

Operating Rules – Part 6 – Mediation & Arbitration Rules

ADOPTED - SEPTEMBER 7, 1999

AMENDED - SEPTEMBER 29, 2000

AMENDED - MARCH 30, 2001

AMENDED - SEPTEMBER 27, 2001

IN FORCE AS OF OCTOBER 29, 2001

AMENDED - APRIL 18, 2002

IN FORCE AS OF MAY 21, 2002

AMENDED - DECEMBER 6, 2003

IN FORCE AS OF JANUARY 6, 2003

AMENDED - April 26, 2003

IN FORCE AS OF May 27, 2003

AMENDED - November 20, 2003

IN FORCE AS OF December 22, 2003

AMENDED – July 8, 2005

IN FORCE AS OF August 8, 2005

AMENDED – May 17, 2006

IN FORCE AS OF June 16, 2006

AMENDED & In Force – August 9, 2007

AMENDED & In Force – November 27, 2007

AMENDED & In Force – December 3, 2009

AMENDED & In Force – October 22, 2010

AMENDED & In Force – May 26, 2011

AMENDED & In Force – August 19, 2013

Table of Contents

PART I. GENERAL

Article 1	Interprétation
Article 2	Application
Article 3	Other Disputes
Article 4	Limitation of Claims
Article 5	Time
Article 6	Communications
Article 7	Exclusion of Liability
Article 8	Waiver

PART II. INFORMAL CONSULTATION

Article 9	Notice of Dispute
Article 10	Reply
Article 11	Consultation
Article 12	Confidentiality and Privilege

PART III. FORMAL PROCEEDINGS

Article 13	Mediation and Arbitration Options
------------	-----------------------------------

SECTION 1: **MEDIATION**

Article 14	Mediation
	I. Commencing the Mediation
Article 15	Notice of Mediation
	II. The Mediator
Article 16	Multi-national Panel of Mediators
Article 17	Appointment of Mediator
Article 18	Challenge of Mediator
Article 19	Replacement of Mediator
Article 20	Authority of Mediator
	III. General Conditions
Article 21	Representation
Article 22	Date, Time, and Place of Mediation
Article 23	Identification of Matters in Dispute
Article 24	Privacy
Article 25	Confidentiality
Article 26	No Stenographic Record
Article 27	Termination of Mediation
Article 28	Mediation Settlement
Article 29	Exclusion of Liability
Article 30	Interpretation and Application of Rules
Article 31	Expenses
Article 32	Administrative Fees

SECTION 2: **ARBITRATION: EXPEDITED RULES & PROCEDURES**

Article 33	Expedited Arbitration - Claims less than \$50,000.
Article 34	Commencement of Arbitration

Article 35	Statement of Defence and Counterclaim
Article 36	Witness Statements
Article 37	Appointment of the Arbitrator
Article 38	Independence and Impartiality
Article 39	Challenge of Arbitrator
Article 40	Replacement of an Arbitrator
Article 41	Conduct of the Arbitration
Article 42	Waiver of Rules
Article 43	Place of Arbitration
Article 44	Language
Article 45	Confidentiality
Article 46	Jurisdiction
Article 47	Default of a Party
Article 48	General Powers of the Arbitrator
Article 49	Applicable Rules and Laws
Article 50	Settlement
Article 51	Arbitral Award
Article 52	Interest
Article 53	Costs
Article 54	Compensation of Arbitrator
Article 55	Deposit of Costs
Article 56	Amendments and Corrections to the Award

SECTION 3: ARBITRATION – FORMAL RULES AND PROCEDURES

Article 57	Claims of \$50,000 or more and unspecified amounts
	I. Commencing the Arbitration
Article 58	Notice of Arbitration (Statement of Claim)
Article 59	Statement of Defense and Counterclaim
Article 60	Amendments to Claims
	II. The Arbitrator
Article 61	Panel of Arbitrators
Article 62	Number of Arbitrators
Article 63	Appointment of Arbitrators
Article 64	Independence and Impartiality
Article 65	Challenge of Arbitrator
Article 66	Replacement of an Arbitrator
Article 67	Replacement of an Arbitrator on a Three Person Tribunal
	III. General Conditions
Article 68	Representation
Article 69	Place of Arbitration
Article 70	Language
Article 71	Pleas as to Jurisdiction
Article 72	Conduct of the Arbitration
Article 73	Further Written Statements

Article 74	Periods of Time
Article 75	Notices
Article 76	Evidence
Article 77	Hearings
Article 78	Interim Measures of Protection
Article 79	Experts
Article 80	Default
Article 81	Closure of Hearing
Article 82	Waiver of Rules
Article 83	Awards, Decisions and Rulings
Article 84	Form and Effect of the Award
Article 85	Applicable Rules and Laws
Article 86	Settlement or Other Reasons for Termination
Article 87	Interpretation or Correction of the Award
Article 88	Interest
Article 89	Costs
Article 90	Compensation of Arbitrators
Article 91	Deposit of Costs
Article 92	Confidentiality
Article 93	Interpretation of Rules
Article 94	Administrative Fee Schedule

PART I. GENERAL

Article 1 Interpretation

- (1). "Rules" means these dispute resolution Rules of the Fruit and Vegetable Dispute Resolution Corporation as amended from time to time.
- (2). In these Rules
 - (a). "Corporation" means the Fruit and Vegetable Dispute Resolution Corporation or its President or any employee or agent of the Corporation designated by the President to assist in the administration of a dispute under these Rules;
 - (b). "dollar" means U.S. dollars;
 - (c). "President" means the person appointed by the Board of the Directors of the Corporation to supervise and control all business and affairs of the Corporation, or that person's delegate;
 - (d). "member" means a member in good standing of the Corporation;
 - (e). "Claim" means a claim by a claimant. Subject to Article 4, a Claim is to be brought by way of Statement of Claim;
 - (f). "Counterclaim" means a claim by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim and that is in excess of the amount being claimed by the claimant. Subject to Article 4, a Counterclaim is to be brought by way of a Counterclaim provided that the respondent previously gave notice of the Counterclaim during the informal consultation process. Claims by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim that are less than the amount being claimed by the claimant are to be asserted as a defense only in the Statement of Defense. Claims by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim that are out of time pursuant to Article 4 may be asserted as a defense to the Claim in the Statement of Defense but no amounts in excess of the Claim shall be recoverable.
 - (g). "Counterclaim with Set Off" means a claim by a respondent arising out of a transaction extrinsic to the Claim. Subject to Article 4, a Counterclaim with Set Off may only be brought by way of a Counterclaim with Set Off provided that the respondent previously gave notice of the Counterclaim with Set Off during the informal consultation process. A Counterclaim with Set Off is not allowed to be asserted as a defence to the Claim.
 - (h). words signifying a male person include a female person;

- (i). words in the singular include the plural and words in the plural include the singular.

