

E U R O P E A N F R E E T R A D E A S S O C I A T I O N

MX-D 3/2002
1 Annex
28 October 2002

Distribution List B (MX)

DECISION OF THE JOINT EFTA-MEXICO COMMITTEE
No. 3 of 2002

(Adopted at the first meeting on 22 October 2002)

Attached you will find Decision of the Joint EFTA-Mexico Committee No. 3 of 2002 adopting the Model Rules of Procedure for the arbitration panel.

DECISION OF THE EFTA – MEXICO JOINT COMMITTEE

No. 3 of 2002

(Adopted on 22 October 2002)

MODEL RULES OF PROCEDURE FOR THE ARBITRATION PANEL

THE JOINT COMMITTEE,

Having regard to the Free Trade Agreement between the EFTA States on the one part, and the United Mexican States, on the other, signed in Mexico City on 27 November 2000, hereinafter referred to as “the Agreement”;

Whereas:

Paragraph 2 of Article 78 of the Agreement provides that the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure that shall be adopted at the first meeting of the Joint Committee.

HAS DECIDED AS FOLLOWS:

Article 1

To adopt the Model Rules of Procedure for the arbitration panel as set out in the Annex to this Decision.

Article 2

This Decision shall enter into force with immediate effect.

Signed in Mexico City on 22 October 2002 in two originals, in the English and Spanish languages, both texts being equally authentic.

For the United Mexican States

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation

A N N E X

MODEL RULES OF PROCEDURE (REFERRED TO IN PARAGRAPH 2 OF ARTICLE 78 OF THE FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND MEXICO (HEREINAFTER REFERRED TO AS THE AGREEMENT.)

Definitions

1. In these rules:

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

"complaining Party" means any Party that requests the establishment of an arbitration panel under Article 73 of the Agreement;

"arbitration panel" means an arbitration panel established pursuant to Article 74 of the Agreement.

"a Party" means a party to the dispute;

"the Parties" mean the parties to the dispute;

"representative of a Party" means an employee of a government department or agency or of any other government entity of a Party;

2. The Parties may designate a specialised entity to administer the dispute settlement proceedings.
3. Unless the Parties otherwise agree, the Parties shall meet with the arbitration panel within 15 days of the date of establishment of the arbitration panel in order to determine matters such as:
 - (a) remuneration and expenses that will be paid to the arbitrators which normally shall conform to the WTO standards;
 - (b) the administration of proceedings, where the Parties have not designated a specialised entity pursuant to rule 2; and
 - (c) such other matters that the Parties deem appropriate.

Qualification of Arbitrators

4. 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 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.

Terms of reference

5. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to consultations under Article 72 of the Agreement, and to rule on the consistency of the measures at issue with the Agreement."

6. The Parties shall promptly deliver any agreed terms of reference to the arbitration panel.

Written submissions and other documents

7. Where the Parties have designated an entity pursuant to rule 2, a Party or the arbitration panel, respectively, shall deliver any request, notice, written submissions or other document to that entity. An entity designated under rule 2 that receives a written submission shall forward it to the recipients by the most expeditious means practicable.

8. Where the Parties have not designated an entity pursuant to rule 2, a Party or the arbitration panel, respectively, shall deliver any request, notice, written submission or other document in accordance with the agreement reached under rule 3.

9. A Party shall, to the extent practicable, provide a copy of the documents in electronic format.

10. Unless otherwise agreed pursuant to rule 3 a Party shall provide a copy of each of its written submissions for the other Party and each of the arbitrators.

11. A complaining Party shall deliver its initial written submission no later than 25 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.
12. Unless otherwise agreed pursuant to rule 3 in the case of any request, notice or other document related to the arbitration panel proceeding that is not covered by rule 10 or 11, the Party shall deliver to the other Party and to each of the arbitrators a copy of the document by facsimile or other means of electronic transmission.
13. 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.
14. If the last day for delivery of a document falls on a legal holiday or on any other day on which the offices are closed by order of the government or by force majeure, the document may be delivered on the next business day.

