



EUROPEAN COMMISSION  
Directorate-General for Trade

Brussels, 30 July 2010  
Ref:

	
<b>Council of the EU General Secretariat</b>	
<b>Trade Policy Committee</b>	
<b>m.d. :</b>	<b>452/10</b>
<b>source :</b>	<b>Commission</b>
<b>for :</b>	<b>Information</b>
<b>date :</b>	<b>30 - 07 - 2010</b>

**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE**

**SUBJECT:** *Nomination of Candidates for the Establishment of Dispute Settlement Rosters*

**ORIGIN:** *Ditte JUUL-JØRGENSEN, DG TRADE F2, tel. +32 2 29 62496*

**OBJECTIVE:** *For information*

**REMARKS:** The EU has recently concluded, signed or initialled a number of trade agreements that contain dispute settlement provisions based on third-party arbitration by a dispute settlement panel. In other negotiations recently concluded dispute settlement provisions have also been developed. A list of these agreements and negotiations, with reference to the relevant provisions, is set out in annex.

The rules of composition of panels generally foresee that the parties should initially try to agree on the panelists and that, failing agreement, the panel will be composed by selection by lot from the names contained in a permanent roster. Rosters are composed of three lists: one list of candidates initially proposed by the EU, one list of candidates initially proposed by the FTA partner, and one list of third-country nationals. Each of these lists should usually contain at least five names.

The roster as a whole would then need to be adopted by a designated joint body set up under the agreement.

Most agreements foresee the creation of a "general" roster that would be used for all disputes under the agreement. Certain agreements require also the creation of specialised rosters for disputes in specific subject matters. For example, the FTA initialled with Korea will require also the creation of rosters of specialists in financial services, sustainable development, and cultural cooperation.

In order to prepare for the effective implementation of these trade agreements, the Commission is now seeking candidatures for the list of the rosters whose initial proposal is reserved to the EU.

General characteristics that candidates should have are:

- specialised knowledge or experience of law and international trade;
- not be affiliated with the government of a Party; and
- be independent and able to comply with the code of conduct set out in the agreements.

Please refer to the specific provision of each agreement (copied in Annex) for an exact identification of the applicable requirements. Please also refer to the specific requirements applicable to specialised rosters in the provisions also copied in Annex, which may depart from these general requirements<sup>1</sup>.

Member States are invited to submit candidatures by sending the CVs of the proposed candidates to Ms. Ditte Juul-Jørgensen ([Ditte.Juul-Joergensen@ec.europa.eu](mailto:Ditte.Juul-Joergensen@ec.europa.eu)) **by 30 September 2010**.

The candidatures received under this procedure will also be considered for agreements that may be finalised in the near future, as the need arise. To facilitate the process, the Commission will also consider the candidatures made by Member States in 2008 for the purpose of selecting the EU candidates for the WTO Appellate Body, as well as those received for the EPAs, which do not need to be re-submitted. Should any of the candidates proposed in response to this request also wish to make themselves available for selection for inclusion in the lists to be established the EPAs Member States are invited to make this known at the time of submission. To the extent they are available, former members of the WTO Appellate Body will also be considered.

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<sup>1</sup> For example, candidates for the rosters on cultural cooperation do not need to have specialised knowledge or experience in international trade and may be affiliated with the government of a Party.

## ANNEX

- **Agreements with South-East Europe**

- Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of **Montenegro**, of the other part (OJ L108 of 29/04/2010, p.1)

*Protocol 7, Article 15*

**List of arbitrators.**

1. The Stabilisation and Association Committee shall, no later than six months after the entry into force of this Protocol, establish a list of fifteen individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The Parties shall also agree on five individuals which shall act as chairperson to arbitration panels. The Stabilisation and Association Committee will ensure that the list is always maintained at this level.

2. Arbitrators should have specialised knowledge and experience of law, international law, Community law and/or international trade. They shall be independent, serve in their individual capacities and not be affiliated with, or take instructions from any organisation or government, and shall comply with the Code of Conduct referred to in Article 18.

- Interim Agreement on trade and trade-related matters between the European Community, of the one part, and **Bosnia and Herzegovina**, of the other part (OJ L169 of 30/06/2008, p.10)

*Protocol 5, Article 15*

**List of arbitrators**

1. The Interim Committee shall, no later than six months after the entry into force of this Protocol, establish a list of fifteen individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The Parties shall also agree on five individuals which shall act as chairperson to arbitration panels. The Interim Committee will ensure that the list is always maintained at this level.

2. Arbitrators should have specialised knowledge and experience of law, international law, Community law and/or international trade. They shall be independent, serve in their individual capacities and not be affiliated with, or take instructions from any organisation or government, and shall comply with the Code of Conduct referred to in Article 18.

- Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of **Serbia**, of the other part

*Protocol 6, Article 15*

**List of arbitrators**

1. The Interim Committee shall, no later than six months after the entry into force of this Protocol, establish a list of fifteen individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The Parties shall also agree on five individuals which shall act as chairperson to arbitration panels. The Interim Committee will ensure that the list is always maintained at this level.

