

6. Within 10 days after the panel chair is selected, each Party shall select a panelist from among those roster members who are citizens of the other Party. If a Party fails to select a panelist within the time periods specified, the panelist shall be selected by lot from among the roster members who are citizens of the other Party.

7. Panelists shall be independent of, and not be affiliated with or take instructions from, a Party, including a state or provincial government. Panelists shall be selected strictly on the basis of objectivity, reliability, sound judgment and to the extent possible, expertise appropriate to the substance of the matter in dispute. Panelists shall comply with the *Code of Conduct for Dispute Settlement Procedures under Chapters 19 and 20 of the North American Free Trade Agreement ("Code of Conduct")*, and in particular shall be free of any conflict of interest or appearance of such a conflict.

8. If a Party believes that a panelist is in violation of the *Code of Conduct*, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this article. If a member of the arbitral panel withdraws from the panel prior to completing his or her duties, a replacement panelist shall be appointed in the same manner as the panelist who has withdrawn from the panel.

9. The remuneration of panelists, their travel and lodging expenses and all general expenses of the panel shall be borne equally by the Parties. Panelists shall be remunerated and their expenses paid in accordance with the rates established by the NAFTA Commission for panelists appointed to dispute settlement panels under the NAFTA. Each panelist shall keep a record and render a final account of his or her time and expenses, and the panel shall keep a record and render a final account of all general expenses.

#### **Submissions**

10. Within 15 days following the appointment of the third panelist, the complaining Party shall deliver to the panel and to the responding Party a written submission outlining its position and all documents relied on in support of its claim, which may include information supplied to the Party by industry representatives.

11. Within 20 days following the receipt of the submission, the responding Party shall deliver to the panel and to the complaining Party a written counter-submission outlining its position and all documents relied on, which may include information supplied to the Party by industry representatives.

12. The arbitral panel shall conduct the arbitration in the manner it considers appropriate, including establishing procedures to ensure the protection of confidential information and relating to matters such as the participation of experts and whether oral hearings should be held.

#### **Decision**

13. No later than 30 days after it receives the counter-submission, the arbitral panel shall issue a written decision, together with its findings and reasons therefor, with regard to whether the matter complained of constitutes a breach of this Agreement. The decision shall contain no recommendation or instruction to the Parties. A decision of the arbitral panel shall be by majority vote and based on the votes of all members of the panel.