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THE EUROPEAN UNION**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 March 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 157 final - Annex IX
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part - Annex IX

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Delegations will find attached document COM(2014) 157 final - Annex IX.

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Encl.: COM(2014) 157 final - Annex IX



Brussels, 10.3.2014  
COM(2014) 157 final

ANNEX 9

**ANNEX**

**ANNEX IX**

**Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part**

*to the*

**Proposal for a Council Decision**

**on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part**

## **ANNEX XXXI**

### **EARLY WARNING MECHANISM**

1. The Union and the Republic of Moldova hereby establish an Early Warning Mechanism with the objective of setting out practical measures aimed at preventing and rapidly reacting to an emergency situation or to a threat thereof. It foresees an early evaluation of potential risks and problems related to the supply and demand of natural gas, oil or electricity and the prevention and rapid reaction in case of an emergency situation or a threat thereof.
2. For the purposes of this Annex, an emergency situation is a situation causing a significant disruption or a physical interruption of supply of natural gas, oil or electricity between the Union and the Republic of Moldova.
3. For the purposes of this Annex, the Coordinators are the Minister of the Republic of Moldova in charge of Energy and the Member of the European Commission in charge of Energy.
4. Regular evaluations of potential risks and problems related to the supply and demand of energy materials and products should be undertaken jointly by the Parties and reported to the Coordinators.
5. Should one of the Parties become aware of an emergency situation or of a situation which, in its opinion, could lead to an emergency situation, that Party shall inform the other Party without delay.

6. Under the circumstances set out in paragraph 5, the Coordinators shall notify each other, within the shortest possible time, of the necessity to initiate the Early Warning Mechanism. The notification shall indicate, inter alia, designated persons that are authorised by the Coordinators to maintain permanent contact with each other.

7. Upon notification in accordance with paragraph 6, each Party shall provide the other Party with its own assessment. Such an assessment shall include an estimate of the timeframe within which the emergency situation or the threat thereof could be eliminated. The Parties shall react promptly to the assessment provided by the other Party and complement it with available additional information.

8. If one Party is unable to adequately assess or accept the other Party's assessment of the situation, or the estimated timeframe within which an emergency situation or a threat thereof may be eliminated, the corresponding Coordinator may request consultations, which are to commence within a time period not exceeding 3 days from the moment of forwarding the notification provided for in paragraph 6. Such consultations shall take place through an Experts Group consisting of representatives authorised by the Coordinators. The consultations shall aim at:

- (a) elaborating a common evaluation of the situation and of possible further developments;
- (b) elaborating recommendations to overcome the emergency situation or to eliminate the threat thereof ;
- (c) elaborating recommendations on a joint action plan in order to minimise the impact of an emergency situation and, if possible, to overcome the emergency situation, including the possibility of establishing a Special Monitoring Group.

9. The consultations, common evaluations and proposed recommendations shall be based on the principles of transparency, non-discrimination and proportionality.

10. The Coordinators, within their competencies, shall work to overcome the emergency situation or to eliminate the threat thereof taking into account the recommendations that have been elaborated as the result of the consultations.

11. The Experts Group referred to in paragraph 8 shall report on its activities to the Coordinators promptly after the implementation of any agreed plan of action.

12. If an emergency situation occurs, the Coordinators may establish a Special Monitoring Group with the task of examining the ongoing circumstances and development of events and keeping an objective record of them. The Special Monitoring Group shall consist of:

- (a) representatives of both Parties;
- (b) representatives of energy companies of the Parties;
- (c) representatives of international energy organisations, proposed and mutually approved by the Parties;
- (d) independent experts proposed and mutually approved by the Parties.

13. The Special Monitoring Group shall start its work without delay and shall operate, as necessary, until the emergency situation has been solved. A decision on the termination of the work of the Special Monitoring Group shall be taken jointly by the Coordinators.