2. Arbitrators should have specialised knowledge and experience of law, international law, Community law and/or international trade. They shall be independent, serve in their individual capacities and not be affiliated with, or take instructions from any organisation or government, and shall comply with the Code of Conduct referred to in Article 18.

- **Agreements with Euromed**

- *EU-Tunisia Protocol on Dispute Settlement (Council Decision 2010/91/EC)*

Article 19

List of arbitrators

1. The subcommittee on industry, trade and services shall, no later than six months after the entry into force of this Protocol, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall propose at least five individuals to serve as arbitrators. The two Parties shall also select at least five individuals who are not nationals of either Party to act as chairperson to the arbitration panel. The subcommittee on industry, trade and services will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Protocol.

3. The subcommittee on industry, trade and services may establish additional lists of at least 15 individuals having a sectoral expertise in specific matters covered by the Association Agreement. When recourse is made to the selection procedure of Article 6(2), the chairpersons of the subcommittee on industry, trade and services may use such sectoral list upon agreement of both Parties.

- *EU-Lebanon Protocol on Dispute Settlement (Council Decision of 10 November 2009)*

Article 19 (same requirements as the text for Tunisia above)

- *EU-Morocco Agreement on Dispute Settlement (COM(2010)326 and 328 final)*

Article 19 (same requirements as the text for Tunisia above)

- *EU-Jordan Protocol on Dispute Settlement (COM(2010)321 and 322 final)*

Article 19 (same requirements as the text for Tunisia above)

- *EU-Egypt Protocol on Dispute Settlement (initialled on 27 April)*

Article 19 (same requirements as the text for Tunisia above)

- **FTA with Korea** (initialled on 15/10/2009, COM/2010/0137 final)

- *General roster: Article 14.18*

#### List of Arbitrators

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select five individuals who are not nationals of either Party and shall act as chairperson to the arbitration panel. The Trade Committee will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of any Party, and shall comply with Annex 14-C.

- *Financial services: Article 7.45*

#### Dispute Settlement

[...] 2. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals. Each Party shall propose five individuals respectively and the Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the arbitration panel. Those individuals shall have expertise or experience in financial services law or practice, which may include the regulation of financial service suppliers, and shall comply with Annex 14-C (Code of Conduct for Members of Arbitration Panels and Mediators). [...]

○ *Sustainable Development: Article 13.15*

Panel of Experts

[...] 3. Upon the entry into force of this Agreement, the Parties shall agree on a list of at least 15 persons with expertise on the issues covered by this Chapter, of whom at least five shall be non-nationals of either Party who will serve as chair of the Panel of Experts. The experts shall be independent of, and not be affiliated with or take instructions from, either Party or organisations represented in the Domestic Advisory Group(s). Each Party shall select one expert from the list of experts within 30 days of the receipt of the request for the establishment of a Panel of Experts. If a Party fails to select its expert within such period, the other Party shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall decide on the chair who shall not be a national of either Party.

○ *Cultural Cooperation: Annex 3, Article 3 bis*

[...] (c) The Committee on Cultural Co-operation shall, promptly after its establishment, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the arbitration panel. The Committee on Cultural Co-operation will ensure that the list is always maintained at this level. Arbitrators shall have knowledge and experience on the subject matter of this Protocol. In serving as arbitrators, they shall be independent, serve in their individual capacity and not take instructions from any organisation or government with regard to matters related to the dispute, and shall comply with Annex 14-C (Code of Conduct for Members of Arbitration Panels and Mediators);

**FTA with Colombia and Peru (currently subject to legal scrubbing)**

○ *General roster: Article 6 of the Dispute Settlement Title (provisional numbering)*

List of Arbitrators

1. The Trade Committee shall establish at its first meeting a list of 25 individuals who are willing and able to serve as arbitrators<sup>1</sup>. Each Party shall propose 5 individuals to serve as arbitrators. The Parties shall also select by mutual agreement 10 individuals who are not [citizens/nationals]<sup>2</sup> of any of the Parties, and who shall act as president of the Arbitration Panel.

2. The Trade Committee shall ensure that the list is always complete. In any event, the list may be used in accordance with Article XI.5 (Establishment of the arbitration panel) even if it is not complete.

3. The arbitrators shall have specialized knowledge or experience in International Trade Law, or in settlement of disputes under international trade agreements; they shall be independent, impartial, shall not have either direct or indirect relationship with any of the Parties, and shall not receive instructions from them or from any organization. The arbitrators shall comply with the Code of Conduct established by the Trade Committee at its first meeting.

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<sup>1</sup> Note by negotiators: negotiators agree that, with the view to ensure that the list of arbitrators is adopted formally by the Trade Committee at its first meeting, the Parties shall agree on such list before the entry into force [or provisional application] of the Agreement. The commitment to adopt in the Trade Committee the list agreed by the Parties this way will be reflected in an exchange of notes on the date of signature of the Agreement.

