

## **ANNEX ON RULES OF PROCEDURE FOR ARBITRAL TRIBUNAL PROCEEDINGS**

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 17 (Consultations and Dispute Settlement).

### **Timetable**

2. After consulting the Parties to the dispute, 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. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to the dispute to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties to the dispute and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties to the dispute its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties to the dispute within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties to the dispute, an arbitral tribunal may, in consultation with the Parties to the dispute, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

### **Operation of Arbitral Tribunals**

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

8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties to the dispute, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties to the dispute.

11. The arbitral tribunal's deliberations shall be confidential. The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the

confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

13. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings.

### **Written Submissions and Other Documents**

14. Each Party to the dispute shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, a Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

15. A Party to the dispute shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Parties to the dispute. Third Parties shall receive the submissions of the Parties to the dispute to the first substantive hearing.

16. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party to the dispute may deliver a copy of the document(s) to the other Party to the dispute by facsimile, email or other means of electronic transmission.

17. A Party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral

tribunal proceeding by delivering a new document clearly indicating the changes.

## **Hearings**

18. At the first substantive hearing with the Parties to the dispute, each Party to the dispute shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties to the dispute shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

19. All Third Parties shall be invited to present their views during a separate session of the first substantive hearing of the arbitral tribunal set aside for that purpose. All Third Parties may be present during the entirety of this session.

20. The Parties to the dispute and Third Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

## **Availability of Information**

21. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall, upon request of another Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

## **Information Gathering**

22. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

23. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

## **Reports**

24. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

25. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

26. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

## **Venue**

27. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

## **Remuneration and Payment of Expenses**

28. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains pursuant to Rule 10.