14. From the time at which a Party informs the other Party of the circumstances described in paragraph 5, and until the completion of the procedures set out in this Annex and the resolution of the emergency situation or the elimination of the threat thereof, the Parties will do their utmost to minimise negative consequences for the other Party. The Parties shall cooperate with the aim to reach an immediate solution in a spirit of transparency. The Parties shall refrain from any actions unrelated to the ongoing emergency situation that could create or deepen the negative consequences for the supply of natural gas, oil or electricity between the Union and the Republic of Moldova.

15. Each Party independently carries the costs relating to the actions in the framework of this Annex.

16. The Parties shall maintain in confidence all information exchanged between them that is designated as being of a confidential nature. The Parties shall take any necessary measures to protect confidential information on the basis of the relevant legal and normative acts of the Republic of Moldova, or the Union and/or its Member States, as applicable, as well as in accordance with applicable international agreements and conventions.

17. The Parties may invite, by mutual agreement, representatives of third parties to take part in the consultations or monitoring referred to in paragraphs 8 and 12.

18. The Parties may agree to adapt the provisions of this Annex in view of establishing an Early Warning Mechanism between them and other Parties.

19. A violation of the Early Warning Mechanism cannot serve as a basis for dispute settlement procedures under Title V (Trade and Trade-related Matters) of this Agreement. Moreover, a Party shall not rely on, or introduce as evidence in such dispute settlement procedures:

- (a) positions taken or proposals made by the other Party in the course of the procedure set out in this Annex; or
- (b) the fact that the other Party has indicated its willingness to accept a solution to the emergency situation subject to the Early Warning Mechanism.

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## **ANNEX XXXII**

### **MEDIATION MECHANISM**

#### Article 1

##### Objective

The objective of this Annex is to facilitate a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

#### Section 1

##### Procedure under the Mediation Mechanism

#### Article 2

##### Request for information

1. Before the initiation of the mediation procedure, a Party may request, at any time, in writing, information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall provide, within 20 days, a written response containing its comments on the information contained in the request.



2. Where the responding Party considers that a response within 20 days is not practicable, it shall inform the requesting Party of the reasons for the delay, together with an estimate of the shortest period within which it will be able to provide its response.

### Article 3

#### Initiation of the procedure

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed in order to clearly present the concerns of the requesting Party and shall:

- (a) identify the specific measure at issue;
- (b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and
- (c) explain how the requesting Party considers that those effects are linked to the measure.

2. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which a request pursuant to paragraph 1 is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt.

## Article 4

### Selection of the mediator

1. Upon the launch of the mediation procedure, the Parties shall endeavour to agree on a mediator no later than 15 days after the receipt of the reply to the request referred to in Article 3 of this Annex.
2. In the event that the Parties are unable to agree on the mediator within the time frame laid down in paragraph 1 of this Article, either Party may request the chair or co-chairs of the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement, or their delegates, to select the mediator, by drawing lots, from the list established under Article 404(1) of this Agreement. Representatives of both Parties shall be invited, with sufficient advance notice, to be present when the lots are drawn. In any event, the drawing of lots shall be carried out with the Party/Parties that is/are present.
3. The chair or co-chairs of the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement, or their delegates, shall select the mediator within five working days of the request made under paragraph 2 of this Article by either Party.
4. Should the list referred to in Article 404(1) of this Agreement not be established at the time a request is made pursuant to Article 3 of this Annex, the mediator shall be selected, by drawing lots, from the individuals which have been formally proposed by one or both of the Parties.
5. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

6. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The Code of Conduct for Arbitrators and Mediators set out in Annex XXXIV to this Agreement shall apply to mediators, *mutatis mutandis*. Rules 3 to 7 (Notifications) and 41 to 45 (Translation and interpretation) of the Rules of Procedure of Annex XXXIII to this Agreement shall also apply, *mutatis mutandis*.

## Article 5

### Rules of the mediation procedure

1. Within ten days after the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days after the date of delivery of this description, the other Party may provide, in writing, its comments on the description of the problem. Either Party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade effects. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. However, before seeking the assistance of, or consulting with, relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution or agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement. Either Party may make such a solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. The version disclosed to the public may not contain any information that a Party has designated as confidential.

