DECISIONS

COUNCIL DECISION (EU) 2019/1954

of 18 November 2019

establishing the position to be adopted, on behalf of the European Union, in the EPA Committee set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, in connection with the adoption of the rules of procedure for mediation, the rules of procedure for arbitration and the code of conduct for arbitrators

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part ([1]) ('the Agreement'), was signed on behalf of the Union by Council Decision 2009/152/EC ([2]) and has been applied on a provisional basis since 4 August 2014.

(2) In accordance with Article 80(1) of the Agreement, the EPA Committee is required to lay down the rules of procedure and the code of conduct on the settlement of disputes.

(3) In accordance with Article 88 of the Agreement, the EPA Committee may decide to amend Title VI of the Agreement and the Annexes thereto.

(4) The EPA Committee, at its next annual meeting is to adopt a decision establishing the rules of procedure for mediation, the rules of procedure for arbitration, and the code of conduct of arbitrators.

(5) It is appropriate to establish the position to be taken, on behalf of the Union, in the EPA Committee concering the adoption of the envisaged decision, as that decision will be binding on the Union.

(6) It is therefore appropriate that the position of the Union in the EPA Committee be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, in the EPA Committee set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, shall be based on the EPA Committee's draft Decision on the rules of procedure for mediation, the rules of procedure for arbitration, and the code of conduct for arbitrators, annexed to this Decision.

([1]) OJ L 57, 28.2.2009, p. 2.

([2]) Council Decision 2009/152/EC of 20 November 2008 on the signature and provisional application of the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part (OJ L 57, 28.2.2009, p. 1).

Article 2

This Decision will enter into force on the date of its adoption.

Done at Brussels, 18 November 2019.

For the Council
The President
J. LEPPÄ

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DECISION No …./2019 OF THE EPA COMMITTEE

set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part,

of …

adopting the rules of procedure for mediation, the rules of procedure for arbitration, and the code of conduct for arbitrators

THE EPA COMMITTEE,

Having regard to the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part (the 'Agreement'), signed in Brussels on 15 January 2009, and applied on a provisional basis since 4 August 2014, and in particular Articles 80(1) and 88 thereof,

Whereas:

(1) Under the terms of the Agreement and of this Decision, the Central Africa Party is composed of the Republic of Cameroon.

(2) Article 80(1) of the Agreement provides that dispute settlement procedures provided for under Chapter 3 (Procedures for the settlement of disputes) of Title VI (Dispute avoidance and settlement) of the Agreement are covered by the rules of procedure and the code of conduct of arbitrators, which will be adopted by the EPA Committee.

(3) Article 88 of the Agreement provides that the EPA Committee may decide to amend Title VI (Dispute avoidance and settlement) of the Agreement and the Annexes thereto,

HAS ADOPTED THIS DECISION:

Article 1

1. The rules of procedure for mediation, as set out in Annex I to this Decision, shall be established as Annex IV to the Agreement.

2. The rules of procedure for arbitration, as set out in Annex II to this Decision, shall be established as Annex V to the Agreement.

3. The code of conduct for arbitrators, as set out in Annex III to this Decision, shall be established as Annex VI to the Agreement.

4. The rules of procedure and the code of conduct, as referred to in paragraphs 1 and 3 of this Article shall be established without prejudice to any special rules provided for in the Agreement or which may be decided by the EPA Committee.

Article 2

This Decision shall enter into force on the date of its signature.

Done at …,

For the Republic of Cameroon	*For the European Union*
…	…

ANNEX I

RULES OF PROCEDURE FOR MEDIATION

Article 1

Scope of application

1. The provisions contained in these rules of procedure supplement and clarify the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part ('the Agreement'), in particular Article 69 (mediation) thereof.

2. These rules of procedure are intended to enable the Parties to resolve any disputes that may arise between them through a mutually satisfying solution reached owing to a comprehensive and expeditious mediation procedure.

3. Within the meaning of these rules of procedure, 'mediation' means any proceeding, regardless of what that proceeding is called, in which the Parties ask a mediator to help them to settle their dispute amicably.

