ARTICLE 22.8

Composition of a panel

1. A panel shall be composed of three arbitrators.

2. No later than 10 days after the date of receipt of the request for the establishment of a panel by the Party complained against, the Parties shall consult with a view to reaching an agreement on the composition of the panel.

3. If the Parties do not reach an agreement on the composition of the panel within the time period provided for in paragraph 2, each Party shall appoint an arbitrator from the sub-list for that Party established pursuant to Article 22.9 no later than five days after the expiry of the time period provided for in paragraph 2. If a Party fails to appoint an arbitrator within that time period, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the expiry of the time period, an arbitrator from the sub-list for the Party that has failed to appoint an arbitrator established pursuant to Article 22.9. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the arbitrator to his or her representative.

4. If the Parties do not reach an agreement on the chairperson of the panel within the time period provided for in paragraph 2, on request of a Party, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the date of delivery of the request, the chairperson of the panel from the sub-list of chairpersons established pursuant to Article 22.9. That request shall be notified simultaneously to the other Party. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the chairperson of the panel to his or her representative.

5. Should the lists provided for in Article 22.9 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 22.9. 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.

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