

ANNEX IV.2 RULES OF PROCEDURE

Definitions

1. In these rules:

- a) “adviser” means a person retained by a party to advise or assist that party in connection with the Arbitration Tribunal proceeding;
- b) “complaining party” means any party, as defined in Article 3 of Chapter IV that requests the establishment of an Arbitration Tribunal under Article 11 of Chapter IV;
- c) “party complained against” means the party against whom a dispute is brought arising from the alleged non fulfillment of the provisions of the Agreement or the Joint Committee decisions taken pursuant to the Agreement;
- d) “Arbitration Tribunal” means a Tribunal established under Article 14 of Chapter IV; and,
- e) “representative of a party” means an employee or any person appointed by a government department or agency or any other public entity of a party.

Notifications

2. Any notifications between MERCOSUR or its Member States and Egypt shall be sent, in the case of MERCOSUR, to the Pro Tempore Presidency or to the National Coordinators of the Common Market Group, as the case may be; and in the case of Egypt, to the Ministry of Trade and Industry.

3. The parties and the Arbitration Tribunal shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof. A copy of the documents shall also be provided in electronic format.

4. The documents submitted by the parties shall be signed by the duly authorized representatives of the party in order to be considered officially submitted to the Arbitration Tribunal.

5. 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.

6. Notifications, documents and requests of all types shall be deemed to be received, on the date upon which the electronic version of them is received.

Record of the Meetings of the Tribunal

7. The Arbitration Tribunal shall record minutes of the meetings held during each proceeding, which shall be kept in the files of the dispute.

Commencing the Arbitration

8. Unless the parties agree otherwise, the Arbitration Tribunal within seven (7) days of its establishment shall contact the parties in order to determine such matters that the parties or the Arbitration Tribunal deem appropriate.

Initial Submissions

9. The complaining party shall deliver its initial written submission to the other party and to each of the arbitrators, no later than fifteen (15) days after the date of establishment of the Arbitration Tribunal.

This submission shall:

- a) designate a duly authorized representative;
- b) inform the service address, telephone numbers and e-mail addresses to which communications arising in the course of the proceeding shall be sent;
- c) include a summary of the relevant facts and circumstances;
- d) indicate the relevant provisions of the Agreement and the legal basis of the complaint;
- e) state clearly the party's claim; including identification of the measures at issue and an indication of the legal basis for the complaint; a request for an award addressing the issue of fulfillment /non-fulfillment of the provisions of the Agreement or Joint Committee decisions taken pursuant to the Agreement;
- f) include supporting evidence, including expert or technical opinion, and specify any other evidence which cannot be produced at the time of the submission, but will be presented to the Arbitration Tribunal before or during the first hearing; and,
- g) be dated and signed.

10. The party complained against shall deliver its written counter-submission to the other party and to each of the arbitrators, no later than twenty (20) days after the date of delivery of the initial written submission.

This submission shall:

- a) designate a duly authorized representative;
- b) inform the service address, telephone numbers and e-mail addresses to which communications arising in the course of the proceeding shall be sent;
- c) state the facts and arguments upon which its defense is based;
- d) include supporting evidence and specify any other evidence, including expert or technical opinion, which cannot be produced at the time of the submission, but will be presented to the Arbitration Tribunal during or before the first hearing; and,
- e) be dated and signed.

Work of Arbitration Tribunal

11. The chairperson of the Arbitration Tribunal shall preside at all its meetings.
12. Unless provided otherwise in these rules, the Arbitration Tribunal may conduct its activities by any means, including telephone, facsimile transmissions, computer links or video-conference.
13. Only arbitrators may take part in the deliberations of the Arbitration Tribunal but the Arbitration Tribunal may permit their assistants to be present at its deliberations.
14. The drafting of the award or any decision shall remain the exclusive responsibility of the Arbitration Tribunal.
15. If a procedural question arises that is not covered by these rules, the Arbitration Tribunal, after consulting the parties, may adopt the appropriate procedure.
16. Notwithstanding Article 15.2 of Chapter IV, when the Arbitration Tribunal considers, after consulting the parties, that there is a need for modifying any time-limit or any other procedure, it shall propose a new procedure or timeframe to the parties by means of a written notification. Any modification of procedure or of time-limits shall be mutually agreed between the parties.