Article 2 Application

- (1). These Rules are incorporated by reference in the Constitution and By-laws of the Corporation and their application to disputes between members is a condition of membership in the Corporation.
- (2). Each member agrees that any dispute, controversy or claim with another member arising out of or in connection with any transaction involving fresh fruits and vegetables as defined in the By-Laws of the Corporation shall be resolved exclusively in accordance with these Rules as amended from time to time. Each member further specifically agrees to submit any such disputes not resolved through mediation to arbitration in accordance with these Rules.
- (3). A member's agreement to submit disputes to arbitration under the By-Laws and Rules of the Corporation, and the Corporation's obligation to administer such disputes, shall only apply to disputes arising in relation to transactions that have entered into commerce in Canada, Mexico and the United States by the product that is the subject matter of the dispute having been grown in, received in or otherwise physically present in Canada, Mexico and the United States.
- (4). Nothing in these Rules shall prevent any member from preserving any rights it may have under the statutory trust of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e, from seeking interim, injunctive relief to prevent dissipation of assets covered by the PACA trust, from any rights and recourses it may have to pursue a debtor/member under any insolvency legislation or from seeking interim relief from a court of competent jurisdiction in appropriate circumstances pending resolution of a proceeding before the Corporation.
- (5). Nothing in these Rules is intended to prevent legal action against a non-member, except where a non-member has agreed to the application of these Rules pursuant to Article 3 or is determined by an arbitrator to be within the scope of application of these Rules.
- (6). Each member agrees that it will endeavour to resolve all disputes within the scope of these Rules in good faith in accordance with these Rules.
- (7). Each member recognizes and agrees that a failure to abide by these Rules or any request or order by the Corporation, an arbitrator or a mediator in the application of these Rules or any settlement agreement or award of an arbitrator may give rise to discipline or expulsion from membership pursuant to the constitution and by-laws of the Corporation.
- (8). Unless the parties agree otherwise, and any applicable fees are fully paid, these Rules shall not apply to disputes which arose prior to the application for membership in the Corporation by the parties in dispute.
- (9). All administrative fees including commencement and filing fees, hearing fees and postponement fees shall be determined by the Corporation's Board of Directors, and such rates shall remain in effect until changed by the Board of Directors.
- (10). Any copy of a member's membership application provided by the Corporation shall be conclusive evidence of the member's agreement to arbitrate any dispute, controversy or claim as provided for in these Rules. Members hereby consent to the Corporation releasing a copy of their membership application to the opposing party in any arbitration proceeding as necessary

to provide evidence of the member's agreement to arbitrate for the arbitration process and/or enforcement of the arbitration award. The agreement to arbitrate contained in a member's membership application is legally effective, valid and enforceable against the member despite the fact that signatures on the membership application may be in electronic form or that it may have been created, transmitted, stored or otherwise handled or formed, in whole or in part, by electronic means.

Article 3 Other Disputes

(1). These Rules also apply to any dispute, controversy or claim between a member and one or more non-members where the parties agree in writing to their application.

Article 4 Limitation of Claims

(1). Unless the parties otherwise specifically agree in writing, no Claim may be brought under these Rules by one member against another unless the Claim is notified to the Corporation by way of a Notice of Dispute within nine (9) months of when the Claim arose or within nine (9) months of when the claimant ought reasonably to have known of its existence. Failure to file the Claim with the Corporation within this time shall be deemed an abandonment of the Claim and prevent recovery against another member

(2). Unless the parties otherwise specifically agree in writing, no Counterclaim may be brought under these Rules by one member against another unless the Counterclaim is notified to the Corporation by way of a Reply to the Notice of Dispute within nine (9) months of when the claim arose or within nine (9) months of when the respondent ought reasonably to have known of its existence. Failure to file the Counterclaim with the Corporation within this time shall be deemed an abandonment of the claim and prevent recovery against another member provided, however, that a Counterclaim may still be asserted as a defence to a Claim but no amount in excess of the Claim shall be recoverable.

(3). Unless the parties otherwise specifically agree in writing, no Counterclaim with Set Off may be brought under these Rules by one member against another unless the Counterclaim with Set Off is notified to the Corporation by way of a Reply to the Notice of Dispute within nine (9) months of when the claim arose or within nine (9) months of when the respondent ought reasonably to have known of its existence. Failure to file the Counterclaim with Set Off with the Corporation within this time shall be deemed an abandonment of the claim and prevent recovery against another member.

(4). Unless the parties otherwise specifically agree in writing, no formal proceedings may be brought by one member against another member under Part III of these Rules unless the claim is filed with the Corporation by way of a Statement of Claim or Notice of Arbitration and Statement of Claim within 12 months of when the Notice of Dispute regarding the specific claim was confirmed by the Corporation. Failure to proceed with formal proceedings within this time shall be deemed an abandonment of the claim and prevent recovery against another member.

Article 5 Time

- (1). In these Rules, where the time for doing an act falls or expires on a holiday, the period is extended until the first following business day. Holidays occurring within a period of time are included in calculating the period.
- (2). In these Rules, in the calculation of time, the first day shall be excluded and the last day included.
- (3). The Corporation may, at any time, extend or abridge a period of time required in these Rules, other than a period of time fixed or determined by an arbitrator.

Article 6 Communications

- (1). Unless otherwise agreed in writing by the parties or ordered by an arbitrator, the parties to a dispute may deliver any written communications required or permitted under these Rules personally, by mail, by facsimile or by other means of electronic communication which provide a record of delivery. Communications shall be considered received when delivered to a party's address for delivery.
- (2). The address for delivery of a party shall be the party's place of business, habitual residence or mailing address. If none of these places can be found after making a reasonable enquiry, a written communication is deemed to have been received if it delivered to the addressee's last known place of business, habitual residence or mailing address.
- (3). The parties shall accept all notices under these Rules from the Corporation, a mediator or an arbitrator by telephone. Such notices shall subsequently be confirmed in writing to the parties. However, failure to confirm any notice in writing shall not invalidate the giving of notice provided notice was, in fact, given by telephone.
- (4). A copy of all written communications between a party and the Corporation, a mediator or arbitrator must be delivered to the other party or parties at the same time.

Article 7 Exclusion of Liability

- (1). None of the Corporation, its employees or agents, any mediator or arbitrator shall be liable to any party for any act or omission in connection with any consultation, mediation or arbitration conducted under these Rules, save where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing by the Corporation or person alleged to be liable.

Article 8 Waiver

- (1). Any party which knows of a failure to comply with these Rules and which proceeds without promptly stating its objection in writing shall be deemed to have waived the objection.

PART II. INFORMAL CONSULTATION**Article 9** Notice of Dispute

- (1). A party, as claimant, may submit a dispute to resolution under these Rules by delivering a written Notice of Dispute to the respondent and to the Corporation.
- (2). The Notice of Dispute shall contain:
 - (a). the names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
 - (b). a brief statement of the matter in dispute;
 - (c). the remedy sought including, where possible, a precise estimate of the amount claimed.
- (3). In the event the parties agree to apply these Rules to a dispute in which one of the parties is a non-member, the Notice of Dispute must be accompanied by a copy of the clause or agreement incorporating these Rules and a non-refundable commencement fee payable by the non-member. Pursuant to the by-laws of the Corporation, the commencement fee paid by the non-member shall be credited towards membership fees should the non-member apply for membership in the Corporation. Should the non-member refuse to or otherwise not pay the commencement fee, the member may pay the commencement fee on behalf of the non-member and add same to the member's claim.
- (4). Upon confirmation that a Notice of Dispute has properly been filed in accordance with these Rules, the Corporation shall confirm that the respondent has received a copy of the Notice of Dispute and advise the parties that proceedings under these Rules have commenced.

