

**RULES OF PROCEDURE FOR ARBITRATION**

**I. COSTS**

1. The remuneration paid to the arbitrators shall include all remuneration and expenses due to their assistants. The Trade Committee shall agree on rules regarding the remuneration and expenses of arbitrators at its first meeting. If the Trade Committee has not established such rules, the remuneration and expenses of arbitrators shall be determined in accordance with WTO practice.

**II. NOTIFICATIONS**

2. The parties and the arbitration panel shall deliver any request, notice, written submission or other document by e-mail or other electronic means that provides a record of the sending thereof. Unless proven otherwise, the notification shall be deemed to be delivered and received on the date of its sending. A copy of the documents shall also be provided by post or other means agreed by the parties, including a notification of the date of its sending.
3. Any request, notice, written submission or other document shall be sent as follows:
  - (a) from the arbitration panel to both parties at the same time;
  - (b) from a party to the arbitration panel, copied to the other party;

- (c) from a party to the other party, copied to the panel, as appropriate; or
- (d) from the co-chair of the Trade Committee to the arbitrators pursuant to point (c) of Rule 10, copied to the other co-chair and to the parties.

4. All notifications shall be addressed either to the *pro tempore* presidency of MERCOSUR, if MERCOSUR is a party, or to the relevant national coordinator if a Signatory MERCOSUR State is a party, and to the Directorate-General for Trade of the European Commission of the European Union, respectively. If the representatives of the parties have already been appointed, all notifications shall be also addressed to them.
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. The documents submitted by a party shall be duly signed in order to be considered officially submitted to the arbitration panel.
7. If the last day for delivery of a document falls on a non-working day of the institutions of the European Union or of a Signatory MERCOSUR State, as applicable, the time period of the delivery of the document shall end on the first following working day.
8. The chairperson of the arbitration panel shall be responsible for the internal and external communications of the arbitration panel, including notifications between the parties and the arbitration panel.

9. The chairperson of the arbitration panel shall be responsible for keeping the file of the proceedings. The chairperson shall provide to any of the parties, on its request, a copy of the file of the proceedings after the issuing of the arbitral award or ruling. The chairperson shall keep the original file during 5 (five) years after the date of issuing of the arbitral award or ruling. At the end of this period, the chairperson shall transmit the original file to the complaining party. The complaining party shall provide a copy of the file to the defending party on its request.

### III. COMMENCEMENT OF THE ARBITRATION

10. Regarding the selection of an arbitrator, the following apply:

- (a) If, pursuant to Article 21.9 or to Rule 26 and Rules 28 to 31, any member of the arbitration panel is to be selected by lot, representatives of both parties shall be invited with due anticipation to be present when lots are drawn. In any event, the drawing of lots shall be carried out with the party or parties that are present. The co-chair of the Trade Committee of the complaining party shall promptly inform the co-chair of the defending party of the date, time and venue of the lot.
- (b) If any of the sub-lists referred to in Article 21.8(3) is not established, the co-chair of the Trade Committee of the complaining party shall select by lot the arbitrator, no later than 5 (five) days after the date of delivery of the request referred to in Article 21.8(5), among those natural persons who have been formally proposed by one or both Parties for the establishment of that particular sub-list.
- (c) The co-chair of the Trade Committee of the complaining party shall notify arbitrators regarding their appointment.

- (d) An arbitrator who has been appointed according to the procedure established in Article 21.9 shall confirm in writing her or his availability to serve as member of the arbitration panel to the co-chairs of the Trade Committee no later than 5 (five) days after the date of the receipt of the notification of her or his appointment. In the notification confirming her or his availability, the arbitrator shall also explicitly confirm that he or she complies and commits to comply with the provisions set out in Annex 21-B.
- (e) Unless the parties agree otherwise, they shall meet the arbitration panel no later than 7 (seven) days after its establishment in order to determine the matters that the parties or the arbitration panel deem appropriate. Members of the arbitration panel and representatives of the parties may take part in this meeting via telephone or video conference. Before this meeting, the parties shall notify the arbitration panel of their appointed representatives, as well as the address, telephone numbers and e-mail addresses to which communications arising in the course of the proceeding are to be sent.