Article 2

Start of the proceeding

1. A Party may request, in writing and at any time, that the Parties enter into a mediation proceeding. The request must be sufficiently detailed to present clearly the concerns of the complaining Party. It must also:

(a) identify the specific measure at issue;

(b) provide a statement of the alleged adverse effects that the measure has, or will have, in the view of the complainting Party, on trade between the Parties;

(c) explain how the complaining Party considers that there exist a causal link between the measure and those effects.

2. The mediation proceeding may only be initiated by mutual consent of the Parties. Where a Party requests mediation pursuant to paragraph 1, the other Party shall consider the request and reply in writing within five days of the request. Failing this, the request shall be considered to have been dismissed.

Article 3

Selection of the mediator

1. The Parties shall mutually agree on a mediator at the beginning of the mediation proceeding, and no later than 15 days after receipt of the reply to the mediation request.

2. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

3. The mediator shall provide a written statement confirming his or her impartiality and independence and his or her availability to oversee the mediation proceeding.

4. The mediator shall comply *mutatis mutandis* with the code of conduct for arbitrators.

Article 4

Conduct of the mediation proceeding

1. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure at issue and its possible trade effects between the Parties, and in reaching a mutually satisfying solution.

2. The mediator may decide on the most appropriate approach to bringing clarity to the measure concerned and its possible impact on trade between the Parties. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult, relevant experts and stakeholders, and provide any additional support requested by the Parties. However, before seeking the assistance of, or consulting, relevant experts and stakeholders, the mediator shall consult the Parties. Where the mediator wishes to meet, or talk to, one of the Parties and/or its counsel separately, he or she shall inform the other Party in advance or as soon as possible after his or her unilateral meeting or discussion with the first Party.

3. The mediator may offer advice and propose a solution that he or she submits to the Parties which may accept or reject the proposed solution or even agree on a different solution. However, the mediator may not, in any way, advise or comment on the consistency of the measure at issue with the Agreement.

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

5. The Parties shall endeavour to reach a mutually satisfactory 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 an EPA Committee decision. Mutually satisfactory solutions shall be made public, unless the Parties decide otherwise. However, the version disclosed to the public may not contain any information classified by either Party as confidential.

7. At the request of the Parties, the mediator shall submit in writing a draft factual report to the Parties, providing a brief summary of the measure at issue in the proceeding and any mutually satisfactory solution reached as the final outcome of the proceeding, including possible interim solutions. The mediator shall grant the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within the deadline provided, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report may not contain any interpretation of the Agreement.

Article 5

End of the mediation proceeding

The proceeding shall be terminated:

(a) by the adoption of a solution mutually agreed between the Parties, on the date of adoption;

(b) 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;

(c) by a written declaration of a Party after exploring solutions mutually agreed under the mediation proceeding and after having considered any advice and proposed solutions by the mediator, on the date of that declaration. Such declaration may not be issued before the period set out in Article 4(5) of these rules of procedure has expired; or

(d) at any stage of the proceeding by mutual agreement of the Parties, on the date of that agreement.

Article 6

Implementation of a mutually satisfactory solution

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement it within the agreed time limit.

2. The implementing Party shall inform the other Party, in writing and within the agreed time limit, of any steps or measures taken to implement the mutually satisfactory solution.

Article 7

Confidentiality and relationship to dispute settlement

1. All information relating to the mediation proceeding must remain confidential, unless its disclosure is required by law or required for the implementation or performance of the agreement resulting from the mediation.

2. Unless the Parties agree otherwise, and without prejudice to Article 4(6) of these rules of procedure, all steps in the proceeding, including any advice or proposed solutions, shall be kept confidential. However, either Party may disclose to the public that mediation is taking place. The obligation of confidentiality does not extend to factual information already existing in the public domain.

3. The mediation proceeding is without prejudice to the Parties' rights and obligations under the provisions of the Agreement on dispute settlement or in any other relevant agreement.

4. The Parties shall not be required to undertake consultations before initiating the mediation proceeding. However, a Party should in principle apply the other relevant cooperation or consultation provisions of the Agreement before initiating the mediation proceeding.

5. A Party shall not rely on the following elements, or introduce them as evidence in the framework other dispute settlement proceedings under the Agreement or any other agreement, nor shall an arbitration panel take into consideration:

(a) positions taken by the other Party in the course of the mediation proceeding or information gathered under Articles 4 (1) and (2) of these rules of procedure;

(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.