Article 10 Reply

- (1). The respondent shall deliver to the claimant and to the Corporation a copy of its Reply within seven (7) days of receipt of the Notice of Dispute.
- (2). The Reply shall contain a brief response to the Notice of Dispute, including the respondent's position with respect to the claimant's description of the matters in dispute, the relevant facts and the remedy sought together with a description of any Counterclaims or Counterclaims with Set Off it may have against the claimant in the same manner as claims are to be set out in the Notice of Dispute.

Article 11 Consultation

- (1). After delivery of the Reply, the Corporation shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist the parties to resolve the dispute between themselves as quickly as possible.
- (2). The parties shall cooperate fully with the Corporation and shall participate in good faith in the informal consultation process.
- (3). If the parties reach an agreement to resolve the dispute, the Corporation shall assist the parties to record the terms of their agreement. The parties agree to comply in good faith with the terms of their agreement.

Article 12 Confidentiality and Privilege

- (1). All discussions between the parties and the Corporation during the informal consultation process shall be kept confidential and may not be recorded nor used by any party in subsequent proceedings.

PART III. FORMAL PROCEEDINGS

Article 13 Mediation and Arbitration Options

- (1). If the parties are unable to resolve their dispute by informal consultations within twenty-one (21) days from delivery of the Notice of Dispute, the dispute shall be resolved by arbitration pursuant to these Rules.
- (2). The parties may agree to refer their dispute to mediation pursuant to Article 14 prior to proceeding to arbitration. In the event the parties decide to pursue mediation, any applicable time limits shall be suspended pending the conduct of mediation.

SECTION 1: MEDIATION

Article 14 Mediation

- (1). Unless the parties agree otherwise, mediation shall be conducted in accordance with the Corporation's Mediation Rules.
- (2). Unless the parties agree otherwise, the mediation shall be commenced within thirty (30) days of the parties' execution of their written agreement to mediate.

(3). Unless the parties agree otherwise, or the applicable mediation Rules so provide, the mediation shall be deemed to have terminated if the parties have been unable to reach a settlement within sixty (60) days of the parties' execution of their written mediation agreement.

(4). The parties shall be deemed to have made these Rules a part of their mediation agreement whenever they have provided for mediation by the Fruit and Vegetable Dispute Resolution Corporation or its assigns (hereinafter referred to as the "Corporation" or the "Administrator") under its Mediation Rules. These Rules, and any amendment of them, shall apply in the form obtained at the time the demand for, or submission to, mediation is received by the Corporation. The parties, by written agreement, may vary the procedures set forth in these Rules.

I. Commencing the Mediation

Article 15 Notice of Mediation

(1). Any party or parties to a dispute may initiate mediation by filing with the Administrator a submission to mediation or a written request for mediation pursuant to these Rules, together with the appropriate filing fee. Where there is no submission to mediation or contract providing for mediation, a party may request the Administrator to invite another party to join in mediation. Upon receipt of such a request, the Administrator will contact the other parties involved in the dispute and attempt to obtain their agreement to mediation.

(2). A request for or submission to mediation shall contain a brief statement of the nature of the dispute, and the names, addresses, and telephone numbers of all parties to the dispute and their representatives, if any. The initiating party shall simultaneously file two copies of the request with the Administrator and one copy with every party to the dispute.

II. The Mediator

Article 16 Multi-national Panel of Mediators

(1). The Corporation shall establish and maintain a multi-national panel of mediators and shall appoint mediators as provided in these Rules.

Article 17 Appointment of Mediator

(1). If the parties have not appointed a mediator and have not mutually agreed on a method of appointment, the Administrator shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the multi-national Corporation panel. Normally, a single mediator will be appointed, unless the parties agree otherwise.

(2). Each party to the dispute shall have twenty (20) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. If a party does not return the list within the time specified all persons named therein shall be deemed acceptable. From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the Administrator shall invite the acceptance of a mediator to serve. If the parties fail to agree on any of the persons named, or if acceptable mediators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment from among other members of the panel without the submission of additional lists. To the extent possible, the Administrator will abide by any agreement of the parties regarding the desired qualifications of the mediator.

Article 18 Challenge of Mediator

(1). Persons serving as mediators shall be independent and impartial. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the matters in dispute between the parties or the result or outcome of the mediation. Prior to accepting an appointment, the prospective mediator shall confirm his/her availability and disclose any circumstance likely to create justifiable doubts as to impartiality or independence. Upon receipt of such information, the Administrator shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the Administrator will appoint another mediator. The Administrator is authorized to appoint another mediator whenever the appointed mediator is unable to serve promptly.

Article 19 Replacement of Mediator

(1). If any mediator becomes unwilling or unable to serve or is disqualified, the Administrator will appoint another mediator, taking into account the expressed preferences of the parties.

Article 20 Authority of Mediator

(1). The mediator does not have the authority to impose a settlement on the parties but will seek to assist them in reaching a satisfactory resolution of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and bear the costs of obtaining such advice. Arrangements for obtaining such expert advice shall be made by the mediator or the parties, as the mediator shall determine.

(2). The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

III. General Conditions

Article 21 Representation

(1). By agreeing to mediate under these Rules, the parties undertake to conduct the mediation in a bona fide and forthright manner and make a serious attempt to resolve the dispute.

(2). Any party may be represented in the mediation. The names, addresses and telephone numbers of such persons shall be communicated in writing to all parties and to the Administrator.

(3). The parties shall make every reasonable effort to ensure that their representatives have the necessary authority to settle the dispute.

Article 22 Date, Time, and Place of Mediation

(1). The mediator shall fix the date and the time of each mediation session in consultation with the parties.

(2). The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine, including the most convenient office of the Administrator.

Article 23 Identification of Matters in Dispute

(1). At least ten (10) days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved, its position with respect to these issues and all information reasonably required for the mediator to understand these issues. Such memoranda shall be mutually exchanged by the parties.

(2). The parties will be expected to produce all information reasonably required for the parties and the mediator to understand the issues presented.

(3). The mediator may require any party to supplement such information.

Article 24 Privacy

(1). Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

Article 25 Confidentiality

(1). Confidential information disclosed to a mediator by the parties or participants in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received or made by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum.

(2). The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

- (a). views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (b). admissions made by a party in the course of the mediation proceedings;
- (c). documents, notes, or other information obtained during the mediation proceeding;
- (d). proposals made or views expressed by the mediator; or,
- (e). the fact that a party had or had not indicated willingness to accept a proposal.

Article 26 No Stenographic Record

(1). There shall be no stenographic record of the mediation proceedings.

Article 27 Termination of Mediation

(1). The mediation shall be terminated:

- (a). by the execution of a settlement agreement by the parties;
- (b). by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or,
- (c). by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

Article 28 Mediation Settlement

(1). Parties who undertake to mediate under these Rules agree to carry out any settlement agreement without delay.

Article 29 Exclusion of Liability

(1). Neither the Administrator nor any mediator is a necessary party in judicial proceedings relating to the mediation.

(2). Neither the Administrator nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these Rules, save that they may be liable for the consequences of conscious and deliberate wrongdoing.

Article 30 Interpretation and Application of Rules

(1). The mediator shall interpret and apply these Rules insofar as they relate to the mediator's powers and duties. All other Rules shall be interpreted and applied by the Administrator.

Article 31 Expenses

(1). The expenses of any information production shall be paid by the party producing such information. All other expenses of the mediation, including required travel and other expenses of the mediator and representatives of the Administrator, and the expenses of any information or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

Article 32 Administrative Fees

(1). The Filing Fee

(a). A non-refundable filing fee is payable at the time mediation is requested. This fee is to be borne equally or as otherwise agreed by the parties.

