

ANNEX XVII

REFERRED TO IN ARTICLE 93(1)

MODEL RULES OF PROCEDURE
FOR THE CONDUCT OF ARBITRATION PANELS

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General provisions

1. In these rules:

“adviser” means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article 91 of this Agreement;

“arbitration panel” means an arbitration panel established pursuant to Article 92 of this Agreement;

“representative of a Party” means an employee or any person appointed by a government department or agency or of any other government entity of a Party; and

“Party or Parties” means the Party or Parties to the dispute.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed.

Notifications

3. Any request, notice, written submissions or other document shall be delivered by either Party or the arbitration panel 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.

4. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

5. All notifications shall be made and delivered to Chile and the EFTA State Party.

6. 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.

7. If the last day for delivery of a document falls on a legal holiday of a Party, the document may be delivered on the next business day.

Commencing the arbitration

8. Unless the Parties otherwise agree, they shall meet with the arbitration panel within seven days following the date of the establishment of the arbitration panel in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses that shall be paid to the arbitrators, which normally shall conform to the WTO standards.

Initial submissions

9. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

Operation of arbitration panels

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

11. Except as otherwise provided in these rules, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

12. Only arbitrators may take part in the deliberations of the arbitration panel but the arbitration panel may permit their assistants to be present during such deliberations.

13. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel.

14. Where a procedural question arises that is not covered by these rules, an arbitration panel may adopt an appropriate procedure that is not inconsistent with this Agreement.

15. When the arbitration panel considers that there is a need to modify any time period applicable in the proceeding, or to make any other procedural or administrative adjustment in the proceeding, it shall inform the Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

Hearings

16. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. It shall notify in writing to the Parties of the date, time and location of the hearing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding when the hearing is open to

the public. Unless the Parties disagree, the arbitration panel may decide not to convene a hearing.

17. Unless the Parties otherwise agree, the hearing shall be held in Geneva, where the complaining Party is Chile, or in Santiago, where the complaining Party is an EFTA State.

18. The arbitration panel may convene additional hearings if the Parties so agree.

19. All arbitrators shall be present at hearings.

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

- (a) representatives of a Party;
- (b) advisers to a Party;
- (c) administration personnel, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representative and advisor of a Party may address the arbitration panel.

21. No later than five days before the date of a hearing, each Party shall deliver a list of the names of those 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.

22. The hearings of the arbitration panels shall be closed to the public, unless the Parties decide otherwise. If the Parties decide that the hearing is open to the public, part of the hearing may however be closed to the public, if the arbitration panel, on application by the Parties, so decides for serious reasons. In particular, the arbitration panel shall meet in closed sessions when the submission and arguments of a Party contain business confidential information.

23. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

- (a) argument of the complaining Party.
- (b) argument of the Party complained against.

Rebuttal Argument

- (a) reply of the complaining Party.
- (b) counter-reply of the Party complained against.

24. The arbitration panel may direct questions to either Party at any time during a hearing.
25. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties.
26. Within 10 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing.

Questions in writing

27. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. The arbitration panel shall deliver the written questions to the Party or Parties to whom the questions are addressed.
28. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitration panel. Each Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

Confidentiality

29. The Parties shall maintain the confidentiality of the panel's hearings, to the extent that the panel holds the hearing in closed session under rule 22. Each Party shall treat as confidential the information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the panel, 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 date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

Ex parte contacts

30. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
31. No arbitrator may discuss an aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other arbitrators.

Role of experts

32. Upon request of a Party or on its own initiative, the arbitration panel may obtain information and technical advice from any person or body that it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.

33. When a request is made for a written report of an expert, any time period applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitration panel.

Amicus curiae submissions

34. Unless the Parties otherwise agree within three days following the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within 10 days following the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, included any annexes, and that they are directly relevant to the factual and legal issue under consideration by the panel.

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 arbitration proceeding. It shall be made in English and Spanish languages .

36. The arbitration panel shall list in its ruling all the submissions that it has received and that conform to the provisions of the above rules. The arbitration panel shall not be obliged to address, in its ruling, the factual or legal arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for comments.

Cases of urgency

37. In cases of urgency referred to in Article 91(1) of this Agreement, the arbitration panel shall appropriately adjust the time periods mentioned to in these rules.

Translation and interpretation

38. Subject to agreement by the Parties, the languages used in the proceedings of the arbitration panel shall be English and Spanish. This shall apply to all oral or written submissions.

39. Each Party shall arrange for and bear the costs of the translation of its written submissions into the languages of the arbitration panel.

40. The arbitration panel may suspend the proceeding for the time necessary to allow a Party to complete a translation.

41. The Party complained against shall arrange for the interpretation of oral submissions into English and Spanish languages.

42. Arbitration panel rulings shall be issued in English and Spanish languages.

43. The costs incurred to prepare a translation of an arbitration panel ruling shall be borne equally by the Parties.

44. Any Party may provide comments on a translated version of a document that is prepared in accordance with these rules.

Computation of time

45. Where anything under this Agreement or these rules is to be done, or the arbitration panel 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.

46. Where, by reason of the operation of rule 7, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

Other proceedings

47. These rules shall apply to the proceedings established under Article 96(4), (5), (8) and (10) of this Agreement except that:

- (a) the Party making a request under Article 96(4) shall deliver its initial written submission within 10 days after the date the request is submitted, and the responding Party shall deliver its written counter-submission within 10 days after the date of delivery of the initial written submission;
- (b) the Party making a request under Article 96(5) shall deliver its initial written submission within 10 days after the date the request is submitted and the responding Party shall deliver its written counter-submission within 10 days after the date of delivery of the initial written submission;
- (c) the Party making a request under Article 96(8) shall deliver its initial written submission within 10 days after the date the request is submitted and the responding Party shall deliver its written counter-submission within 10 days after the date of delivery of the initial written submission; and
- (d) the Party making a request under Article 96(10) shall deliver its initial written submission within 10 days after the date the request is submitted and the responding Party shall deliver its written counter-submission within 10 days after the date of delivery of the initial written submission.

48. If appropriate, the arbitration panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for arbitration panel proceedings set out in Article 96 of this Agreement and these rules.

Qualification of arbitrators

49. Arbitrators should be selected among persons whose independence and impartiality are beyond doubt. The members shall have sufficiently diverse background and a wide spectrum of experience. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation.

A. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Joint Committee and sending it to the Joint Committee.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

- (1) any financial interest of the candidate:
 - (a) in the proceeding or in its outcome; and
 - (b) in an administrative proceeding, a domestic court proceeding or another arbitration panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (2) any financial interest of the candidate's employer, partner, business associate or family member:
 - (a) in the proceeding or in its outcome; and
 - (b) in an administrative proceeding, a domestic court proceeding or another arbitration panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and
- (4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

B. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in Section A and shall

disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

The member shall disclose such interests, relationships and matters by communicating them in writing to the Joint Committee for consideration by the Parties.