6. Unless the Parties agree otherwise, a mediator may not be a member of an arbitration panel in the framework of dispute settlement proceedings under the Agreement or under the World Trade Organization (WTO) Agreement involving the same matter for which he or she has been a mediator.

Article 8

Application of the rules of procedure for arbitration

Article 3 (Notifications) - without prejudice to Article 4(2) of these rules of procedure -, Article 15 (Costs), Article 16 (Working language for the proceeding, translation and interpretation) and Article 17 (Calculating time limits) of the rules of procedure for arbitration shall apply *mutatis mutandis*.

Article 9

Review

Five years after the date of entry into force of this Decision, the Parties shall consult each other on any need to modify the mediation mechanism in light of the experience gained and the development of any corresponding mechanism in the WTO.

ANNEX II

RULES OF PROCEDURE FOR ARBITRATION

Article 1

Definitions

For the purposes of these rules of procedure:

— 'adviser': means a natural person retained by a Party to advise or assist that Party in connection with an arbitration proceeding;

— 'arbitration panel': means a panel set up under Article 71 of the Agreement;

— 'arbitrator': means a member of an arbitration panel set up under Article 71 of the Agreement;

— 'assistant': means a natural person who, under the terms of appointment of an arbitrator, conducts research for or provides assistance to the arbitrator;

— 'day': means a calendar day unless otherwise specified;

— 'representative of a Party': means an employee or any natural person appointed by a government department or agency or any other public entity of a Party who represents the Party in a dispute under this Agreement;

— 'party complained against': means the Party that is alleged to be in violation of the provisions referred to in Article 67 of the Agreement;

— 'complaining Party': means any Party that requests the setting up of an arbitration panel under Article 70 of the Agreement.

Article 2

Scope of application

1. These rules of procedure supplement and clarify the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part ('the Agreement'), in particular Articles 70 *et seq*. thereof on arbitration.

2. These rules of procedure are intended to enable the Parties to resolve disputes that may arise between them through a mutually satisfactory solution reached owing to the arbitration mechanism.

Article 3

Notifications

1. 'Notification', for the purposes of these rules of procedure, means any request, notice, written submission or other document related to the arbitration procedure, on given that:

(a) any notification from the arbitration panel shall be sent to both Parties at the same time;

(b) any notification from one Party which is addressed to the arbitration panel shall be copied to the other Party at the same time; and

(c) any notification from one Party which is addressed to the other Party shall be copied to the arbitration panel at the same time, as appropriate.

2. Any notification shall be carried out by e-mail or, where appropriate, by any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to have been delivered on the date of its sending.

3. All notifications shall be addressed to the Directorate-General for Trade of the European Commission and to the Cameroonian Ministry responsible for implementing the Agreement.

4. Minor errors of a clerical nature in notification may be corrected by delivery of a new notification clearly indicating the changes that have been made.

5. If the last day for delivery of a notification is a non-working day in the Central Africa Party or in the European Union, the notification may be delivered on the next business day. No notification of any kind shall be deemed to have been received on a non-working day.

6. Depending on the nature of the issues under dispute, all notifications addressed to the EPA Committee in accordance with these rules of procedure shall also be copied to the other relevant institutional bodies.

Article 4

Appointment of arbitrators

1. If, pursuant to Article 71 of the Agreement, an arbitrator is selected by drawing lots, the Chairperson of the EPA Committee or his or her representative shall promptly inform the Parties of the date, time and venue of the drawing by lot.

2. The Parties shall be present when the lots are drawn.

3. The Chairperson of the EPA Committee or the Chairperson's representative shall, in writing, inform each individual selected of his or her appointment as arbitrator. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment.

4. If the list of arbitrators referred to in Article 85 of the Agreement has not been drawn up or does not have sufficient names when a request is submitted under Article 71(2) of the Agreement, the Chairperson of the EPA Committee shall select arbitrators by drawing lots from the names of individuals officially put forward by one or both of the Parties, and who meet the conditions laid down in Article 85(2) of the Agreement.

