

ANNEX 8

MODEL RULES OF PROCEDURE FOR ARBITRAL TRIBUNALS

1. These rules shall be read consistently with the provisions of Chapter 21 (Dispute Settlement).

Notifications

2. Any written submission, request, notice or other document shall be delivered by a Party or the arbitral tribunal by delivery against receipt, registered post, courier, facsimile or electronic transmission or any other means of telecommunication that provides a record of the sending thereof.
3. Each Party shall provide to the other Party and to each of the arbitrators a copy of all its written communications related to the arbitral proceedings, including any written submissions, request, notice, or other document. A copy of the written communications shall also be provided in electronic format.
4. Minor errors of a clerical nature in any written submission, request, notice or other document related to the arbitral tribunal proceedings may be corrected by delivery of a new document clearly indicating the changes.
5. If the last day for delivery of a document falls on a non-business day of a Party, the document may be delivered on the next business day.

Commencing the Arbitration

6. Unless the Parties otherwise agree, they shall meet with the arbitral tribunal within 7 days following the establishment of the arbitral tribunal in order to determine such matters that the Parties or the arbitral tribunal deem appropriate, including the remuneration and expenses that shall be paid to the Chair of the arbitral tribunal, which normally shall conform to the WTO standards. Unless otherwise agreed by the Parties, this meeting shall not be required to be in person and can be conducted by any means, including video-conference, tele-conference or computer links.

Timetable

7. After consulting the Parties, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process.

8. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties and they shall respect those deadlines. In their written submissions, the Parties shall set out the facts of the case and their arguments.

9. Unless otherwise agreed by the Parties, an arbitral tribunal may, in consultation with the Parties, modify any time period established pursuant to these rules and make such other procedural or administrative adjustments as may be required in the arbitral tribunal proceedings.

Operation of Arbitral Tribunals

10. The chair of the arbitral tribunal shall preside at all of its meetings. The arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions.

11. Except as otherwise provided in these rules, the arbitral tribunal may conduct its activities by any means, including telephone, facsimile transmissions or computer links. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

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

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

14. The arbitral tribunal may, in consultation with the Parties, retain such number of assistants or designated note-takers as may be required for the arbitral tribunal proceedings.

15. The arbitral tribunal's deliberations shall be confidential. The

members of the arbitral tribunal and any persons retained by the arbitral tribunal under rule 14 shall maintain the confidentiality of arbitral tribunal proceedings and deliberations.

Hearings

16. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitral tribunal¹. The chair shall notify the Parties in writing of the date, time and location of the hearing. Unless either of the Parties disagrees, the arbitral tribunal may decide not to convene a hearing.

17. Unless the Parties otherwise agree, the hearing shall be held in the responding Party. The responding Party shall be in charge of the logistical administration of arbitral tribunal proceedings, in particular the organisation of hearings, unless otherwise agreed.

18. The arbitral tribunal may convene additional hearings if the Parties so agree.

19. All arbitrators shall be present at all hearings².

20. No later than five days before the date of a hearing, each Party shall deliver to the other Party and arbitral tribunal a list of the names of representatives or advisers who will be attending the hearing.

21. The Parties may decide that the hearing shall, in full or in part, be open to the public. If the Parties decide that the hearing is open to the public, part of the hearing may nevertheless be held in closed session, if the arbitral tribunal, on application by either Party, so decides for good reasons. In particular, the arbitral tribunal shall meet in closed sessions when the submission and arguments of a Party contain business confidential 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 Party in charge of the logistical administration of the arbitral tribunal proceedings.

¹ Except where, in accordance with paragraph 9 of Article 8 (Composition of Arbitral Tribunals), an arbitral tribunal comprises only the chair of the original arbitral tribunal.

² Except where, in accordance with paragraph 9 of Article 8 (Composition of Arbitral Tribunals), an arbitral tribunal comprises only the chair of the original arbitral tribunal.

22. The arbitral tribunal shall conduct the hearing in the following manner:

- (a) argument of the complaining Party;
- (b) argument of the responding Party;
- (c) questions from the arbitral tribunal to the Parties and from each Party to the other Party;
- (d) final statement of the complaining Party;
- (e) final statement of the responding Party.

23. The chair may set time limits for oral arguments to ensure that each Party is afforded equal time. Each Party shall make available to the arbitral tribunal and to the other Party written versions of their oral statements within a specified number of days following the hearing, which shall be fixed by the arbitral tribunal under Rule 7.

Questions in Writing

24. The arbitral tribunal may at any time during the arbitral tribunal proceedings address questions in writing to either or both of the Parties. In the event that the arbitral tribunal addresses questions to one Party only, the arbitral tribunal shall provide a copy of the written questions to the other Party.

25. A Party to whom the arbitral tribunal addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitral tribunal in accordance with the timetable established by the arbitral tribunal. The other Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

Confidentiality

26. The Parties shall maintain the confidentiality of the arbitral tribunal's hearings to the extent that the arbitral tribunal holds the hearing in closed session under rule 21.

27. Each Party shall:

- (a) Unless otherwise agreed by the Parties, treat as confidential any information or technical advice submitted to the

arbitral tribunal by any individual or body in accordance with a request by the arbitral tribunal pursuant to Article 10 (Proceedings of Arbitral Tribunals);

(b) Treat as confidential any information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential.

28. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public, no later than 15 days after the hearing.

29. Nothing in these rules shall preclude either Party from disclosing statements of its own positions to the public.

No *ex parte* Communications

30. The arbitral tribunal shall not meet or contact a Party in the absence of the other Party.

31. Neither Party shall contact any arbitrator in relation to the dispute in the absence of the other Party.

32. No arbitrator shall discuss an aspect of the subject matter of the arbitral tribunal proceedings with a Party in the absence of the other Party.

***Amicus curiae* Submissions**

33. The arbitral tribunal shall have the authority to accept and consider *amicus curiae* submissions from any persons and entities in the Parties and from interested persons and entities outside the Parties.

34. Any such submissions shall fulfil the following requirements:

(a) be made within a specified number of days following the establishment of the arbitral tribunal which shall be fixed by the arbitral tribunal under rule 7;

(b) are concise and in no case longer than 15 typed pages, including any annexes; and

(c) are directly relevant to the factual and legal issue under consideration by the arbitral tribunal.

35. The submission shall contain a description of the person, whether natural or legal, 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 arbitral tribunal proceedings.

36. The arbitral tribunal shall promptly provide to the Parties copies of any *amicus curiae* submission received by it and list in its ruling all the *amicus curiae* submissions that it has received that conform to the provisions of the above rules.

Language

37. The working language of the arbitral tribunal proceedings shall be English.

38. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitral tribunal, as well as all other written or oral communications between the Parties and the arbitral tribunal shall be conducted in English.

Computation of Time

39. Where anything under Chapter 21 (Dispute Settlement) or these rules is to be done, or the arbitral tribunal 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.

40. Where, by reason of the operation of rule 5, the Parties receive the same document on a different date, the calculation of any period of time which is dependent on the date of receipt shall be from the date the last Party received the document.