

## **Annex 14.10**

### **Rules of Procedure for Arbitral Panels**

#### **General Provisions**

1. For the purposes of this Chapter:

**arbitral panel** means an arbitral panel established pursuant to Article 14.6;

**complaining Party** means Party that requests the establishment of an arbitral panel under Article 14.6;

**disputing Party** means the Party to the dispute; and

**responding Party** means a Party that has been complained against pursuant to Article 14.6.

#### **Notifications**

2. Any request, notice, written submissions or other documents shall be delivered by a Party or the arbitral panel by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provide a record of the sending thereof.

3. A disputing Party shall provide a copy of each of its written submissions to the other disputing Party and to each of the arbitrators. The disputing Parties shall also make available to the arbitral panel a written version of their oral statements. A copy of the document shall also be provided in electronic format.

4. All notifications shall be made and delivered to the disputing Parties.

5. Minor errors of a clerical nature in any request, notice, written submission or other documents related to the arbitral panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

6. If the last day for delivery of a document falls on a public holiday of a disputing Party, the document may be delivered on the next business day.

#### **Commencing the Arbitration**

7. Unless the disputing Parties otherwise agree, they shall consult with the arbitral panel within ten (10) days following the composition of the arbitral panel in order to determine such matters that the disputing Parties or the arbitral panel deem appropriate, including the remuneration and expenses that shall be paid to the chair of the arbitral panel, which normally shall conform to the WTO standards.

### **Initial Submissions**

8. Unless the Parties otherwise agree, the complaining Party shall deliver its initial written submission no later than thirty (30) days after the composition of the arbitral panel. The responding Party shall deliver its written counter-submission no later than thirty (30) days after the date of receipt of the initial written submission.

### **Operation of Arbitral Panels**

9. The chair of the arbitral panel shall preside at all of its meetings.

10. Except as otherwise provided in this Annex, the arbitral panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

11. Only arbitrators may take part in the deliberations of the arbitral panel.

12. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitral panel.

13. Where a procedural question arises that is not covered by this Annex, an arbitral panel may adopt an appropriate procedure that is not inconsistent with this Agreement.

14. When the arbitral panel considers that 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 consult and inform the disputing Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

### **Hearings**

15. The chair shall fix the date and time of the hearing in consultation with the disputing Parties and the other members of the arbitral panel. The chair shall notify in writing to the disputing Parties the date, time and location of the hearing. The arbitral panel may decide not to convene a hearing, unless either of the disputing Parties disagrees.

16. Unless the disputing Parties otherwise agree, the hearing shall be held in the responding Party's territory. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organization of hearings, unless otherwise agreed. If additional hearings are necessary, the disputing Parties shall agree on its venue and logistical administration.

17. The arbitral panel may convene additional hearings if the Parties so agree.

18. All arbitrators shall be present at all hearings. Nonetheless, the arbitral panel may agree to delegate to the Chair the authority to make administrative and procedural decisions.

19. No later than five (5) days before the date of a hearing, each disputing Party shall deliver a list of names of representatives or advisers who will be attending the hearing.

20. The hearings of the arbitral panel shall be held in closed session, unless the

disputing Parties decide otherwise. If the disputing Parties decide that the hearing is open to the public, part of the hearing may, however, be held in closed session, should the arbitral panel, upon request by the disputing Parties, so decides for reasons of confidentiality. In particular, the arbitral panel shall meet in closed sessions when the submissions and arguments of a disputing Party contain confidential business information. If the hearing is open to the public, the date, time and location of the hearing shall also be made publicly available by the disputing Party in charge of the logistical administration of the proceeding.

21. The arbitral panel shall conduct the hearing in the following manner: arguments of the complaining Party; arguments of the responding Party; rebuttal arguments of the disputing Parties; the reply of the complaining Party; and the counter-reply of the responding Party. The chair may set time limits for oral arguments to ensure that each disputing Party are afforded equal time.

22. The arbitral panel may direct questions to any disputing Party at any time during a hearing.

23. Within fifteen (15) days after the date of the hearing, each disputing Party may deliver a supplementary written submission responding to any matter that arose during the hearing unless the arbitral panel, by agreement of the Parties, set the deadline otherwise.

### **Questions in Writing**

24. The arbitral panel may at any time during the proceedings address questions in writing to any disputing Party. The arbitral panel shall deliver the written questions to the disputing Party to whom the questions are addressed.

25. A disputing Party to whom the arbitral panel addresses written questions shall deliver a copy of any written reply to the other disputing Party and to the arbitral panel. Each disputing Party shall be given the opportunity to provide written comments on the reply within ten (10) days after the date of receipt, unless the arbitral panel, by agreement of the Parties, set the deadline otherwise.

### **Confidentiality**

26. The disputing Parties shall maintain the confidentiality of the arbitral panel's hearings, to the extent that the arbitral panel holds the hearing in closed session under rule 20.

27. Each disputing Party shall treat as confidential any information submitted by the other disputing Party to the arbitral panel which that Party has designated as confidential. Where a Party to a dispute submits a confidential version of its written submissions to the arbitral panel, it shall also, upon request of the other disputing Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public, no later than fifteen (15) days after the hearing, whichever is later. Nothing in these rules shall preclude a disputing Party from disclosing statements of its own positions to the public.

### ***Ex parte* Contacts**

28. The arbitral panel shall not meet or contact a disputing Party in the absence of the other disputing Party.
29. No disputing Party may contact any panelist in relation to the dispute in the absence of the other disputing Party or the other panelists.
30. No arbitrator may discuss an aspect of the subject matter of the proceeding with a disputing Party in the absence of the other panelists.

### **Role of Experts**

31. Upon request of a disputing Party or on its own initiative, the arbitral panel may obtain information and technical advice from any person or body that it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.
32. When a request is made for a written report of an expert, any time period applicable to the arbitral 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 arbitral panel.

### ***Amicus curiae* Submissions**

33. The arbitral panel shall have the authority to accept and consider *amicus curiae* submissions from any persons and entities in the territories of the disputing Parties.
34. Any such submissions shall fulfill the following requirements: be made within ten (10) days following the composition of the arbitral panel; are concise and in no case longer than fifteen (15) typed pages, including any annexes; and are directly relevant to the factual and legal issues under consideration by the arbitral panel.
35. The submission shall contain a description of the person, whether natural or juridical, making the submission, including the nature of its activities and the source of its financing, and specify the nature of the interest that that person has in the arbitration proceeding.
36. The arbitral panel shall list in its ruling all the submissions that it has received and that conform to the provisions of the above rules.

### **Cases of Urgency**

37. In cases of urgency referred to in Article 14.3, the arbitral panel shall appropriately adjust the time periods mentioned in this Annex.

### **Translation and Interpretation**

38. The working language of the dispute settlement proceedings shall be English.
39. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitral panel, as well as all other written or oral

communications between the disputing Parties and the arbitral panel, shall be conducted in the working language.

40. The costs incurred to prepare a translation of an arbitral panel ruling shall be borne equally by the Parties.

41. Any Party may provide comments on a translated version of a document that is prepared in accordance with this Annex.

### **Computation of Time**

42. Where anything under this Agreement or this Annex is to be done, or the arbitral 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.

43. Where, by reason of the operation of rule 6, 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.

### **Expenses**

44. Each Party shall bear the costs of its appointed panelist and its own expenses. The costs of the chair of an arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.