

ANNEX VI

REFERRED TO IN ARTICLE 38

CONSTITUTION AND FUNCTIONING OF
THE ARBITRAL TRIBUNAL

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1. The arbitral tribunal shall comprise three members.
2. In the written notification pursuant to Article (arbitration) of this Agreement, the Party or Parties referring the dispute to arbitration shall designate one member of the arbitral tribunal.
3. Within 15 days from the receipt of the notification referred to in paragraph 2, the Party or Parties to which it was addressed shall, in turn, designate one member.
4. Within 30 days from the receipt of the notification referred to in paragraph 2, the Parties concerned shall agree on the designation of a third member. The third member shall not be a national nor permanently reside in the territory of the parties to the dispute. The member thus appointed shall be the President of the arbitral tribunal.
5. If all three members have not been designated or appointed within 30 days from the receipt of the notification referred to in paragraph 2, the necessary designations shall be made, at request of any party to the dispute, by the President of the International Court of Justice applying the criteria of paragraphs 3 and 4. If the President is unable to act under this paragraph or is a national of a party to the dispute, the designations shall be effected by the next senior member of the Court who is neither unable to act nor a national of a Party.
6. Unless otherwise agreed between the parties to the dispute, and subject to Article (Arbitration) of the Agreement and this Annex, the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration (PCA), effective 20 October 1992, shall apply.
7. The arbitral tribunal shall take its decisions by majority vote. Minority opinions shall not be disclosed.
8. The arbitral award shall be rendered within six months of the date at which the President of the arbitral tribunal was appointed. This period can be extended by a maximum of three additional months, if the parties to the dispute so agree.
9. The expenses of the arbitral tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. Fees and expenses payable to members of an arbitral tribunal established under this Agreement will be subject to schedules established by the Joint Committee and in force at the time of the establishment of the arbitral tribunal. These schedules normally shall conform to the WTO standards.