(b). Additionally, the parties are charged a fee based on the mediator's time. It is suggested that parties consult the Administrator for applicable rates.

(c). A supplementary fee will be charged to the filing party where the Administrator is requested to invite other parties to join in mediation, which will be applied to the filing fee upon obtaining the parties' agreement to mediate.

(d). The expenses of the Administrator and the mediator, if any, are generally borne equally by the parties. The parties may vary this arrangement by agreement.

(2). Deposits

(a). Before the commencement of mediation, the parties shall equally deposit such portion of the fee covering the cost of mediation as the Administrator shall direct and all appropriate additional sums that the Administrator deems necessary to defray the expenses of the proceeding. When the mediation has terminated, the Administrator shall render an accounting and return any unexpended balance to the parties.

(3). Refunds

(a). Once the mediation file is opened, no refund of filing fees will be made.

SECTION 2: ARBITRATION: EXPEDITED RULES & PROCEDURES

Article 33 Expedited Arbitration - Claims less than \$50,000.

(1). The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the Fruit and Vegetable Dispute Resolution Corporation or its assigns (hereinafter also referred to as the "Corporation" or the "Administrator") or under its Arbitration Rules. These Rules, and any amendment of them, shall apply in the form obtained at the time the demand for, or submission to, arbitration is received by the Administrator. The parties, by written agreement, may vary the procedures set forth in these Rules.

(2). These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(3). These Rules specify the duties and responsibilities of the Administrator. The Administrator may provide services through any of its offices.

(4). Unless the parties agree otherwise, after the filing of a Notice of Dispute pursuant to Article 9, Claims, Counterclaims and Counterclaims with Set Off individually less than \$50,000, exclusive of interest and costs, shall be determined by a sole arbitrator pursuant to the expedited procedure contained in this Section of the Rules.

(5). In the event a Claim, Counterclaim or Counterclaim with Set Off, exclusive of interest and costs, is equal to or exceeds the value of \$50,000, both claims shall be heard together under the Formal Arbitration procedures provided for in Section 3 of this Part of these Rules, except where the claimant petitions the Corporation to proceed under the expedited procedure

contained in this section of the Rules when the respondent has failed to deliver its Reply to the Notice of Dispute and to cooperate during the informal consultation procedure provided for in Part II of these Rules. Should the respondent subsequently decide to cooperate in the Expedited Arbitration and provide its Statement of Defence, then the matter will be heard under the Formal Arbitration procedures and the respondent will be liable for any additional filing fees and/or deposits under Articles 91 and 94 resulting from the use of the formal procedures.

- (6). After the filing of a Notice of Dispute pursuant to Article 9, with the agreement of the Administrator the parties may agree in writing to the application of this expedited procedure to disputes of a value of \$50,000 or more.
- (7). For Claims, Counterclaims and Counterclaims with Set Off of less than \$15,000, no hearing will be part of the proceedings, unless the parties agree in writing, or the arbitrator decides one is required.
- (8). For Claims, Counterclaims and Counterclaims with Set Off equal to \$15,000 and less than \$50,000, no hearing will be part of the proceedings, unless one or more of the parties make a request in writing, or the arbitrator decides one is required.
- (9). For Claims, Counterclaims and Counterclaims with Set Off equal to \$50,000 or more hearings cannot be waived, without the agreement of the Administrator.
- (10). Where no specific amount is claimed, the dispute shall be governed by the formal arbitration procedure in Section 3 of this Part of these Rules, unless the parties agree otherwise after the filing of a Notice of Dispute pursuant to Article 9.

Article 34 Commencement of Arbitration

- (1). Arbitration pursuant to this expedited procedure shall be commenced by the delivery of a Statement of Claim by the claimant.
- (2). The claimant shall deliver a copy of the Statement of Claim to the Corporation together with a non-refundable commencement fee. The claimant shall also deliver a copy of the Statement of Claim directly to the respondent.
- (3). The Statement of Claim shall include the following:
 - (a). the names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
 - (b). a detailed description of the claim and all the material facts supporting it;

- (c). the amount or other remedy claimed;
- (d). all documents supporting the claim, such as invoices, inspections and relevant agreements and communications between the parties;
- (e). any witness statements containing the testimony and evidence upon which the claimant relies; and
- (f). any argument or legal authority upon which the claimant relies.

(4). Upon receipt of the Statement of Claim and the commencement fee, the Corporation shall communicate with all parties to the dispute to confirm receipt of the Statement of Claim. The arbitration proceeding under these Expedited Rules shall be deemed to have commenced when the Statement of Claim together with the commencement fee has been received by the Corporation.

Article 35 Statement of Defence and Counterclaim

- (1). Within twenty-one (21) days after receipt of the Statement of Claim, the respondent shall deliver to the Corporation and all other parties a Statement of Defence which shall include the following.
- (a). a detailed description of the defence and all the material facts supporting it;
 - (b). all documents supporting the defence, such as invoices, inspections and relevant agreements and communications between the parties;
 - (c). any witness statements containing the evidence or testimony upon which the respondent relies; and
 - (d). any argument or legal authority upon which the respondent relies.
- (2). At the time a respondent submits its Statement of Defence, it may file a Counterclaim or Counterclaim with Set Off provided it has previously given notice of the Counterclaim or Counterclaim with Set Off during the informal consultation process.
- (3). The Counterclaim or Counterclaim with Set Off shall contain the information and documents necessary for the filing of a Statement of Claim pursuant to Article 34 and must be accompanied by a non-refundable commencement fee.

(4). The claimant shall have twenty-one (21) days from the filing of a Counterclaim or Counterclaim with Set Off to deliver a Statement of Defence to Counterclaim in accordance with the requirements of Article 35(1).

(5). A party may file a Reply to a Statement of Defence or to a Statement of Defence to Counterclaim within ten (10) days of receipt of the Statement of Defence or Statement of Defence to Counterclaim. A Reply may include rebuttal witness statements, documents and legal argument.

(6). Further replies, evidence, documents or argument shall only be submitted with the consent or upon the direction of the arbitrator.

Article 36 Witness Statements

(1). Subject to the direction of the arbitrator, arbitration proceedings shall be conducted on the basis of documents and written evidence and argument only.

(2). The written statement of each witness shall be signed by the witness and duly sworn or declared.

(3). The written statement of the witness shall contain the full evidence of that witness.

Article 37 Appointment of the Arbitrator

(1). The Corporation shall establish and maintain a multinational panel of arbitrators experienced in resolving produce disputes and shall appoint arbitrators as provided in these Rules.

(2). Unless the parties have agreed to the selection of a particular arbitrator, the Corporation shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the multi-national Corporation panel. Each party shall have five (5) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator.

(3). Each party may strike three names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

(4). From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the Administrator shall identify acceptable candidates from which the Administrator shall appoint an arbitrator. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Corporation shall have the power to make the appointment from among other members of the panel

without the submission of additional lists. To the extent possible, the Corporation will abide by any agreement of the parties regarding the desired qualifications of the arbitrator.

(5). Upon appointment of the arbitrator, the Corporation shall disclose the identity of the arbitrator to the parties and provide the parties with a summary of the arbitrator's qualifications and biographical data.

Article 38 Independence and Impartiality

(1). All arbitrators acting under these Rules shall be impartial and independent.

