

RULES OF PROCEDURE FOR ARBITRATION

General provisions

1. This Annex shall apply to dispute settlement proceedings under Chapter 18 (Dispute Settlement) unless the disputing parties agree otherwise.

Definitions

2. The definitions in Chapter 18 (Dispute Settlement) shall apply to this Annex. In addition, for the purposes of this Annex and Annex 18-B (Code of Conduct):
 - (a) "adviser" means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;
 - (b) "arbitrator" means a member of an arbitration panel established pursuant to Article 18.9 (Composition and establishment of the arbitration panel);
 - (c) "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;
 - (d) "official legal holiday" means for any year, with regard to a disputing party, Saturday, Sunday and any other day officially designated by that disputing party as a public or legal holiday; and
 - (e) "representative" means an employee or any person appointed by a government department, an agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

Logistics of proceedings

3. The responding party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed.

Notifications

4. The disputing parties and the arbitration panel shall transmit simultaneously to the relevant parties any request, notice, written submission or other document by e-mail, with a paper copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.

5. A disputing party shall provide an electronic copy of each of its written submissions and rebuttals to each of the arbitrators and simultaneously to the other disputing party. A paper copy of the document shall also be provided.

6. All notifications shall be addressed to the representatives appointed by the disputing parties. If no representatives have been appointed, all notifications shall be addressed:

(a) Where MERCOSUR is a disputing party, to the *Pro Tempore* Presidency of MERCOSUR;

(b) Where a Signatory MERCOSUR State is a disputing party, to the national coordinator of the Common Market Group of that Signatory MERCOSUR State or its successor; and

(c) Where Singapore is a disputing party, to the Director of Emerging Markets Division, Ministry of Trade and Industry or its successor.

7. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may, unless the other disputing party objects, be corrected by delivery, in accordance with Rules 4 to 6, of a new document clearly indicating the changes.

8. If the last day for delivery of a document falls on an official legal holiday of the disputing party responsible for such delivery or the disputing party that is to receive the document, the disputing party responsible for such delivery may deliver the document in the next business day. The disputing parties shall notify the arbitration panel their respective calendars of official legal holidays at the meeting of the arbitration panel with the disputing parties.

Commencing of the arbitration

9. Unless the disputing parties agree otherwise, they shall meet the arbitration panel within 7 (seven) days after its establishment in order to determine the matters that the disputing parties or the arbitration panel deem appropriate. Arbitrators and representatives of the disputing parties may take part in this meeting via telephone or video conference.

Initial written submissions

10. Unless the disputing parties agree otherwise, the complaining party shall deliver its written submission no later than 21 (twenty-one) days after the date of establishment of the arbitration panel. The responding party shall deliver its written submission no later than 21 (twenty-one) days after the date of delivery of the complaining party's written submission.

Working of arbitration panels

11. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions. These decisions shall be notified to the other arbitrators and, if appropriate, to the disputing parties.

12. Unless otherwise provided for in Chapter 18 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

13. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

14. It shall be the exclusive responsibility of the arbitration panel to consider all issues raised during the proceedings and draft any decision, and this responsibility shall not be delegated.

15. Where a procedural question arises that is not covered by Chapter 18 (Dispute Settlement) or its Annexes, the arbitration panel, after consulting the disputing parties, may adopt an appropriate procedure that is compatible with those provisions.

16. When the arbitration panel considers that there is a need to modify any time limit applicable to the proceedings or to make any other procedural or administrative adjustment, it shall inform the disputing parties in writing of the reasons for the change or adjustment and of the period or adjustment needed. The arbitration panel may adopt such change or adjustment after consulting the disputing parties. The arbitration panel shall not modify time limits of Article 18.9 (Composition and establishment of the arbitration panel).

Replacement of arbitrators

17. If an arbitrator is unable to participate in the proceeding, resigns, or must be replaced, a replacement shall be selected in accordance with Article 18.9 (Composition and establishment of the arbitration panel).

18. Where a disputing party considers that an arbitrator other than the chairperson does not comply with the requirements of Article 18.9(3) (Composition and establishment of the arbitration panel), or the Code of Conduct under Annex 18-B, and for this reason must be replaced, this disputing party shall notify the other disputing party within 15 (fifteen) days of the time at which it came to know of the circumstances underlying the arbitrator's non-compliance. The disputing parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 18.9.

19. If the disputing parties fail to agree on the need to replace an arbitrator other than the chairperson, any disputing party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final. If, pursuant to such a request, the chairperson finds that an arbitrator did not comply with Article 18.9(3) (Composition and establishment of the arbitration panel) or the Code of Conduct, that arbitrator shall be replaced and a new arbitrator shall

be appointed in the same manner as prescribed for the appointment of the original member, pursuant to Article 18.9.

20. Where a disputing party considers that the chairperson of the arbitration panel does not comply with the requirements of Article 18.9(3) (Composition and establishment of the arbitration panel) or the Code of Conduct, this disputing party shall notify the other disputing party within 15 (fifteen) days of the time at which it came to know of the circumstances underlying the chairperson's non-compliance. The disputing parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 18.9.