Operation of arbitration panels

15. 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.
16. Except as otherwise provided in these rules, the arbitration panel may conduct its business by any means, including by telephone, facsimile transmissions or computer links.
17. Only arbitrators may take part in the deliberations of the arbitration panel but the arbitration panel may permit assistants, administration personnel, interpreters or translators to be present during such deliberations.
18. 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 these rules.
19. When the arbitration panel considers 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 the adjustment with an estimate of the period or the adjustment needed.

Hearings

20. Where the Parties have designated an entity pursuant to rule 2, the chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the arbitration panel and such entity. That entity shall notify in writing to the Parties of the date, time and location of the hearing as soon as possible, and at the latest 10 days before the hearing.
21. Where the Parties have not designated an entity pursuant to rule 2, the chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, in accordance with the agreement reached under rule 3. The Parties shall be notified in writing of the date, time and location of the hearing in accordance with the agreement reached under rule 3.
22. Unless the Parties otherwise agree the hearing shall be held in Geneva , where the complaining Party is Mexico, or in Mexico City, where the complaining Party is one or more EFTA States.
23. The arbitration panel may convene additional hearings if the Parties so agree.
24. All arbitrators shall be present at hearings.
25. The following persons may attend a hearing:
 - (a) representatives of a Party;
 - (b) advisers to a Party, provided that they do not address the arbitration panel;
 - (c) administration personnel, interpreters, translators and court reporters; and
 - (d) arbitrators' assistants.
26. 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.
27. A Party to the Agreement which is not a Party to the dispute, on delivery of a written notice to the disputing Parties, shall be entitled to make written submissions to the arbitration panel, to receive written submissions of the disputing Parties, attend all hearings and make oral submissions. The rules governing time limits for submissions, hearings and document distribution shall apply *mutatis mutandis* to such a Party.

28. The hearing shall be conducted by the arbitration panel 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.

29. The arbitration panel may direct questions to either Party at any time during a hearing.

30. Where the Parties have designated an entity pursuant to rule 2, such entity 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 and the arbitration panel.

31. Where the Parties have not designated an entity pursuant to rule 2, a transcript of each hearing shall be prepared in accordance with the agreement reached under rule 3 and shall, as soon as possible after it is prepared, be delivered to the Parties and the arbitration panel.

32. The arbitration panel may at any time during a proceeding 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.

33. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply. Each Party shall be given the opportunity to provide written comments on the reply within seven days after the date of delivery.

34. 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.

Rules of interpretation

35. Arbitration panels shall interpret the provisions of the Agreement in accordance with rules of interpretation of public international law.

Confidentiality

36. The Parties and the arbitration panel shall treat any confidential or proprietary information exchanged in the course of the proceedings in the same manner as the Party providing the information.

Ex parte contacts

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

Role of Experts

39. On request of a Party or on its own initiative, the arbitration panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.
40. Where in accordance with rule 39 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.

Arbitration Panel Reports

41. Unless the Parties otherwise agree, the arbitration panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to rule 39.
42. After considering written comments to the initial report by the Parties, the arbitration panel, on its own initiative or on the request of either Party, may:
- (a) request the views of each Party;
 - (b) reconsider its report; and
 - (c) make any further examination that it considers appropriate.

43. All decisions of the arbitration panel, including the adoption of the final report and of any preliminary ruling, shall be taken by majority vote, each arbitrator having one vote. Minority opinions shall not be disclosed.

Languages, translation and interpretation

44. 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.
45. Each Party shall arrange for, and bear the costs of, the translation of its written submissions into the languages of the arbitration panel.
46. The arbitration panel may suspend the proceeding for the time necessary to allow a Party to complete a translation.
47. The arbitration panel shall arrange for the interpretation of oral submissions into English and Spanish.
48. Arbitration panel reports shall be issued in English and Spanish.
49. The costs incurred to prepare a translation of an arbitration panel report shall be borne equally by the Parties.
50. Any Party may provide comments on a translated version of a document that is prepared in accordance with these rules.

Computation of time

51. Where anything under 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.
52. Where, by reason of the operation of rule 14 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.