Article 5

Consultation between the Parties and the arbitration panel

1. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its setting up in order to determine such matters that the Parties or the arbitration panel deem appropriate, including:

(a) the remuneration and expenses to be paid to arbitrators, which shall be in accordance with WTO standards;

(b) the remuneration for each arbitrator's assistant, the total of which shall not exceed 50 per cent of the total remuneration of that arbitrator;

(c) the timetable of the proceeding.

Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.

2. Unless the Parties agree otherwise within five days of the date of the setting up of the arbitration panel, the terms of reference of the arbitration panel shall be:

'*to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for the setting up of the arbitration panel, to rule on the compatibility of the measure in question with Article 67 of the Agreement, and to make a ruling in accordance with Articles 73, 83 and 84 of the Agreement*.'.

3. The Parties shall notify the agreed terms of reference to the arbitration panel within three days of their agreement on the mandate.

Article 6

Written submissions

The complaining Party shall deliver its initial written submission no later than 20 days after the date of the setting up of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

Article 7

Working of the arbitration panels

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

2. In accordance witih Article 9 of these rules of procedure, the arbitrators and the persons requested shall attend the hearing. Unless otherwise provided in the Agreement or these rules of procedure, the arbitration panel may conduct its other activities by any means, including by telephone, fax or any electronic means.

3. 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.

4. The drafting of any ruling shall be the exclusive responsibility of the arbitration panel and shall not be delegated.

5. Where a procedural question arises that is not covered by the provisions of Title VI (Dispute avoidance and settlement) of the Agreement, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions and that ensures equal treatment between the Parties.

6. If the arbitration panel considers that there is a need to change any of the time limits for its proceedings other than the time limits set out in Title VI (Dispute avoidance and settlement) of the Agreement, or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for which the change or adjustment has been made and of the time limit or adjustment needed. The arbitration panel may adopt such change or adjustment after having consulted the Parties.

7. At the request of one of the Parties, the arbitration panel may modify the time limits applicable to the proceeding, provided that equal treatment between the Parties is ensured.

8. At the request of both Parties, the arbitration panel may suspend the proceeding at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The arbitration panel shall resume the proceeding at any time at the written request of both Parties, or at the end of the agreed suspension period at the written request of one of the Parties. The chairperson of the arbitration panel and, where necessary, the other Party shall be informed of the request. If the panel's proceeding has been suspended for over 12 consecutive months, the authority conferred for the setting up of the arbitration panel shall become invalid and the proceeding before the panel shall be terminated. The Parties may, at any time, agree to terminate the proceeding before the arbitration panel. The Parties shall jointly notify the chairperson of the arbitration panel of this agreement. In the event of suspension, the relevant time limits shall be extended by the same amount of time as the arbitration panel's proceeding was suspended.

9. The termination of the arbitration panel's work shall be without prejudice to the rights of the Parties in the framework of any other proceeding on the same matter under Title VI (Dispute avoidance and settlement) of the Agreement.

Article 8

Replacement

1. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 71 of the Agreement.

2. Where a Party considers that an arbitrator does not comply with the requirements of the code of conduct of arbitrators and for this reason should be replaced, that Party shall notify the other Party within 15 days from the date on which it became aware of the circumstances underlying the arbitrator's alleged failure to comply with the code of conduct.

3. The Parties shall consult each other within 15 days of the date of the notification referred to in paragraph 2 of this Article. The Parties shall inform the arbitrator of his or her alleged non-compliance and may request that the arbitrator take the steps necessary to remedy the alleged non-compliance. They may also, if they so agree, remove the arbitrator and select a new arbitrator in accordance with the procedure set out in Article 71(2) of the Agreement.

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

If, pursuant to this request, the chairperson finds that an arbitrator does not comply with the requirements of the code of conduct of arbitrators, a new arbitrator shall be selected in accordance with Article 71(3) of the Agreement.

5. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the persons on the list, of individuals selected to act as chairperson of the arbitration panel established under Article 85 of the Agreement. The name of this individual shall be drawn at random by the Chairperson of the EPA Committee. The individual thus selected shall decide whether or not the chairperson complies with the requirements of the code of conduct of arbitrators. The decision shall be final.

If it is found that the chairperson does not comply with the requirements of the code of conduct of arbitrators, the new chairperson shall be selected in accordance with Article 71(3) of the Agreement.