11. Regarding the terms of reference of the arbitration panel, the following apply:

- (a) Unless the parties agree otherwise no later than 5 (five) days after the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:  
"to examine, in the light of the provisions cited by the parties, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the covered provisions or on whether the measure in question nullifies or substantially impairs any benefit accruing to the complaining party under the covered provisions in a manner adversely affecting trade between the parties, as the case may be, and to issue an arbitral award in accordance with Article 21.14".

- (b) The parties shall notify the agreed terms of reference to the arbitration panel no later than 3 (three) days after their agreement.

#### IV. INITIAL SUBMISSIONS

- 12. The complaining party shall deliver its initial written submission no later than 30 (thirty) days after the date of establishment of the arbitration panel. The defending party shall deliver its written counter-submission no later than 30 (thirty) days after the date of receipt of the initial written submission.
- 13. The initial submission shall state clearly the party's claim, including the identification of the measures at issue, the legal basis for the complaint and a summary of the relevant facts and circumstances.
- 14. The counter-submission shall state the facts and arguments of the defending party upon which its defense is based.

#### V. EVIDENCE

- 15. The initial submission and the counter-submission shall include any available supporting evidence, including any expert or technical opinion. Each party shall otherwise submit all factual evidence to the arbitration panel as early as possible and no later than 5 (five) days before the date of the first hearing, except with respect to evidence necessary for purposes of rebuttals, answers to questions, or comments to answers provided by the other party. Upon due justification, the arbitration panel may grant exceptions to this Rule. In such cases, the other party shall be accorded the opportunity to comment on the newly submitted evidence.

16. In all cases, each party shall be accorded the opportunity to comment on the evidence submitted by the other party.
17. All the evidence submitted by a party shall be kept in the files of the proceedings.
18. The arbitration panel may hear witnesses or experts only in the presence of both parties.

## VI. WORKING OF ARBITRATION PANELS

19. The chairperson of the arbitration panel shall preside all its meetings. An arbitration panel may delegate to the chairperson the authority to make administrative and procedural decisions. Those decisions shall be notified to the other arbitrators and, if appropriate, to the parties.
20. The arbitration panel may carry out its activities by any means, including telephone, facsimile, computer links or video-conference.
21. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit the arbitrators' assistants to be present at its deliberations.
22. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
23. If a procedural question arises that is not covered by the provisions of Chapter 21 or this Annex, the arbitration panel, after consulting the parties, may adopt an appropriate procedure that is compatible with those provisions.

24. If the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the parties in writing of the reasons for the change or adjustment and of the period of time or adjustment needed. The arbitration panel may adopt such change or adjustment after consulting the parties. The time limits of Article 21.14(4) shall not be modified.

## VII. AMENDMENT OF THE LIST OF ARBITRATORS

25. The list of arbitrators may be amended at any time by initiative of any Party. Any Party can present new individuals by notifying the other Party of the proposed names. The Parties shall discuss the proposal no later than 1 (one) month after the receipt of the notification of the proposed names. The Trade Committee shall take the decision to amend the list no later than 6 (six) months after such notification.

## VIII. REPLACEMENT OF ARBITRATORS

26. If an arbitrator is unable to participate in the proceeding, withdraws or has to be replaced, a replacement shall be selected in accordance with Article 21.9 and Rule 10 of this Annex.
27. If a party considers that an arbitrator does not comply with the requirements of the Code of Conduct as set out in Annex 21-B and for this reason should be replaced, that party should notify the other party no later than 15 (fifteen) days after the date on which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct as set out in Annex 21-B.

28. If a party to the dispute considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct as set out in Annex 21-B, the parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 21.9 and Rule 10 of this Annex. If the parties fail to agree on the need to replace an arbitrator within 5 (five) days of the date of the notification referred to in Rule 27, any party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.
29. In case an arbitrator other than the chairperson has to be replaced, and if the party concerned fails to select the replacement of an arbitrator, the chairperson shall select a new arbitrator by lot from the same sub-list as the arbitrator to be replaced in accordance with the procedure set out in Article 21.9(4). The selection of the new arbitrator shall be done no later than 5 (five) days after the date of the submission of the request to the chairperson.
30. If a party considers that the chairperson does not comply with the requirements of the Code of Conduct as set out in Annex 21-B, and for this reason should be replaced, that party should notify the other party no later than 15 (fifteen) days after the date on which it obtained evidence of the circumstances underlying the arbitrator's material violation of the Code of Conduct as set out in Annex 21-B. The parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 21.9 and Rule 10 of this Annex.