(2). Prior to accepting appointment, a prospective arbitrator shall disclose to the Administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Once appointed, an arbitrator shall disclose any additional such information to the parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to the parties and to the arbitrator.

(3). Every person must, upon accepting appointment as arbitrator, sign a statement declaring that he knows of no circumstances likely to give rise to justifiable doubts as to his independence or impartiality and that he will disclose any such circumstance to the parties should such arise after that time and before the arbitration is concluded. A copy of the statement shall be filed with the Corporation and a copy provided to all parties.

Article 39 Challenge of Arbitrator

(1). A party may challenge an arbitrator where circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality.

(2). A party who intends to challenge an arbitrator shall, no later than seven (7) days after the appointment of that arbitrator or seven (7) days after circumstances giving rise to the challenge become known to that party, send a written Statement of Challenge to the arbitrator, to the Corporation and to all other parties. The Statement of Challenge shall set out the detailed reasons for the challenge.

(3). If the challenged arbitrator agrees to withdraw or the other parties to the arbitration agree to the challenge, the challenged arbitrator shall withdraw from the arbitration. In neither case shall the validity of the grounds for challenge be implied.

(4). Where the challenged arbitrator does not withdraw pursuant to Article 39(3), the Corporation shall decide the challenge in its sole discretion.

(5). The Corporation shall decide the challenge as soon as is reasonably possible after receiving the request and according to such procedures as the Corporation considers appropriate. The decision of the Corporation on the challenge shall be final and conclusive.

Article 40 Replacement of an Arbitrator

(1). If an arbitrator withdraws after a challenge, or the Administrator sustains the challenge, or the Administrator determines that there are sufficient reasons to accept the resignation of an arbitrator, or an arbitrator dies, a substitute arbitrator shall be appointed by the Corporation pursuant to the provisions of Article 37, unless the parties otherwise agree in accordance with Article 37 (2).

Article 41 Conduct of the Arbitration

(1). The arbitrator shall strive to achieve a just, speedy and economical determination of the proceeding on its merits. In order to achieve these goals, the arbitrator shall have broad discretion to determine the arbitration procedure.

(2). Subject to Article 33(9), unless the arbitrator determines that an oral hearing is required, the arbitrator shall determine the dispute on the basis of the documents, written statements, evidence and argument presented by the parties.

(3). The arbitrator may order a party to produce any particular document or class of documents he considers relevant within a time he specifies.

(4). The arbitrator shall decide all issues of relevance and materiality of evidence and in doing so shall not be required to apply the strict Rules of evidence.

(5). Any hearing shall be conducted in accordance with the provisions contained in the Formal Arbitration Procedures.

Article 42 Waiver of Rules

(1). A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

Article 43 Place of Arbitration

Unless the parties agree otherwise, the place (seat) of arbitration under this Expedited Arbitration Procedure is the province of Ontario, Canada whose laws shall govern the

agreement to arbitrate and the arbitral procedure. In the event of any conflict between this and any other article contained in these Rules, this article shall prevail.

Article 44 Language

(1). Unless the parties agree otherwise, the language(s) of the arbitration shall be that of the documents containing the arbitration agreement between the parties or, in the case of disputes between members where there is no separate arbitration agreement, the language of the principal agreement between the parties. However, the arbitrator retains the power to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration.

(2). The arbitrator may order that any documents delivered in another language shall be accompanied by a translation into the language or languages of the arbitration.

Article 45 Confidentiality

(1). Subject to Article 51(7), unless otherwise agreed by the parties or required by law, all hearings, meetings and communications shall be private and confidential as between the parties, the arbitrator and the Corporation.

Article 46 Jurisdiction

(1). The arbitrator may rule on his own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement.

(2). A decision by the arbitrator that the contract between the parties is null and void shall not entail the invalidity of the arbitration clause or agreement unless specifically found to be so by the arbitrator.

(3). Any objection to the jurisdiction of the arbitrator to consider a claim or counterclaim shall be raised in the Statement of Defence or Statement of Defence to Counterclaim. The arbitrator may consider a later objection only if he regards the delay justified.

Article 47 Default of a Party

(1). If the claimant fails to comply with a requirement under these Rules or fails to comply with an order of the arbitrator, the arbitrator may issue an order for the termination of the arbitration. The arbitrator shall provide the claimant with not less than seven (7) days' notice of

his intention to terminate the arbitration and determine that the claimant has not provided sufficient cause for being in breach of the Rules or the order of the arbitrator.

(2). If the respondent fails to deliver its Statement of Defense, fails to comply with a requirement under these Rules or fails to comply with an order of the arbitrator, the arbitrator may proceed to determine the issues before him and the award shall be made on the basis of the evidence received. The arbitrator shall provide the respondent with not less than seven (7) days' notice of his intention to proceed to decide the issues on the basis of the evidence received.

Article 48 General Powers of the Arbitrator

(1). Without limiting the generality of Article 41 or any other rule which confers jurisdiction or powers on the arbitrator, and unless the parties at any time agree otherwise, the arbitrator may:

- (a). order an adjournment of the proceedings from time to time;
- (b). make a partial award;
- (c). make an interim order or award on any matter with respect to which he may make a final award, including an order for costs, or any order for the protection or preservation of property that is the subject matter of the dispute;
- (d). order inspection of documents, exhibits or other property, including a view or physical inspection of goods or property;
- (e). order an oral hearing or oral examination of any witness including the use of telephone and video conferences and the use of other means of electronic communication;
- (f). at any time extend or abridge a period of time fixed or determined by him, or any period of time required in these Rules;
- (g). order any party to provide security for the legal or other costs of any other party by way of a deposit or bank guarantee or in any other manner the arbitrator thinks fit;
- (h). order any party to provide security for all or part of any amount in dispute in the arbitration;
- (i). make an award ordering specific performance, rectification, injunctions and other equitable remedies.

Article 49 Applicable Rules and Laws

- (1). In all cases, the arbitrator shall decide the dispute in accordance with the terms of the agreement of the parties and the Trading Standards, the Transportation Standards, the Rules and Regulations, and the Policies of the Corporation.
- (2). To the extent recourse to rules of law is required, the arbitrator shall apply the laws or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the arbitrator shall apply such law or laws as he determines to be appropriate.
- (3). In arbitrations involving the application of contracts, the arbitrator shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
- (4). The arbitrator shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized him to do so.

Article 50 Settlement

- (1). The arbitrator may encourage settlement of the dispute and, with the written agreement of the parties, may conduct mediation, conciliation, facilitation or other appropriate procedures.
- (2). If the parties settle the dispute during the arbitration proceedings, the arbitrator shall terminate the proceedings and, if requested by the parties and acceptable to him, record the settlement in the form of an arbitral award.

Article 51 Arbitral Award

- (1). The arbitrator shall make his final award within thirty (30) days after the exchange of submissions has been closed.
- (2). Awards shall be final and binding on the parties. The parties undertake to carry out any such award without delay.
- (3). The Award shall be deemed to be made at the place of arbitration on the date stated therein.
- (4). The award shall be in writing and include brief written reasons. The arbitrator shall file a copy of each award with the Corporation.
- (5). The arbitrator may withhold an award from the parties on the basis of outstanding fees or expenses.

- (6). An award may be made public only with the consent of all parties or as required by law.
- (7). The Corporation shall maintain a register of awards which it shall make available to members in good standing pursuant to such procedures as it considers appropriate. The register shall contain the names of the parties and the full text of the decision and award.
- (8). The Corporation may publicly publish the full text of the awards, by redacting the names of all parties.

