panel or from an advisory opinion.

#### **Confidentiality**

16. No arbitrator or mediator or former arbitrator or mediator 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 interest of others.
17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Agreement.
18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's views.