31. If the parties fail to agree on the need to replace the chairperson within 5 (five) days of the date of the receipt of the notification referred to in Rule 30, a new chairperson shall, unless the parties agree otherwise, be selected by lot by the co-chair of the Trade Committee from the requesting party or that co-chair's designee from the sub-list referred to in point (c) of Article 21.8(3). The new chairperson shall be selected no later than 5 (five) days after the date of the delivery of the request to the co-chair of the Trade Committee from the requesting party to that effect.
32. The arbitration proceedings shall be suspended for the time period taken to carry out the procedures provided for in Rules 27, 28, 29, 30 and 31.

## IX. HEARINGS

33. The defending party shall be in charge of the logistical administration of dispute settlement hearings, unless otherwise agreed. The chairperson of the arbitration panel shall fix the date and time of the hearing in consultation with the parties and the other members of the arbitration panel, and shall confirm this in writing to the parties. This information shall also be made publicly available by the party in charge of the logistical administration of the hearing unless the hearing is closed to the public. Unless a party disagrees, the arbitration panel may decide not to convene a hearing.
34. Unless the parties agree otherwise, the hearing shall be held:
  - (a) if the defending party is the European Union, in Brussels, Belgium;
  - (b) if the defending party is MERCOSUR, in Asunción, Paraguay; and

- (c) if the defending party is 1 (one) or more Signatory MERCOSUR States, in the place indicated by such States.

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

36. All arbitrators shall be present during the entirety of any hearing.

37. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

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

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

38. No later than 5 (five) days before the date of a hearing, each party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that party and of those representatives or advisers who will be attending the hearing. A party may modify its list after that time limit, if duly justified.

39. The hearings of the arbitration panel shall be open to the public, unless the parties decide otherwise. The hearings of the arbitration panel shall be partially or completely closed to the public, if the submission or arguments of a party contain information which that party has designated as confidential.
40. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining party and the defending party are afforded equal time:
  - (a) Argument:
    - (i) argument of the complaining party;
    - (ii) argument of the defending party.
  - (b) Rebuttal argument:
    - (i) reply of the complaining party;
    - (ii) counter-reply of the defending party.
41. The arbitration panel may direct questions to either party at any time during the hearing.
42. The arbitration panel shall arrange for a transcript or an audio recording of each hearing to be prepared and delivered as soon as possible to the parties. The parties may comment on the accuracy of the transcript and the arbitration panel may consider those comments.

43. Each party may deliver to the arbitration panel, with a copy to the other party, a supplementary written submission concerning any matter that arose during the hearing, no later than 10 (ten) days after the date of the hearing.

## X. QUESTIONS IN WRITING

44. The arbitration panel may at any time during the proceedings address questions in writing to one or both parties and set a reasonable time limit for the submission of their responses. Each of the parties shall receive a copy of any questions put by the arbitration panel to the other party.
45. A party shall also provide to the other party a copy of its written reply to the arbitration panel's questions. Each party shall be given the opportunity to provide written comments on the other party's replies no later than 7 (seven) days after the date of receipt of such replies.

## XI. CONFIDENTIALITY

46. The parties and their advisers shall maintain the confidentiality of the arbitration panel hearings if the hearings are held in closed session, in accordance with Rule 39. Each party and its advisers shall treat as confidential any information submitted by the other party to the arbitration panel which that party has designated as confidential. If a party submits a confidential version of its written submissions to the arbitration panel, it shall also, on request of the other party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public as soon as possible but no later than 30 (thirty) days after the date of either the request or the submission, whichever is later. Nothing in this Annex shall preclude a party from disclosing statements of its own positions to the public to the extent that, if making reference to information submitted by the other party, it does not disclose any information designated by the other party as confidential.

## XII. *EX PARTE* CONTACTS

47. The arbitration panel shall not meet or communicate with a party in the absence of the other party.
48. No member of the arbitration panel may discuss any aspect of the subject matter of the proceeding with the parties in the absence of the other arbitrators.