Article 52 Interest

- (1). On the basis of the evidence presented, the arbitrator may award interest to be paid in an award. Interest may include simple or compound interest at commercial rates.

Article 53 Costs

- (1). The arbitrator shall determine liability for costs and may apportion costs between the parties. Such costs include:
 - (a). the fees and expenses of the arbitrator;
 - (b). the costs of assistance required by the arbitrator, including his experts;
 - (c). the fees and expenses of the Administrator.
- (2). Parties shall be responsible for any costs associated with their own legal or other representation.
- (3). In awarding costs, the arbitrator shall take into account the purpose of achieving a just, speedy and economical determination of the proceeding on its merits and the failure of any party to comply with these Rules or the orders of the arbitrator.
- (4). In the event the arbitrator awards costs, he shall specify the amounts of the fees and expenses so awarded.

Article 54 Compensation of Arbitrator

- (1). For arbitrations less than \$15,000 arbitrators shall be compensated based on a fixed fee set by the Board of Directors. For arbitrations of \$15,000 and more arbitrators shall be compensated upon their amount of service, taking into account the size and complexity of the case. An appropriate daily or hourly rate, based on such considerations, shall be arranged by the Administrator with the parties and the arbitrator prior to the appointment of the arbitrator.

If the parties fail to agree on the terms of compensation, an appropriate rate shall be established by the Administrator and communicated in writing to the parties.

Article 55 Deposit of Costs

- (1). When claims are filed, the Administrator may request the filing party to deposit appropriate amounts, as an advance for the costs referred to in Article 53, paragraphs (a), (b) and (c).
- (2). During the course of the arbitral proceedings, the arbitrator may request supplementary deposits from the parties.
- (3). If the deposits requested are not paid in full within the timeframe specified by the Administrator or the arbitrator, the Administrator shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings.
- (4). After the award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 56 Amendments and Corrections to the Award

- (1). On the application of a party or on the arbitrator's own initiative, an arbitrator may amend an award to correct:
 - (a). a clerical or typographical error,
 - (b). an accidental slip, error, omission or similar mistake, or
 - (c). an arithmetical error made in a computation.
- (2). An Application by a Party under Article 56(1) must be made within fifteen (15) days after the party is notified of the award.
- (3). An amendment under Article 56(1) must not, without the consent of all parties, be made more than thirty (30) days of receipt of the original application.
- (4). Within fifteen (15) days of being notified of the award, a party may apply to the arbitrator for clarification of the award.
- (5). On an application under Article 56(4), the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it.

(6). Within fifteen (15) days after receiving the award, a party may apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but omitted from the award, unless otherwise agreed by the parties.

(7). If the arbitrator considers the request to be justified, he shall make the clarification or additional award within 30 days of receipt of the original application.

SECTION 3: ARBITRATION – FORMAL RULES AND PROCEDURES

Article 57 Claims of \$50,000 or more and unspecified amounts

(1). The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the Fruit and Vegetable Dispute Resolution Corporation or its assigns (hereinafter referred to as the "Corporation" or the "Administrator") or under its Arbitration Rules. These Rules, and any amendment of them, shall apply in the form obtained at the time the demand for, or submission to, arbitration is received by the Administrator. The parties, by written agreement, may vary the procedures set forth in these Rules.

(2). These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(3). These Rules specify the duties and responsibilities of the Administrator. The Administrator may provide services through any of its offices.

I. Commencing the Arbitration

Article 58 Notice of Arbitration (Statement of Claim)

(1). The party initiating arbitration ("claimant") shall give written notice of arbitration (Statement of Claim) to the Administrator and to the party or parties against whom a claim is being made ("respondent").

(2). Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration (Statement of Claim) is received by the Administrator.

(3). The notice of arbitration (Statement of Claim) shall include the following:

(a). a demand that the dispute be referred to arbitration;

- (b). the names, addresses and telephone numbers of the parties;
 - (c). if both parties were not Corporation members at the time of the transaction, a copy of the arbitration clause or agreement that is invoked;
 - (d). a reference to any contract out of, or in relation to, which the dispute arises;
 - (e). a description of the claim and an indication of the facts supporting it;
 - (f). the relief or remedy sought and the amount claimed; and,
 - (g). may include proposals as to the number of arbitrators, the place of arbitration and the language of the arbitration.
- (4). Upon receipt of such notice, the Administrator will communicate with all parties with respect to the arbitration to confirm receipt of the notice. The arbitration proceeding under these rules shall be deemed to have commenced when the Notice of Arbitration (Statement of Claim) has been received by the Corporation.

Article 59 Statement of Defense and Counterclaim

- (1). Within thirty (30) days after notice to the parties of the commencement of the arbitration by the Corporation, a respondent shall file a Statement of Defense in writing with the claimant and any other parties, and with the Administrator for transmittal to the tribunal when appointed. A Statement of Defence shall include the following.
- (a) a detailed description of the defence and all the material facts supporting it;
 - (b) all documents supporting the defence, such as invoices, inspections and relevant agreements and communications between the parties;
 - (c) any witness statements containing the evidence or testimony upon which the respondent relies; and
 - (d) any argument or legal authority upon which the respondent relies.
- (2). At the time a respondent submits its Statement of Defense, a respondent may bring a Counterclaims or Counterclaim with Set Off provided it has previously given notice of the Counterclaim or Counterclaim with Set Off during the informal consultation process.
- (3). The Counterclaim or Counterclaim with Set Off shall contain the information and documents necessary for the filing of a Statement of Claim pursuant to Article 34(3).

(4). The claimant shall have thirty (30) days from the filing of a Counterclaim or Counterclaim with Set Off to deliver a Statement of Defence to Counterclaim in accordance with the requirements of Article 59(1).

(5). A respondent shall respond to the Administrator, the claimant and other parties within ten (10) days as to any proposals the claimant may have made as to the number of arbitrators, the place of the arbitration or the language of the arbitration, except to the extent that the parties have previously agreed as to these matters.

Article 60 Amendments to Claims

(1). During the arbitral proceedings, any party may amend or supplement its Claim, Counterclaim or Counterclaim with Set Off or defence, unless the tribunal considers it inappropriate to allow such amendment because of the party's delay in making it, or of prejudice to the other parties, or any other circumstances.

(2). A Claim, Counterclaim or Counterclaim with Set Off may not be amended if the amendment would fall outside the scope of the agreement to arbitrate.

II. The Arbitrator

Article 61 Panel of Arbitrators

(1). The Corporation shall establish and maintain a multi-national panel of arbitrators experienced in resolving produce disputes and shall appoint arbitrators as provided in these Rules.

Article 62 Number of Arbitrators

(1). If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines, in its discretion, that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

Article 63 Appointment of Arbitrators

(1). If the agreement of the parties names an arbitrator or specifies a method of appointing the arbitrator, such designation or method shall be followed. The notice of appointment, with the name, address, and telephone number of the arbitrator, shall be filed with the Administrator by the appointing parties within ten (10) days of the appointment. If no period of time for the appointment of arbitrator is specified in the agreement, the Administrator will notify the parties that they have ten (10) days within which to make such appointment. If any

party fails to make the appointment within the time specified by the agreement or by the Administrator, the Administrator shall make the appointment.