21. If the disputing parties fail to agree on the need to replace the chairperson, any disputing party may request that such matter be referred to the other arbitrators, whose decision shall be final. If, pursuant to such a request, the other arbitrators find that the chairperson did not comply with the requirements of Article 18.9(3) (Composition and establishment of the arbitration panel) or the Code of Conduct, the chairperson shall be replaced and a new one shall be appointed in the same manner pursuant to Article 18.9.

22. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in Rules 17 to 21 of this Annex.

Hearings

23. The chairperson shall fix the date and time of the hearing in consultation with the disputing parties and the other arbitrators, and confirm this in writing to the disputing parties. Unless a disputing party disagrees, the arbitration panel may decide not to convene a hearing.

24. Unless the disputing parties agree otherwise, the hearing shall be held in the territory of the responding party.

25. The arbitration panel may convene additional hearings if the disputing parties so agree.

26. All arbitrators shall be present during the entirety of all hearings.

27. The following persons may attend a hearing:

- (a) Representatives of the disputing parties;
- (b) Advisers to the disputing parties;
- (c) Administrative staff, interpreters, translators and court reporters; and
- (d) Arbitrators' assistants.

28. Only the representatives of and advisers to the disputing parties may address the arbitration panel.

29. No later than 3 (three) days before the date of a hearing, each disputing party shall deliver to the arbitration panel, and simultaneously to the other disputing party, a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of the first mentioned disputing party and of its other representatives or advisers who will attend the hearing.

30. The arbitration panel shall ensure that the complaining party and the responding party are afforded equal time during the submissions and rebuttals. These stages shall be conducted in the following order:

(a) Submissions

- (i) submission of the complaining party;
- (ii) submission of the responding party; and

(b) Rebuttals

- (i) rebuttal of the complaining party;
- (ii) counter-rebuttal of the responding party.

31. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the disputing parties.

32. A disputing party may submit a supplementary written submission, with a copy to the other disputing party, responding to any matter that arose during the hearing, within 10 (ten) days after the date of the hearing. The other disputing party shall also be given the opportunity to provide written comments on any such supplementary written submission.

Questions in writing

33. The arbitration panel may at any time during the proceedings address questions in writing to one or both disputing parties and set a reasonable time limit for the submission of their responses. Each of the disputing parties shall receive a copy of any questions put by the arbitration panel.

34. Each disputing party shall also provide a copy of its written response to the arbitration panel's questions to the arbitration panel and simultaneously to the other disputing party. Each disputing party shall be given the opportunity to provide written comments on the other party's reply within 7 (seven) days after the date of receipt.

Confidentiality

35. The disputing parties and their advisers and representatives, all arbitrators, former arbitrators and their assistants, and all attendees and experts at the arbitration panel hearings shall maintain the confidentiality of the hearings, the deliberations and interim panel report, and all written submissions to, and communications with, the panel. This includes any information submitted by a disputing party to the arbitration panel which that disputing party has designated as confidential. Nothing in this Annex shall preclude a disputing party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other disputing party, it does not disclose any information designated by the other disputing party as confidential.

Ex parte contacts

36. The arbitration panel shall not meet, hear, or otherwise contact a disputing party in the absence of the other disputing party.
37. Arbitrators shall not discuss any aspect of the subject matter of the proceedings with a disputing party or the disputing parties in the absence of the other arbitrators.

Urgent cases

38. In cases of urgency referred to in Chapter 18 (Dispute Settlement), the arbitration panel, after consulting the disputing parties, shall adjust the time limits referred to in this Annex as appropriate and shall notify the disputing parties of such adjustments.

Language and translation

39. All proceedings pursuant to Chapter 18 (Dispute Settlement) and all communications with, documents submitted to and reports issued by the arbitration panel shall be in the English language.
40. Each disputing party shall bear the responsibility of preparing English language translations of any documents that it submits during the proceedings.

Calculation of time limits

41. For the purpose of calculating a period of time, such period shall begin on the day following the day when any request, notice, written submission or other document is received by the addressee.
42. Where a disputing party receives a document on a date other than the date on which this document is received by the other disputing party, any period of time that is calculated on the basis

of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Other procedures

43. This Annex is also applicable to procedures set out in Article 18.14 (Implementation of the final arbitral award), Article 18.15 (Compensation and suspension of concessions or other obligations), and Article 18.16 (Compliance review). The time limits laid down in this Annex shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

Final arbitral award

44. The arbitral award shall contain the following details, in addition to any other elements which the arbitration panel may consider appropriate for inclusion:

- (a) Identification of the disputing parties;
- (b) The name of each of the members of the arbitration panel and the date of its establishment;
- (c) The terms of reference of the arbitration panel, including a description of the measure at issue;
- (d) The arguments of each of the disputing parties;
- (e) A description of the development of the arbitration procedure, including a summary of the actions taken;
- (f) A description of the factual elements of the dispute;
- (g) The decision reached in relation to the dispute, indicating the factual and legal grounds;
- (h) The date of issue; and

- (i) The signature of all members of the arbitration panel.