

## ANNEX XVI

**MODEL RULES OF PROCEDURE**

(referred to in Article 47)

**Definitions**

1. In these rules:

'adviser' means a person retained by a party to advise or assist the Party in connection with the arbitration panel proceeding;

'complaining Party' means any Party that requests the establishment of an arbitration panel under Chapter III of Title VI of the Decision;

'arbitration panel' means an arbitration panel established pursuant to Chapter III of Title VI of the Decision;

'representative of a Party' means an employee of a government department or agency or of any other government entity of a Party.
2. The Parties may designate a specialised entity to administer the dispute settlement proceedings.
3. Unless the Parties otherwise agree, the Parties shall meet with the arbitration panel within 15 days of the date of establishment of the arbitration panel in order to determine matters such as:
  - (a) remuneration and expenses that will be paid to the arbitrators which normally shall conform to the WTO standards;
  - (b) the administration of proceedings, where the Parties have not designated a specialised entity pursuant to Rule 2; and
  - (c) such other matters that the Parties deem appropriate.

**Qualification of arbitrators**

4. Arbitrators should be selected with a view to ensuring the independence and impartiality of the members, a sufficiently diverse background and a wide spectrum of experience. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. They shall comply with a code of conduct established in Appendix I.

**Terms of reference**

5. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

'To examine, in the light of the relevant provisions of the covered legal instruments, the matter referred to the Joint Committee (as set out in the request for a Joint Committee meeting), and to rule on the consistency of the measures at issue with the covered legal instruments.'
6. The parties shall promptly deliver any agreed terms of reference to the arbitration panel.

**Written submissions and other documents**

7. Where the Parties have designated an entity pursuant to Rule 2, a Party or the arbitration panel, respectively, shall deliver any request, notice, written submissions or other document to that entity. An entity designated under Rule 2 that receives a written submission shall forward it to the recipients by the most expeditious means practicable.

8. Where the Parties have not designated an entity pursuant to Rule 2, a Party or the arbitration panel, respectively, shall deliver any request, notice, written submission or other document in accordance with the agreement reached under Rule 3.
9. A Party shall, to the extent practicable, provide a copy of the document in magnetic format.
10. Unless otherwise agreed pursuant to Rule 3 a Party shall provide a copy of each of its written submissions for the other Party and each of the arbitrators.
11. A complaining Party shall deliver its initial written submission no later than 25 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.
12. Unless otherwise agreed pursuant to Rule 3 in the case of any request, notice or other document related to the arbitration panel proceeding that is not covered by Rule 10 or 11, the Party shall deliver to the other Party and to each of the arbitrators a copy of the document by facsimile or other means of electronic transmission.
13. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
14. If the last day for delivery of a document falls on a legal holiday or on any other day on which the offices are closed by order of the government or by *force majeure*, the document may be delivered on the next business day.

#### **Operation of arbitration panels**

15. The chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the chair authority to make administrative and procedural decisions.
16. Except as otherwise provided in these Rules, the arbitration panel may conduct its business by any means, including by telephone, facsimile transmissions or computer links.
17. Only arbitrators may take part in the deliberations of the arbitration panel but the arbitration panel may permit assistants, administration personnel, interpreters or translators to be present during such deliberations.
18. Where a procedural question arises that is not covered by these Rules, an arbitration panel may adopt an appropriate procedure that is not inconsistent with the Decision.
19. When the arbitration panel considers there is a need to modify any time period applicable in the proceeding or to make any other procedural or administrative adjustment in the proceeding, it shall inform the Parties in writing of the reasons for the modification or adjustment with an estimate of the period or adjustment needed.

#### **Hearings**

20. Where the Parties have designated an entity pursuant to Rule 2, the chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the arbitration panel and such entity. That entity shall notify in writing to the Parties of the date, time and location of the hearing.
21. Where the Parties have not designated an entity pursuant to Rule 2, the chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, in accordance with the agreement reached under Rule 3. The Parties shall be notified in writing of the date, time and location of the hearing in accordance with the agreement reached under Rule 3.
22. Unless the Parties otherwise agree the hearing shall be held in Brussels, where the complaining Party is Mexico, or in Mexico City, where the complaining Party is the Community.
23. The arbitration panel may convene additional hearings if the Parties so agree.
24. All arbitrators shall be present at hearings.

25. The following persons may attend a hearing:
  - (a) representatives of a Party;
  - (b) advisers to a Party, provided that they do not address the arbitration panel and provided further that neither they nor their employers, partners, business associates or family members have a financial or personal interest in the proceeding;
  - (c) administration personnel, interpreters, translators and court reporters; and
  - (d) arbitrators' assistants.
26. No later than five days before the date of a hearing, each Party shall deliver a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
27. The hearing shall be conducted by the arbitration panel in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

*Argument*

- (a) Argument of the complaining Party,
- (b) Argument of the Party complained against;

*Rebuttal argument*

- (a) Reply of the complaining Party,
- (b) Counter-reply of the Party complained against.