Article 9

Hearings

1. Based upon the timetable determined pursuant to Article 5(1), and after consulting with the Parties and the other arbitrators, the chairperson of the arbitration panel shall notify the Parties of the date, time and venue of the hearing. The Party responsible for the logistical administration of the proceeding shall make this information available to the public, subject to Article 11.

2. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the Central Africa Party and in Yaoundé if the complaining Party is the European Union.

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

4. All arbitrators shall be present during the entirety of the hearing.

5. The following persons may attend the hearing, irrespective of whether or not the proceeding is open to the public:

(a) representatives of the Parties;

(b) advisers to the Parties;

(c) administrative staff, interpreters, translators and court reporters;

(d) arbitrators' assistants;

(e) experts, as chosen by the arbitration panel pursuant to Article 81 of the Agreement.

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

7. The arbitration panel shall ensure that the complaining Party and the Party complained against are afforded equal speaking time. It shall conduct the hearing as follows:

Argument

(a) argument of the complaining Party;

(b) argument of the Party complained against.

Rebuttal Argument

(a) reply of the complaining Party;

(b) counter-reply of the Party complained against.

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

9. The arbitration panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties within a reasonable time after the hearing. The Parties may comment on the transcript, and the arbitration panel may consider those comments.

10. Each Party may deliver to the arbitrators and to the other Party a supplementary written submission concerning any matter arising during the hearing within ten days of the date of the hearing.

Article 10

Questions in writing

1. The arbitration panel may, at any time during the proceeding, address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.

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

Article 11

Transparency and confidentiality

1. Each Party and the arbitration panel shall endeavour to ensure the confidentiality of any information submitted by the other Party to the arbitration panel and which that Party has classified as confidential. Where a Party's submission to the arbitration panel contains confidential information, that Party shall also provide, within 15 days of delivery of that communication, a non-confidential version of the submission that could be disclosed to the public.

2. Nothing in these rules of procedure shall preclude a Party 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 classified by the other Party as confidential.

3. The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential business information. The Parties shall maintain the confidentiality of the arbitration panel hearings when they are held in closed session.

Article 12

Ex parte contacts

1. The arbitration panel shall not meet or contact a Party in the absence of the other Party.

2. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or the Parties in the absence of the other arbitrators.

Article 13

Amicus curiae submissions

1. Non-governmental persons established on the territory of a Party may submit *amicus curiae* briefs to the arbitration panel in accordance with paragraphs 2 to 5.

2. Unless the Parties agree otherwise within five days of the date of the setting up of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within ten days of the date of the setting up of the arbitration panel, and those submissions, including any annexes thereto, are in no case longer than fifteen typed pages, including any annexes, and that they are directly relevant to the issue under consideration by the arbitration panel.

3. Each submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that that person has in the arbitration proceeding. The submission shall be drafted in the languages chosen by the Parties, in accordance with Article 16(1) and (2) of these rules of procedure.

4. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within ten days of the delivery, to the arbitration panel.

5. The arbitration panel shall list in its ruling all the submissions it has received that conform to these rules. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. The arbitration panel shall submit to the Parties for their comments any submission it obtains.

Article 14

Urgent cases

In cases of urgency referred to in Article 73(2) of the Agreement, the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

Article 15

Costs

1. Each Party shall bear its costs of participation in the arbitration proceeding.

2. The Party complained against shall be responsible for the logistical administration of the arbitration proceeding, in particular for organising hearings, unless it is agreed otherwise, and shall bear all of the costs of the logistical administration of the hearing. However, the Parties shall jointly and equally bear the other administrative costs of the arbitration proceeding as well as the remuneration and expenses of the arbitrators and their assistants.

Article 16

Working language for the proceeding, translation and interpretation

1. During the consultations referred to in Article 71(2) of the Agreement, and no later than the meeting referred to in Article 5(1) of these rules of procedure, the Parties shall endeavour to agree on a common working language for the proceeding before the arbitration panel.

2. If the Parties are unable to agree on a common working language, each Party shall arrange for the translation of its written submissions into the language chosen by the other Party, unless these submissions are written in one of the official languages common to the Parties to the Agreement. The Party complained against shall be responsible for the interpretation of oral submissions into the languages chosen by the Parties, provided that the Parties have chosen one of the official languages common to the Parties. If one of the Parties chooses a language other than one of the official languages common to both Parties, the interpretation of oral submissions shall be entirely the responsibility of that Party.

