

## **ANNEX K**

REFERRED TO IN ARTICLE 29

ESTABLISHMENT AND FUNCTIONING OF THE ARBITRAL  
TRIBUNAL

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ESTABLISHMENT AND FUNCTIONING OF THE ARBITRAL TRIBUNAL

1. Each member of the arbitral tribunal shall:
  - (a) have expertise or experience in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
  - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (c) be independent of, and not be affiliated with or take instructions from, any Party, nor have dealt with the case in any capacity; and
  - (d) comply with any code of conduct for dispute settlement adopted by the Joint Committee.
  
2. The following procedures shall apply to the selection of the members of the arbitral tribunal:
  - (a) the arbitral tribunal shall comprise three members;
  - (b) in its written notification pursuant to Article 29 of this Agreement, the Party or Parties referring the dispute to arbitration shall designate one member of the arbitral tribunal, who meets the criteria of paragraph 1 of this Annex. Such member may be a national of the referring Party or Parties;
  - (c) within 15 days from the receipt of the notification referred to in subparagraph 2(b), the Party or Parties to which it was addressed shall, in turn, designate one member, who meets the criteria of paragraph 1. Such member may be a national of the designating Party or Parties;

- (d) within 30 days from the receipt of the notification referred to in sub-paragraph 2(b), the Parties concerned shall agree on the designation of a third member, who meets the criteria of paragraph 1. The third member shall not be a national of any of the Parties to this Agreement, nor permanently reside in the territory of any such Party. The member thus designated shall be the President of the arbitral tribunal;
- (e) if any of the three members have not been designated within 30 days from the receipt of the notification referred to in sub-paragraph 2(b), the remaining designation or designations shall be made, at request of any Party to the dispute, by the Secretary-General of the Permanent Court of Arbitration, applying the criteria of sub-paragraphs 2(c) and 2(d). If the Secretary-General is unable to act under this paragraph or is a national of a Party to this Agreement, the designation or designations shall be effected by the Deputy Secretary-General of the Permanent Court of Arbitration.

3. Unless otherwise agreed between the Parties to the dispute, and subject to paragraphs 4 through 7, the *Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States*, effective 20 October 1992, shall apply.

4. The arbitral tribunal shall take its decisions by majority vote.

5. A Party which is not a Party to the dispute, on delivery of a written notice to the disputing Parties, shall be entitled to make written submissions to the arbitral tribunal, to receive written submissions of the disputing Parties, attend all hearings and make oral submissions.

6. 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.

7. 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 the arbitral tribunal established under this Annex shall be subject to schedules established by the Joint Committee and in force at the time of the establishment of the arbitral tribunal.

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