<sup>2</sup> This is subject to the final definition of the term "citizen" or "national".

○ *Specialised rosters: Article 6, paragraph 4*

4. The Trade Committee shall establish, furthermore, additional lists of 12 individuals with sectorial experience on specific subjects covered by the Agreement. To such effect, each Party shall nominate three individuals to serve as arbitrators. The Parties, by mutual agreement, shall select three candidates to chair the arbitration panel who are not [citizens/nationals] of any of the Parties. Each Party to the dispute may choose to designate its arbitrator among those proposed by any of the Parties for a sector list. When resorting to the selection procedure established in Article XI.5, paragraph 3, the chairman of the Trade Committee may use a sector list upon agreement of both Parties to the dispute.

○ *List of Experts on Sustainable Development: Article 282.3 (provisional numbering)*

Group of Experts

3. At the entry into force of this Agreement, the Parties shall submit to the Trade Committee a list of at least 15 persons with expertise on the issues covered by this chapter, of which at least 5 non nationals would be available to serve as Chair of the Group of Experts, for endorsement at the Committee's first meeting. The experts shall be independent of and not take instructions from, any of the Parties. Each Party to a procedure<sup>1</sup> shall select one expert from the list of experts within 30 days of the receipt of the request for the establishment of a Group of Experts. The Parties to the procedure may agree to appoint experts not included in the list to serve in the Group of Experts when they deem it necessary. If one Party to the procedure fails to select its expert within such period, the other Party to the procedure shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall agree on the chair who shall not be a national of either Party to the procedure. In case of disagreement, the Chair shall be selected by lot. The Group of Experts shall be convened within 40 days of a consulting Party's request.

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<sup>1</sup> "Parties to the procedure" shall be understood as the Consulting Parties which participate in a procedure before a Group of Experts.

## FTA With Central America (currently subject to legal scrubbing)

- *Sustainable Development: Title VIII, Article 12*

### ARTICLE 12: PANEL OF EXPERTS

1. Unless the consulting Parties otherwise agree, a Party may, after 60 days of the referral of a matter to the Board on Trade or Sustainable Development or, if the matter is not referred to the Board, after 90 days of the delivery of a request for consultation under Article 11, paragraphs 1 and 3 respectively, request that a Panel of Experts be convened to examine any matter that has not been satisfactorily addressed through government consultations. The Parties to the procedure can make submissions to the Panel of Experts.
2. At the entry into force of this Agreement, the Parties shall submit to the Association Committee a list of 17 persons with at least 5 individuals who are not nationals of any Party, with expertise in environmental law, international trade or the resolution of disputes arising under international agreements; and 17 persons, with at least 5 individuals who are not nationals of any Party, with expertise in labour law, international trade or the resolution of disputes arising under international agreements; for endorsement at the first meeting of the Association Committee. The experts who are not nationals of any Party would be available to serve as Chair of the Panel of Experts. The experts shall be (i) independent of, and not affiliated with or take instructions from, either Party or organisations represented in the Advisory Group(s) referred to in Article 9; and (ii) chosen on the basis of objectivity, reliability, and sound judgment.

- *Dispute Settlement: Title X, Article 18*

### *Article 18* List of Panelists

1. The Association Council shall, no later than 6 months<sup>1</sup> after the entry into force of the Agreement, establish a list of 36 individuals who are willing and able to serve as panelists. The EU Party shall propose 12 individuals to serve as panelists, and each Republic of the CA Party shall propose 2 individuals<sup>2</sup>. The EU Party and the CA Party shall also select 12 individuals that are not nationals of either Party and who shall act as chairperson to the Panel. The Association Council may review the list at any time and shall ensure that the list is always maintained at this level.
2. Panelists shall have specialised knowledge or experience in law, international trade or other matters relating to Part IV of the Agreement or in the resolution of disputes arising from international trade agreements, be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organisation and shall comply with the Code of Conduct adopted by the Association Council. Such lists may be amended by the Association Council as necessary.
3. The Association Council may establish additional lists of up to 15 individuals having a sectoral expertise in specific matters covered by Part IV of the Agreement. When recourse is made to the selection procedure of Article 5, the chairperson of the Association Committee may use a sectoral list upon agreement of the Parties.



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- 1 **Negotiators note:** The negotiators agree that in order to ensure that the required three lists are compiled within the six month deadline, certain intermediate milestones may be appropriate. This could be reflected in either a footnote to Article 18, the Rules of Procedure, or in letters exchanged between the Parties. The milestones below might be appropriate:  
For day 75, send its list of candidates.  
For day 120, approve or reject the candidates.  
For day 150, send a list of additional candidates to replace the rejected candidates.  
For day 180, finalization of the lists of candidates.
  - 2 **Negotiators note:** Due to constitutional considerations, Central America considers that the application of the Dispute Settlement system should be bilateral and individual between each Central American Party and the European Union. The European Union has taken due note of the Central American position keeping in mind also that this issue has overarching implications which relate not only to Dispute Settlement.