7. On request of the Parties, the mediator shall issue to the Parties, in writing, a draft factual report, providing a brief summary of the measure at issue in these procedures, the procedures followed, and any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within that period, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:
- (a) by the adoption of a mutually agreed solution by the Parties, on the date of its adoption;
  - (b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;
  - (c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or
  - (d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

## Section 2

### Implementation

#### Article 6

##### Implementation of a mutually agreed solution

1. Where the Parties have reached agreement on a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

## Section 3

### General Provisions

#### Article 7

##### Confidentiality and relationship to dispute settlement

1. Unless the Parties agree otherwise, and without prejudice to Article 5(6) of this Annex, all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public the fact that mediation is taking place.
2. The mediation procedure is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement of Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement or any other agreement.
3. Consultations under Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement are not required before initiating the mediation procedure. However, a Party should normally avail itself of the other cooperation or consultation provisions provided for in this Agreement before initiating the mediation procedure.

4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

- (a) positions taken by the other Party in the course of the mediation procedure or information gathered under Articles 5(1) and 5(2) of this Annex;
- (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
- (c) advice given or proposals made by the mediator.

5. A mediator may not serve as member of a panel in a dispute settlement proceeding under this Agreement or under the WTO Agreement involving the same matter for which he/she has been a mediator.

## Article 8

### Time limits

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties involved in the mediation procedures.

## Article 9

### Costs

1. Each Party shall bear its own expenses derived from its participation in the mediation procedure.
  2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The remuneration of the mediator shall be in accordance with that foreseen for the chairperson of an arbitration panel in accordance with rule 8(e) of the Rules of Procedure.
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## ANNEX XXXIII

### RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

#### General provisions

1. In Chapter 14 (Dispute settlement) of Title V (Trade and Trade-related Matters) of this Agreement and under these Rules:
  - (a) "adviser" means a person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceeding;
  - (b) "arbitrator" means a member of an arbitration panel established under Article 385 of this Agreement;
  - (c) "arbitration panel" means a panel established under Article 385 of this Agreement;
  - (d) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator;
  - (e) "complaining Party" means any Party that requests the establishment of an arbitration panel under Article 384 of this Agreement;

- (f) "day" means a calendar day;
- (g) "party complained against" means the Party that is alleged to be in violation of the provisions referred to in Article 381 of this Agreement;
- (h) "representative of a Party" means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

2. The Party complained against shall be in charge of the logistical administration of the dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. The Parties shall share the expenses derived from organisational matters, including the remuneration and expenses of the arbitrators.

#### Notifications

3. Each Party to the dispute and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail to the other Party and, as regards written submissions and requests in the context of arbitration, to each of the arbitrators. The arbitration panel shall circulate documents to the Parties also by e-mail. Unless proven otherwise, an e-mail message shall be deemed to be received on the date of its sending. If any of the supporting documents are above ten megabytes, they shall be provided in another electronic format to the other Party and, where relevant, to each of the arbitrators within two days from the sending of the e-mail.

4. A copy of the documents transmitted in accordance with rule 3 shall be submitted to the other Party and, where relevant, to each of the arbitrators on the day of sending the e-mail by facsimile transmission, registered post, courier, or delivery against receipt or any other means of telecommunication that provides a record of the sending thereof.

5. All notifications shall be addressed to the Ministry of Economy of the Republic of Moldova and to the Directorate-General for Trade of the European Commission, 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 an official holiday of the Union or of the Republic of Moldova, the document shall be deemed delivered within the deadline on the next business day.

#### Commencing the arbitration

8. (a) If, pursuant to Article 385 of this Agreement or to rule 20 of these Rules, an arbitrator is selected by drawing lots, the drawing of lots shall be carried out at a time and place decided by the complaining Party to be promptly communicated to the Party complained against. The Party complained against may, if it so chooses, be present during the drawing of lots. In any event, the drawing of lots shall be carried out with the Party/Parties that is/are present.

