

**ANNEX II**  
**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 7 of Chapter X (Dispute Settlement);
  - (b) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 23 of Chapter X (Dispute Settlement) and who is under consideration for selection as a member of an arbitration panel under Article 7 of Chapter X (Dispute Settlement);
  - (c) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
  - (d) "proceeding", unless otherwise specified, means an arbitration panel proceeding under Chapter X (Dispute Settlement);
  - (e) "staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants;
  - (f) "mediator" means a person who conducts a mediation procedure in accordance with Annex III (Mediation).

**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 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 her or his selection as an arbitrator under Chapter X (Dispute Settlement), 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 or arbitrator 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 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 Trade Committee, in writing, for consideration by the Parties.

### **Duties of arbitrators**

6. 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 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 or 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 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 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 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 may not allow financial, business, professional, personal, or social relationships or responsibilities to influence her or his conduct or judgement.
14. An arbitrator 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**

15. 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**

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 interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Chapter X (Dispute Settlement).
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 her or his expenses, as well as the time and expenses of his or her 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.