3. Arbitration panel reports and rulings shall be drafted in the language or languages chosen by the Parties. If the Parties have not agreed on a common working language, the interim and final reports of the arbitration panel and its rulings shall be issued in one of the official languages common to the Parties.

4. Any costs incurred for the translation of an arbitration panel ruling into the language or languages chosen by the Parties shall be borne equally by the Parties.

5. A Party may provide comments on the accuracy of any translated version of a document drawn up in accordance with these rules.

6. Each Party shall bear the costs of the translation of its written submissions.

Article 17

Calculation of time limits

All the time limits set out in Title VI (Dispute avoidance and settlement) of the Agreement and in these rules of procedure, including the time limits for arbitration panels to notify their rulings, may be modified by mutual consent of the Parties, and shall be calculated in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

Article 18

Other procedures

The time limits set out in these rules of procedure shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in proceedings under Articles 74 to 78 of the Agreement.

ANNEX III

CODE OF CONDUCT FOR ARBITRATORS

Article 1

Definitions

For the purposes of this code of conduct:

— 'arbitrator': means a member of an arbitration panel set up under Article 71 of the Agreement;

— 'assistant': means a natural person who, under the terms of appointment of an arbitrator, conducts research for or provides assistance to the arbitrator;

— 'candidate': means an individual whose name is on the list of arbitrators referred to in Article 85 of the Agreement and who is under consideration for selection as an arbitrator under Article 71 of the Agreement;

— 'mediator': means a natural person who conducts mediation in accordance with Article 69 of the Agreement;

— 'staff': in respect of an arbitrator, means natural persons under the direction and control of the arbitrator, other than assistants.

Article 2

Basic principles

1. In order to preserve the integrity and impartiality of the dispute settlement mechanism, each candidate arbitrator must familiarise himself or herself with this code of conduct. He or she must:

(a) be independent and impartial;

(b) avoid direct or indirect conflicts of interests;

(c) avoid impropriety and any act that lead to the presumption of impropriety or of impartiality;

(d) observe high standards of conduct;

(e) not be influenced by self-interest, outside pressure, political considerations, external pressure, loyalty to a Party or fear of criticism.

2. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would interfere, or appear to interfere in any way with the proper performance of his or her duties.

3. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may lead to the presumption that others are in a special position to influence him or her.

4. An arbitrator shall not allow past or existing financial, business, professional, personal, or social relationships or responsibilities to influence his or her conduct or judgement.

5. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably lead to the presumption of impropriety or of impartiality.

Article 3

Disclosure obligations

1. Prior to confirmation of his or her selection as an arbitrator under Article 71 of the 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 lead to the presumption of impropriety or of impartiality in the framework of the proceeding. To this end, a candidate shall strive, to the extent possible, to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.

2. The disclosure obligation under paragraph 1, being a continuing duty, arbitrators shall disclose any such interests, relationships or matters that may arise during any stage of the proceeding.

3. A candidate or an arbitrator shall communicate to the EPA Committee for consideration by the Parties any matters concerning actual or potential violations of this code of conduct as soon as possible after having become aware of them.

Article 4

Duties of arbitrators

1. Upon acceptance of his or her appointment, an arbitrator shall be available to take up his or her duties and shall perform those duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

2. 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.

3. An arbitrator shall take all necessary steps to ensure that his or her assistant and staff are aware of, and comply with, Articles 2, 3 and 6 of this code of conduct.

Article 5

Obligations of former arbitrators

All former arbitrators must avoid actions that may lead to the presumption that they were biased in carrying out their duties or derived advantage from the ruling of the arbitration panel.

Article 6

Confidentiality

1. An arbitrator or former arbitrator shall not, 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.

2. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Article 84(2) of the Agreement.

3. An arbitrator or former arbitrator shall not, at any time, disclose the deliberations of an arbitration panel, or any member's view.

Article 7

Expenses

Each arbitrator shall keep a record and render a final account of the time devoted to the proceeding and of his or her expenses, as well as the time and expenses of his or her assistant, to the Parties.

Article 8

Mediators

This code of conduct applies *mutatis mutandis* to mediators.