5. Should the lists provided for in Article 21.9 not be established or not contain at least nine individuals as referred to in that Article, the following procedures apply:

(a) for the selection of the chairperson:

(i) if the sub-list of chairpersons contains at least two individuals agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select by lot the chairperson from those individuals no later than five days after the date of delivery of the request referred to in paragraph 4;

(ii) if the sub-list of chairpersons contains one individual agreed by the Parties, that individual shall act as chairperson; or

(iii) if the Parties fail to select a chairperson pursuant to subparagraph (i) or (ii) or if the sub-list of chairpersons contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall, no later than five days after the date of delivery of the request referred to in paragraph 4, select by lot the chairperson from the individuals who had been formally proposed by a Party as chairperson at the time of establishing or updating the list of arbitrators referred to in Article 21.9. A Party may propose a new individual, if an individual who had been formally proposed as chairperson by that Party is no longer available; and

(b) for the selection of an arbitrator other than the chairperson:

(i) if the sub-list of a Party contains at least two individuals agreed by the Parties, that Party shall select an arbitrator from those individuals no later than five days after the expiry of the time period provided in paragraph 2;

(ii) if the sub-list of a Party contains one individual agreed by the Parties, that individual shall act as an arbitrator; or

(iii) if an arbitrator cannot be selected pursuant to subparagraph (i) or (ii) or if the sub-list of arbitrators of a Party contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select an arbitrator applying *mutatis mutandis* the procedure referred to in subparagraph (a).

6. The date of establishment of the panel shall be the date on which the last of the three arbitrators has notified to the Parties the acceptance of his or her appointment.