## XIII. INFORMATION AND TECHNICAL ADVICE

49. The arbitration panel shall notify the parties of its intention to request the opinion of experts or information from any relevant source. For greater certainty, the opinion or information obtained pursuant to this provision does not discharge the parties of their corresponding burden of proof.
50. The arbitration panel shall take into account the cost of any request for information or opinion of experts in order not to excessively increase the costs of the dispute settlement procedure.
51. The arbitration panel shall provide the parties with a copy of the information or the expert's opinion received and shall grant them a reasonable period of time to present their comments.

#### XIV. *AMICUS CURIAE* BRIEFS

52. Unless the parties agree otherwise within 5 (five) days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written briefs from interested natural persons of a Party or juridical persons established in the territory of a Party and which are independent from the government of any of the Parties, if they are received by the arbitration panel no later than 10 (ten) days after the date of the establishment of the arbitration panel. These submissions are hereinafter referred to as "*amicus curiae* submissions".

53. *Amicus curiae* submissions shall:

- (a) be concise and in no case longer than 22 500 (twenty-two thousand five hundred) characters typed, including spaces, footnotes, notes at the end of the text and any attachment;
- (b) be directly relevant to the issue under consideration by the arbitration panel;
- (c) contain a description of the person making the submission, whether natural or juridical, including its nationality or place of establishment, the nature of its activities and, in the case of a juridical person, information on its members, legal status and general objectives;

- (d) provide information on any source of financing;
- (e) specify the nature of the interest that the person has in the arbitration proceedings; and
- (f) be drafted in the language chosen by the parties or any of the WTO official languages in accordance with Rules 56, 57 and 58.

54. The arbitration panel shall list in its award all the submissions it has received that conform to Rules 52 and 53. The arbitration panel shall not be obliged to address in its award the arguments made in such submissions. The arbitration panel shall ensure that the parties have the opportunity to comment in writing on any *amicus curiae* submission before the date of the hearing. A party shall deliver any comments no later than 10 (ten) days after the receipt of the submission, and any such comments shall be taken into consideration by the arbitration panel.

#### XV. URGENT CASES

55. In cases of urgency referred to in Chapter 21, the arbitration panel, after consulting the parties, shall adjust the time periods referred to in this Annex as appropriate and shall notify the parties of such adjustments.

#### XVI. TRANSLATION AND INTERPRETATION

56. During the consultations referred to in Article 21.5, and no later than the meeting referred to in point (e) of Rule 10, the parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

57. If the parties are unable to agree on a common working language, each party may choose any of its official languages as its working language for the proceedings. However, if a party chooses a language that is not an official language of the WTO, it shall provide, at the time of filing, a translated version of all its written submissions into the language chosen by the other party and shall arrange for and bear the costs of interpretation of its oral submissions to and from the language chosen by the other party.
58. Arbitral awards and rulings shall be issued in the common working language chosen by the parties. If the parties are unable to agree on a common working language, the arbitral panel awards and arbitration panel rulings shall be issued in any of the official languages of the WTO chosen by the arbitration panel. Any costs incurred for the translation of an arbitral award or a ruling shall be borne equally by the parties.
59. Any party may provide, no later than 5 (five) days after its receipt, comments on the accuracy of the translation of any translated version of a document drawn up in accordance with this Annex.

#### XVII.        CALCULATION OF THE TIME PERIODS

60. Subject to Rule 2, if a party proves that it has received a document on a date other than the date on which this document is received by the other 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.

## XVIII. OTHER PROCEDURES

61. This Annex is also applicable to procedures established under Articles 21.18 to 21.21. Nonetheless, the time periods laid down in this Annex shall be adjusted in line with the special time periods provided for the adoption of a ruling by the arbitration panel in those other procedures.
62. If the original arbitration panel, or some of its members, is unable to reconvene for the procedures established under Articles 21.18, 21.19, 21.20 and 21.21, the procedures set out in Article 21.9 shall apply.

## XIX. ARBITRAL AWARDS

63. The arbitral award shall contain the following details, in addition to any other elements which the arbitration panel may consider appropriate for inclusion:
  - (a) the identification of the 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 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 the members of the arbitration panel.

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