Hearings

17. The party complained against shall be in charge of the logistical administration of the hearings, particularly the venue, the assistance of interpreters and other staff necessary, unless otherwise agreed.
18. The chairperson shall fix the date and time of the hearing in consultation with the parties and the other members of the Arbitration Tribunal, and confirm this in writing to the parties, no later than fifteen (15) days prior to the hearing.

19. Unless the parties agree otherwise, the hearing shall be held in a place to be decided upon by the party complained against.

20. The Arbitration Tribunal may convene additional hearings if the parties so agree.

21. All arbitrators shall be present at hearings.

22. The following persons may attend the hearing:

- a) representatives of the parties;
- b) advisors to the parties;
- c) administrative staff, interpreters and translators; and,
- d) arbitrators' assistants.

Only the representatives of and advisors to the parties may address the Arbitration Tribunal.

23. No later than five (5) days before the date of a hearing, each party shall deliver a list of the names of 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.

24. The Arbitration Tribunal shall conduct the hearing in the following manner, ensuring that the complaining party and the party complained against are afforded equal time:

- a) argument
 - (i) argument of the complaining party
 - (ii) argument of the party complained against
- b) rebuttal argument
 - (i) rebuttal argument of the complaining party
 - (ii) rebuttal argument of the party complained against

25. The Arbitration Tribunal may direct questions to either party at any time during the hearing.

26. The Arbitration Tribunal shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the parties.

27. Each party may deliver a supplementary written submission concerning any matter that arose during the hearing within ten (10) days of the date of the hearing.

Evidence

28. Parties shall submit all evidence to the Tribunal no later than during the course of the first hearing provided for in paragraph 17 other than evidence necessary for purposes of rebuttals and answers to questions. Exceptions to this procedure will be granted upon a showing of good cause. In such cases, the other party shall be accorded a period of time for comment on the newly submitted evidence, as the Tribunal deems appropriate.

29. All the evidence submitted by the parties shall be kept in the files of the dispute.

30. In case the parties so request, the Arbitration Tribunal shall hear witnesses or experts, in the presence of the parties, during the hearings.

Questions in Writing

31. The Arbitration Tribunal may at any time during the proceedings address questions in writing to the parties involved in the dispute and set a time-limit for submission of the responses. The parties shall receive a copy of any question put by the Tribunal.

32. A party shall also provide a copy of its written response to the Arbitration Tribunal's questions to the other parties. Each party shall be given the opportunity to provide written comments on the other party's reply within seven (7) days of the date of receipt.

Breaches to the Procedures

33. Whenever a party fails to submit in due time its initial written submission, is absent from a scheduled hearing or in any other way breaches the procedures without good and sufficient cause, the Tribunal shall, upon assessment of the aforesaid circumstances decide on its effect on the future course of the proceedings.

Arbitration Decisions and Award

34. Following the consideration of written submissions and oral arguments and twenty (20) days prior to the issuance of the award, the Tribunal shall submit its factual determinations to the parties to the dispute. Within ten (10) days the parties may submit comments in writing. Those comments shall not be binding upon the Tribunal.

35. The Arbitration Award and other decisions of the Arbitration Tribunal must contain the following details, in addition to any other elements which the Arbitration Tribunal may consider appropriate for inclusion:

- a) the parties to the dispute;
- b) the name and nationality of each of the members of the Arbitration Tribunal and the date of its establishment;

- c) the names of the representatives of the parties;
- d) the subject matter of the dispute;
- e) a report on the development of the arbitration procedure, including a summary of the actions taken and the arguments of each of the parties;
- f) the decision reached in relation to the dispute, indicating the factual and legal grounds;
- g) the period of time for compliance with the award, when appropriate;
- h) the date and place of issue; and,
- i) the signature of all the members of the Arbitration Tribunal.

“Ex parte” Contacts

36. The Arbitration Tribunal shall not meet or contact a party in the absence of the other parties.

37. No arbitrator may discuss any aspect of the subject matter of the proceedings with one party or other parties in the absence of the other arbitrators.