- (b) If, pursuant to Article 385 of this Agreement or to rule 20 of these Rules, an arbitrator is selected by drawing lots and there are two chairs of the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement, both chairs, or their delegates, or one chair alone in cases where the other chair or his delegate does not accept to participate in the drawing of lots, shall perform the selection.
- (c) The Parties shall notify the selected arbitrators of their appointment.
- (d) An arbitrator who has been appointed according to the procedure established in Article 385 of this Agreement shall confirm his/her availability to serve as an arbitrator to the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement within five days of the date in which he/she was informed of his/her appointment. If a candidate declines the appointment for a justified reason, a new arbitrator shall be selected following the same procedure used for the selection of the unavailable candidate.
- (e) Unless the Parties to the dispute agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters as the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards. The remuneration for each arbitrator's assistant shall not exceed 50 % of the remuneration of that arbitrator. Arbitrators and representatives of the Parties to the dispute may take part in this meeting via telephone or video conference.

9. (a) Unless the Parties agree otherwise within five days from the date of selection of the arbitrators, the terms of reference of the arbitration panel shall be "to examine, in the light of the relevant provisions of the Agreement invoked by the parties to the dispute, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 381 of this Agreement and to make a ruling in accordance with Articles 387 and 402 of this Agreement".
- (b) The Parties shall notify the agreed terms of reference to the arbitration panel within three days of their agreement.

#### Initial submissions

10. The complaining Party shall deliver its initial 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 receipt of the initial written submission.

#### Working of arbitration panels

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

12. Unless otherwise provided in Chapter 14 (Dispute settlement) of Title V (Trade and Trade-related Matters) of this Agreement, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
13. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
14. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
15. Where a procedural question arises that is not addressed by the provisions of Chapter 14 (Dispute settlement) of Title V (Trade and Trade-related Matters) of this Agreement and Annexes XXXII, XXXIII and XXXIV to this Agreement, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
16. When the arbitration panel considers that there is a need to modify any of the time limits for its proceedings other than the time limits set out in Chapter 14 (Dispute settlement) of Title V (Trade and Trade-related Matters) of this Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties to the dispute in writing of the reasons for the change or adjustment and of the period of time or adjustment needed.

## Replacement

17. If an arbitrator is unable to participate in an arbitration panel proceeding, withdraws from it, or must be replaced because he/she does not comply with the requirements of the Code of Conduct, as set out in Annex XXXIV to this Agreement, a replacement shall be selected in accordance with Article 385 of this Agreement and rule 8 of these Rules.

18. Where a Party to the dispute considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party shall notify the other Party to the dispute within 15 days from the time at which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

19. Where a Party to the dispute considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties to the dispute shall consult and, if they so agree, select a new arbitrator in accordance with Article 385 of this Agreement and rule 8 of these Rules.

If the Parties to the dispute fail to agree on the need to replace an arbitrator, any Party to the dispute may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be selected in accordance with Article 385 of this Agreement and rule 8 of these Rules.

20. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, select a new chairperson in accordance with Article 385 of this Agreement and rule 8 of these Rules.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons referred to in Article 404(1) of this Agreement. His/her name shall be drawn by lot by the chair of the Association Committee in Trade configuration as set out in Article 438(4) of this Agreement, or the chair's delegate within five days from the request. The decision by the so selected person on the need to replace the chairperson shall be final.

If the so selected person decides that the original chairperson does not comply with the requirements of the Code of Conduct, he/she shall select a new chairperson by lot among the remaining pool of individuals from the sub-list of chairpersons referred to in Article 404(1) of this Agreement. The selection of the new chairperson shall be carried out within five days of the date of the decision referred to in this paragraph.

21. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18, 19 and 20 of these Rules.



## Hearings

22. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the Parties to the dispute and the other arbitrators, and shall confirm this in writing to the Parties to the dispute. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the Republic of Moldova, and in Chisinau if the complaining Party is the Union.

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

25. All arbitrators shall be present during the entirety of any hearings.

26. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

- (a) representatives of the Parties to the dispute;
- (b) advisers to the Parties to the dispute;
- (c) administrative staff, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representatives and advisers of the Parties to the dispute may address the arbitration panel.