(2). Unless the parties have agreed to the appointment of an arbitrator, the Administrator shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the multi-national Corporation panel. Each party shall have ten (10) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator.

(3). Each party may strike three names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

(4). From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the Administrator shall invite the acceptance of the appropriate number of arbitrators to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment from among other members of the panel without the submission of additional lists. To the extent possible, the Administrator will abide by any agreement of the parties regarding the desired qualifications of the arbitrator.

(5). Upon appointment of the arbitrator, the Corporation shall disclose the identity of the arbitrator to the parties and provide the parties with a summary of the arbitrator's qualifications and biographical data.

Article 64 Independence and Impartiality

(1). All arbitrators acting under these Rules shall be impartial and independent.

(2). Prior to accepting appointment, a prospective arbitrator shall disclose to the Administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Once appointed, an arbitrator shall disclose any additional such information to the parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to the parties and to the arbitrator.

(3). Every person must, upon accepting appointment as arbitrator, sign a statement declaring that he knows of no circumstances likely to give rise to justifiable doubts as to his independence or impartiality and that he will disclose any such circumstance to the parties should such arise after that time and before the arbitration is concluded. A copy of the statement shall be filed with the Corporation and a copy provided to all parties.

Article 65 Challenge of Arbitrator

- (1). A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to the Administrator within twenty (20) days after being notified of the appointment of the arbitrator, or within twenty (20) days after the circumstances giving rise to the challenge became known to that party.
- (2). The challenge shall state in writing the reasons for the challenge.
- (3). Upon receipt of such a challenge, the Administrator shall notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other parties may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall be replaced. The challenged arbitrator may also withdraw from office on his/her own initiative. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- (4). If the other party or parties do not agree to the challenge or the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the Administrator in its sole discretion.
- (5). The Administrator shall decide the challenge as soon as is reasonably possible after receiving the request and according to such procedures as the Administrator considers appropriate. The decision of the Administrator on the challenge shall be final and conclusive.

Article 66 Replacement of an Arbitrator

- (1). If an arbitrator withdraws after a challenge, or the Administrator sustains the challenge, or the Administrator determines that there are sufficient reasons to accept the resignation of an arbitrator, or an arbitrator dies, a substitute arbitrator shall be appointed by the Administrator pursuant to the provisions of Article 63, unless the parties otherwise agree in accordance with Article 63 (1).

Article 67 Replacement of an Arbitrator on a Three Person Tribunal

- (1). If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such nonparticipation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the Administrator, on

proof satisfactory to it, shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 63, unless the parties otherwise agree in accordance with Article 63 (1).

(2). If a substitute arbitrator is appointed, the tribunal shall determine, in its sole discretion, whether all or part of any prior hearings shall be repeated.

III. General Conditions

Article 68 Representation

(1). Any party may be represented in the arbitration. A party intending to be so represented shall notify the other party and the Administrator of the name, address, and telephone number of the representative at least seven (7) days prior to the date set for the hearing at which that person is first to appear. Once the arbitrator has been appointed, the parties or their representatives may communicate in writing directly with the arbitrator. Copies of all communications from the arbitrator to the parties should also be forwarded to the Administrator.

Article 69 Place of Arbitration

Unless the parties agree otherwise, the place (seat) of arbitration under this Formal Arbitration Procedure is the province of Ontario, Canada whose laws shall govern the agreement to arbitrate and the arbitral procedure. In the event of any conflict between this and any other article contained in these Rules, this article shall prevail.

Article 70 Language

(1). Unless the parties agree otherwise, the language of the arbitration shall be that of the documents containing the arbitration agreement between the parties or, in the case of disputes between members where there is no separate arbitration agreement, the language of the principal agreement between the parties. However, the arbitrator retains the power to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration.

(2). The arbitrator may order that any documents delivered in another language shall be accompanied by a translation into such language or languages.

Article 71 Pleas as to Jurisdiction

(1). The arbitrator shall have the power to rule on his own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

(2). The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract.

(3). Any objection to the jurisdiction of the arbitrator to consider a claim or counterclaim shall be raised in the Statement of Defence or Statement of Defence to Counterclaim. The arbitrator may consider a later objection only if he regards the delay justified.

Article 72 Conduct of the Arbitration

(1). Subject to these Rules, the arbitrator may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(2). Documents or information supplied to the arbitrator by one party shall at the same time be communicated by that party to the other party or parties.

Article 73 Further Written Statements

(1). The arbitrator may decide whether any written statements, in addition to statements of claims and counterclaims and statements of defense, shall be required from the parties or may be presented by them, and shall fix the periods of time for submitting such statements.

Article 74 Periods of Time

(1). The periods of time fixed by the arbitrator for the communication of written statements should not exceed thirty (30) days. However, the arbitrator may extend such time limits if he considers such an extension justified.

(2). Without limiting the generality of Article 72 or any other rule which confers jurisdiction or powers on the arbitrator, and unless the parties at any time agree otherwise, the arbitrator may at any time extend or abridge a period of time fixed or determined by him, or any period of time required in these Rules;

Article 75 Notices

(1). Unless otherwise agreed by the parties or ordered by the arbitrator, all notices, statements and written communications may be served on a party by mail or courier addressed to the party or its representative at the last known address or by personal service. Facsimile transmission, telex, telegram, or other written forms of electronic communication may be used to give any such notices, statements or written communications.

Article 76 Evidence

- (1). Each party shall have the burden of proving the facts relied on to support its claim or defense.
- (2). The arbitrator may order a party to deliver to him and to the other parties a summary of the documents and other evidence which that party intends to present in support of its claim, counterclaim or defense.
- (3). At any time during the proceedings, the arbitrator may order parties to produce other documents, exhibits or other evidence he deems necessary or appropriate.
- (4). The admissibility, relevance, materiality and weight of the evidence offered by any party shall be determined by the arbitrator, provided that the arbitrator shall consider applicable principles of legal privilege.

Article 77 Hearings

- (1). The arbitrator shall give the parties at least thirty (30) days' advance notice of the date, time and place of the initial oral hearing. The arbitrator shall give reasonable notice of subsequent hearings.
- (2). At least twenty (20) days before the hearings, each party shall give the arbitrator and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony and the languages in which such witnesses will give their testimony.
- (3). At least ten (10) days before the hearings each party shall give the arbitrator and the other parties the names and addresses of any additional witnesses it intends to present to rebut the witnesses disclosed by the other party, the subject of their testimony and the languages in which such witnesses will give their testimony.
- (4). At the request of the arbitrator or pursuant to mutual agreement of the parties, the arbitrator shall make arrangements for the interpretation of oral testimony or for a record of the hearing.
- (5). Hearings are private unless the parties agree otherwise or the law provides to the contrary. The arbitrator may require any witness or witnesses to retire during the testimony of other witnesses. The arbitrator may determine the manner in which witnesses are examined.
- (6). Evidence of witnesses may also be presented in the form of written statements. The written statement of each witness shall be signed by the witness and duly sworn or declared.