28. The arbitration panel may direct questions to either Party at any time during a hearing.
29. Where the Parties have designated an entity pursuant to Rule 2, such entity shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties and the arbitration panel.
30. Where the Parties have not designated an entity pursuant to Rule 2, a transcript of each hearing shall be prepared in accordance with the agreement reached under Rule 3 and shall, as soon as possible after it is prepared, be delivered to the Parties and the arbitration panel.
31. The arbitration panel may at any time during a proceeding address questions in writing to one or both Parties. The arbitration panel shall deliver the written questions to the Party or Parties to whom the questions are addressed.
32. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply. Each Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.
33. Within 10 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing.

**Rules of interpretation and burden of proof**

34. Arbitration panels shall interpret the provisions of the covered legal instruments in accordance with rules of customary international public law.
35. A Party asserting that a measure of the other Party is inconsistent with the provisions of the covered legal instruments shall have the burden of establishing such inconsistency.
36. A Party asserting that a measure is subject to an exception under the covered legal instruments shall have the burden of establishing that the exception applies.

### **Confidentiality**

37. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to and communications with the arbitration panel.

### **Ex parte contacts**

38. The arbitration panel shall not meet or contact one Party in the absence of the other Party.
39. No arbitrator may discuss an aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other arbitrators.

### **Role of Experts**

40. On request of a Party or on its own initiative, the arbitration panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.
41. Where in accordance with Rule 40 a request is made for a written report of an expert, any time period applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitration panel.

### **Arbitration panel reports**

42. Unless the Parties otherwise agree, the arbitration panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Rule 40.
43. After considering written comments to the initial report by the Parties, the arbitration panel, on its own initiative or on the request of either Party, may:
  - (a) request the views of either Party;
  - (b) reconsider its report; and
  - (c) make any further examination that it considers appropriate.
44. Arbitrators may furnish separate opinions on matters not unanimously agreed. No arbitration panel may, either in its initial report or its final report, disclose which arbitrators are associated with majority or minority opinions.

### **Cases of urgency**

45. In cases of urgency, the arbitration panel shall appropriately adjust the time periods for submission of the initial report and comments by the Parties to such report.

### **Translation and interpretation**

46. Where the Parties have designated an entity pursuant to Rule 2, a Party shall, within a reasonable period of time before it delivers its initial written submission in an arbitration panel proceeding, advise such entity in writing of the language in which its written and oral submissions will be made.
47. Where the Parties have not designated an entity pursuant to Rule 2, a Party shall advise in writing of the language in which its written and oral submissions will be made, no later than at the meeting provided for in Rule 3.
48. Each Party shall arrange for, and bear the costs of, the translation of its written submissions into the language chosen by the other Party in accordance with Rule 46 or 47. Upon request of a Party that has filed a submission, the arbitration panel may suspend the proceeding for the time necessary to allow that Party to complete the translation.

49. The Parties shall arrange for the interpretation of oral submissions into the language chosen by both Parties.
50. Arbitration panel reports shall be issued in the language or languages chosen by the Parties in accordance with Rule 46 or 47.
51. The costs incurred to prepare a translation of an arbitration report shall be borne equally by the Parties.
52. Any Party may provide comments on a translated version of a document that is prepared in accordance with these Rules.

#### **Computation of time**

53. Where anything under the Decision or these Rules is to be done, or the arbitration panel requires anything to be done, within a number of days after, before or of a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.
54. Where, by reason of the operation of Rule 14 a Party receives a document on a date other than the date on which the same document is received by the other Party any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

#### **Other proceedings**

55. These rules shall apply to the proceedings established under paragraphs 4, 5, 8 and 10 of Article 46 of Title VI except that:
    - (a) the Party making a request under paragraph 4 of Article 46 shall deliver its initial written submission within three days after the date the request is submitted and the responding Party shall deliver its written counter-submission within four days after the date of delivery of the initial written submission;
    - (b) the Party making a request under paragraph 5 of Article 46 shall deliver its initial written submission within 10 days after the date the request is submitted and the responding Party shall deliver its written counter-submission within 20 days after the date of delivery of the initial written submission;
    - (c) the Party making a request under paragraph 8 Article 46 shall deliver its initial written submission within 10 days after the date the request is submitted and the responding Party shall deliver its written counter-submission within 15 days after the date of delivery of the initial written submission; and
    - (d) the Party making a request under paragraph 10 Article 46 shall deliver its initial written submission within five days after the date the request is submitted is selected and the responding Party shall deliver its written counter-submission within 10 days after the date of delivery of the initial written submission.
  56. If appropriate, the arbitration panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for arbitration panel proceedings set out in the Decision and these rules.
  57. Unless the Parties disagree, the arbitration panel may decide not to convene a hearing.
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