27. No later than five days before the date of a hearing, each Party to the dispute shall deliver to the arbitration panel a list of the names of individuals who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers attending the hearing.

28. 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;
- (b) counter-argument of the Party complained against;

*Rebuttal Argument*

- (a) argument of the complaining Party;
- (b) counter-argument of the Party complained against.

29. The arbitration panel may direct questions to either Party to the dispute at any time during the hearing.

30. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties to the dispute. The Parties to the dispute may comment on the transcript, and the arbitration panel may consider those comments.

31. Each Party to the dispute may deliver a supplementary written submission concerning any matter that arose during the hearing within ten days of the date of the hearing.

#### Questions in writing

32. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties to the dispute. Each Party to the dispute shall receive a copy of any questions put by the arbitration panel.

33. A Party to the dispute shall also provide a copy of its written response to the arbitration panel's questions to the other Party to the dispute. Each Party to the dispute shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt of such reply.

## Confidentiality

34. Each Party to the dispute and its advisers shall treat as confidential any information submitted by the other Party to the dispute to the arbitration panel which that Party has designated as confidential. Where a Party to the dispute submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later, and an explanation as to why the non-disclosed information is confidential. Nothing in these Rules shall preclude a Party to the dispute from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential. The arbitration panel shall meet in closed session when the submission and the arguments of a Party contain confidential information. The Parties to the dispute and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session.

## *Ex parte* contacts

35. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.

36. No arbitrator may discuss any aspect of the subject matter of the proceedings with either Party or both Parties to the dispute in the absence of the other arbitrators.

### *Amicus curiae* submissions

37. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from natural or legal persons established in the territory of a Party to the dispute who are independent from the governments of the Parties to the dispute, provided that they are made within ten days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 pages typed at double space and that they are directly relevant to a factual or a legal issue under consideration by the arbitration panel.

38. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment, the nature of its activities, its legal status, general objectives and the source of its financing, and specify the nature of the interest that the person has in the arbitration panel proceeding. It shall be drafted in the languages chosen by the Parties to the dispute in accordance with rules 41 and 42 of these Rules.

39. The arbitration panel shall list in its ruling all the submissions it has received that conform to rules 37 and 38 of these Rules. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any such submission shall be notified by the arbitration panel to the Parties to the dispute for their comments. The comments of the Parties to the dispute shall be submitted within ten days, and any such comments shall be taken into consideration by the arbitration panel.

### Urgent cases

40. In the cases of urgency referred to in Chapter 11 (Trade-related Energy) of Title V (Trade and Trade-related Matters) of this Agreement, the arbitration panel, after consulting the Parties to the dispute, shall adjust the time limits referred to in these Rules, as appropriate, and shall notify the Parties of such adjustments.

### Translation and interpretation

41. During the consultations referred to in Article 382 of this Agreement and no later than the meeting referred to in rule 8(e) of these Rules, the Parties to the dispute shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

42. If the Parties to the dispute are unable to agree on a common working language, each Party shall make its written submissions in its chosen language. In such case, that Party shall provide at the same time a translation in the language chosen by the other Party, unless its submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties to the dispute.

43. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties to the dispute.

44. Any Party to the dispute may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules.

45. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for translation of an arbitration ruling shall be borne equally by the Parties to the dispute.

#### Other procedures

46. These Rules of Procedure are also applicable to procedures established under Article 382, Article 391(2), Article 392(2), Article 393(2) and Article 395(2) of Chapter 14 (Dispute settlement) of Title V (Trade and Trade-related Matters) of this Agreement. However, the time limits laid down in these Rules of Procedure shall be adjusted by the arbitration panel in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

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## ANNEX XXXIV

### 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 385 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 404(1) of this Agreement and who is under consideration for selection as an arbitrator under Article 385 of this Agreement;
  - (d) "mediator" means a person who conducts a mediation procedure in accordance with Annex XXXII (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 Association Committee in Trade configuration, as set out in Article 438(4) 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 Association Committee 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 404(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.

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