Article 78 Interim Measures of Protection

- (1). At the request of any party, the arbitrator may take whatever interim measures he deems necessary, including injunctive relief and measures for the conservation of property.
- (2). Such interim measures may be taken in the form of an interim award and the arbitrator may require security for the costs of such measures.
- (3). A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

Article 79 Experts

- (1). The arbitrator may appoint one or more independent experts to report to him, in writing, on specific issues designated by the arbitrator and communicated to the parties.
- (2). The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.
- (3). Upon receipt of an expert's report, the arbitrator shall send a copy of the report to all parties, who shall be given an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.
- (4). At the request of any party, the parties shall be given an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

Article 80 Default

- (1). If the claimant fails to comply with a requirement under these Rules or fails to comply with an order of the arbitrator, the arbitrator may issue an order for the termination of the arbitration. The arbitrator shall provide the claimant with not less than seven (7) days' notice of his intention to terminate the arbitration and determine that the claimant has not provided sufficient cause for being in breach of the Rules or the order of the arbitrator.
- (2). If the respondent fails to deliver its Statement of Defence, fails to comply with a requirement under these Rules or fails to comply with an order of the arbitrator, the arbitrator may proceed to determine the issues before him and the award shall be made on the basis of the evidence received. The arbitrator shall provide the respondent with not less than seven (7) days' notice of his intention to proceed to decide the issues on the basis of the evidence received.

(3). If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, as determined by the arbitrator, the arbitrator may proceed with the arbitration.

(4). If a party, duly invited to produce evidence, fails to do so within the time established by the arbitrator without showing sufficient cause for such failure, as determined by the arbitrator, the arbitrator may make the award on the evidence before him.

Article 81 Closure of Hearing

(1). After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or if satisfied that the record is complete, the arbitrator may declare the hearings closed.

(2). If the arbitrator tribunal considers it appropriate, on his own motion or upon application of a party, the arbitrator may reopen the hearings at any time before the award is made.

Article 82 Waiver of Rules

(1). A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

Article 83 Awards, Decisions and Rulings

(1). When there is more than one arbitrator, any award, decision or ruling of the tribunal shall be made by a majority of the arbitrators.

(2). When the parties or the tribunal so authorize, decisions or rulings on questions of procedure may be made by the presiding arbitrator, subject to revision by the tribunal.

Article 84 Form and Effect of the Award

(1). Awards shall be made in writing, promptly by the arbitrator, and shall be final and binding on the parties. The parties undertake to carry out any such award without delay.

(2). The arbitrator shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given.

(3). An award signed by a majority of the arbitrators shall be sufficient. Where there are three arbitrators and one of them fails to sign, the award shall be accompanied by a statement of whether the third arbitrator was given the opportunity to sign. The award shall contain the

date and the place where the award was made, which shall be the place designated pursuant to Article 69.

- (4). An award may be made public only with the consent of all parties or as required by law.
- (5). Copies of the award shall be communicated to the parties by the Administrator.
- (6). The Corporation shall maintain a register of awards which it shall make available to members in good standing pursuant to such procedures as it considers appropriate. The register shall contain the names of the parties and the full text of the decision and award.
- (7). The Corporation may publicly publish the full text of the awards, by redacting the names of all parties.
- (8). If the arbitration law of the country where the award is made requires the award to be filed or registered, the tribunal shall comply with such requirement.
- (9). In addition to making a final award, the tribunal may make interim, interlocutory, or partial orders and awards.

Article 85 Applicable Rules and Laws

- (1). In all cases, the arbitrator shall decide the dispute in accordance with the terms of the agreement of the parties and the Trading Standards, the Transportation Standards, the Rules and Regulations, and the Policies of the Corporation.
- (2). To the extent recourse to rules of law is required, the arbitrator shall apply the laws or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the arbitrator shall apply such law or laws as he it determines to be appropriate.
- (3). In arbitrations involving the application of contracts, the arbitrator shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
- (4). The arbitrator shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so.

Article 86 Settlement or Other Reasons for Termination

- (1). If the parties settle the dispute before an award is made, the arbitrator shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The arbitrator is not obliged to give reasons for such an award.

(2). If the continuation of the proceedings becomes unnecessary or impossible for any other reason, the arbitrator shall inform the parties of its intention to terminate the proceedings. The arbitrator shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

Article 87 Interpretation or Correction of the Award

(1). On the application of a party or on the arbitrator's own initiative, an arbitrator may amend an award to correct:

- (a). a clerical or typographical error,
- (b). an accidental slip, error, omission or similar mistake, or
- (c). an arithmetical error made in a computation.

(3). An Application by a Party under Article 87 (1) must be made within fifteen (15) days after the party is notified of the award.

(3). An amendment under Article 87 (1) must not, without the consent of all parties, be made more than thirty (30) days of receipt of the original application.

(4). Within fifteen (15) days of being notified of the award, a party may apply to the arbitrator for clarification of the award.

(5). On an application under Article 87 (4), the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it.

(6). Within fifteen (15) days after receiving the award, a party may apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but omitted from the award, unless otherwise agreed by the parties.

(7). If the arbitrator considers the request to be justified, he shall make the clarification or additional award within 30 days of receipt of the original application.

Article 88 Interest

(1). On the basis of the evidence presented, the arbitrator may award interest to be paid in an award. Interest may include simple or compound interest at commercial rates.

Article 89 Costs

(1). The arbitrator shall fix the costs of arbitration in the award. The arbitrator may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case. Such costs may include:

- (a). the fees and expenses of the arbitrator;
- (b). the costs of assistance required by the arbitrator, including its experts;
- (c). the fees and expenses of the Administrator; and,
- (d). the reasonable costs for legal or other representation of a successful party.

Article 90 Compensation of Arbitrators

(1). Arbitrators shall be compensated based upon their amount of service, taking into account the size and complexity of the case. An appropriate daily or hourly rate, based on such considerations, shall be arranged by the Administrator with the parties and the arbitrator prior to the appointment of the arbitrator. If the parties fail to agree on the terms of compensation, an appropriate rate shall be established by the Administrator and communicated in writing to the parties.

Article 91 Deposit of Costs

(1). When claims are filed, the Administrator may request the filing party to deposit appropriate amounts, as an advance for the costs referred to in Article 89, paragraphs (a), (b) and (c).

(2). During the course of the arbitral proceedings, the arbitrator may request supplementary deposits from the parties.

(3). If the deposits requested are not paid in full within the time specified by the Administrator or the arbitrator, the Administrator shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings.

(4). After the award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 92 Confidentiality

(1). Subject to Article 84(6), unless otherwise agreed by the parties or required by law, all hearings, meetings and communications shall be private and confidential as between the parties, the arbitrator and the Corporation.

Article 93 Interpretation of Rules

(1). the arbitrator shall interpret and apply these Rules insofar as they relate to its powers and duties. All other Rules shall be interpreted and applied by the Administrator.

Article 94 Administrative Fee Schedule

The administrative fees of the Corporation are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

(1). Filing Fee

(a). A non-refundable filing fee is payable in full in U.S. dollars by a filing party when a claim, counterclaim or additional claim is filed.

(b). Administrative Fees for undetermined claims are subject to increase when the claim or counterclaim is disclosed.

(c). The administrative fee for claims in excess of \$5,000,000 will be negotiated between the Administrator and the filing party.

(d). When a claim or counterclaim is not for a monetary amount, an appropriate filing fee will be determined by the Administrator.

(2). Postponement/Cancellation Fees

(a). Postponement fees are payable by the party causing a postponement of any scheduled hearing.

(3). Hearing Room Rental

(a). Hearing Fees do not cover the rental of hearing rooms.

(4). Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the Administrator may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If the arbitrator has not yet been appointed, the Administrator may suspend the proceedings.