

DECISION OF THE EFTA-COLOMBIA JOINT COMMITTEE

No. 2 of 2014

(Adopted on 7 November 2014)

ESTABLISHING THE 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 Republic of Colombia (hereinafter referred to as “Colombia”), on the other, signed in Geneva on 25 November 2008, (hereinafter referred to as “the Agreement”),

Noting that paragraph 2 of Article 12.11 of the Agreement provides that the EFTA-Colombia Joint Committee shall adopt the Model Rules of Procedure, within six months following the date of entry into force of the Agreement,

DECIDES:

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 on the date of its adoption.

MODEL RULES OF PROCEDURE FOR THE ARBITRATION PANEL

Article 1

Applicability

The following rules of procedure are established in accordance with Article 12.11 of the Agreement and apply to dispute settlement proceedings under Chapter 12 of the Agreement unless the disputing Parties otherwise agree.

SECTION I

ARBITRATORS

Article 2

Self-Disclosure Obligations for Candidates

1. A candidate shall disclose in writing to the disputing Parties any interest, relationship or matter that is likely to affect or give rise to justifiable doubts as to the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and circumstances.
2. Candidates shall always disclose in writing to the disputing Parties:
 - (a) any personal financial interest or any financial interest of their employer, partner, business associate or family member:
 - (i) in the arbitration panel proceedings or their outcome; and
 - (ii) in administrative proceedings, domestic court proceedings, other arbitration panel proceedings or any other proceedings, that involve issues under consideration in the arbitration panel proceedings at hand;
 - (b) past or existing financial, business, professional, family or social relationship with any interested party in the proceedings or its representatives or advisors, or any such relationship involving a candidate's employer, partner, business associate or family member; and
 - (c) public advocacy or legal or other representation concerning an issue in dispute in the arbitration panel proceedings or involving the same goods or services.

Article 3

Standards of Conduct

1. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously, and with fairness and diligence, throughout the course of the arbitration panel proceedings.
2. An arbitrator shall consider only those issues that are raised in the proceedings and that are necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be, or appear to be, influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party to the dispute or fear of criticism.
4. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
5. Once appointed, an arbitrator shall disclose information referred to in Article 2 to the disputing Parties, unless they have already been informed of these circumstances. Throughout the arbitration panel proceedings, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to under Article 2 herein and shall disclose them in writing to the disputing Parties.
6. Any Party or arbitrator who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by an arbitrator which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time submit such evidence to the arbitration panel and the disputing Parties in a written statement specifying the relevant facts and circumstances.

SECTION II

PROCEEDINGS

Article 4

Operation of Arbitration Panel

1. The chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the chair the authority to make administrative and procedural decisions related to the arbitration panel proceedings. The chair shall be responsible for organising the proceedings, in particular the hearings, unless otherwise agreed by the disputing Parties.

2. Except as otherwise provided in these rules, the arbitration panel may conduct its activities by any means, including telephone, facsimile, computer links, video conferencing or e-mails.
3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may, in consultation with the disputing Parties, permit its assistants, administrative staff, interpreters and translators to be present during such deliberations.
4. The drafting of any decision or ruling shall remain the exclusive responsibility of the arbitration panel.
5. Where a procedural question arises that is not covered by these rules, an arbitration panel may adopt an appropriate procedure that is consistent with the Agreement.

Article 5

Commencing the Arbitration

1. Unless the disputing Parties otherwise agree, they shall meet with the arbitration panel within 15 days following the establishment of the arbitration panel in order to discuss such matters pertaining to the panel proceedings as the disputing Parties or the arbitration panel deem appropriate, including the administration of and the timetable for the arbitration panel proceedings, procedures for the hearing and the remuneration and expenses that shall be paid to the arbitrators.
2. The arbitration panel shall, as soon as practicable and whenever possible within five days after the meeting with the disputing Parties, determine the timetable for the arbitration panel proceedings. Such determination shall not result in an unnecessary delay of the proceedings.

Article 6

Written Submissions

1. Each disputing Party shall have the right to provide initial and rebuttal written submissions.
2. A disputing Party may at any time correct minor errors of a clerical nature in any written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.
3. If the last day for delivery of a document falls on a legal holiday observed by a Party to the dispute or on any other day on which the government offices of that Party are closed by order of the government or by force majeure, the document may be delivered on the next business day.

Article 7

Hearing

1. Each disputing Party shall have the right to at least one hearing before the panel. The arbitration panel may decide to convene additional hearings.
2. The hearings shall be held in Washington D.C., unless otherwise agreed by the disputing Parties.
3. Unless the disputing Parties agree otherwise, the chair shall determine the date and time of the hearing in consultation with the disputing Parties and the other members of the arbitration panel. The disputing Parties shall be notified in writing thereof.
4. The hearing of the arbitration panel shall be open to the public, unless the disputing Parties agree otherwise.
5. All arbitrators shall be present at all hearings.
6. No later than five days before the date of a hearing, each disputing Party shall deliver to the other disputing Party and the arbitration panel a list of the names of its representatives or advisers who will be attending the hearing together with a list of any witnesses that will participate.
7. The arbitration panel may decide to hold any part of the hearing in closed session if the disputing Parties so agree. In such cases, the following persons may attend:
 - (a) representatives of a disputing Party;
 - (b) advisors of a disputing Party;
 - (c) necessary personnel to assist in the arbitration panel proceedings, including interpreters, translators court reporters and arbitrators' assistants; and
 - (d) arbitrators' assistants.
8. The hearings shall be conducted so that the complaining Party and the Party complained against are afforded equal time. In addition to presenting their arguments, they shall be offered the possibility of presenting rebuttal arguments.
9. 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 disputing Parties.
10. Within 15 days after the date of the hearing, each disputing Party may deliver a supplementary written statement responding to any matter that arose during the hearing.

Article 8

No ex parte Communication

1. The arbitration panel shall not meet or discuss matters under consideration with a disputing Party in the absence of the other disputing Party.
2. No arbitrator shall discuss matters under consideration with any or all disputing Parties in the absence of the other arbitrators.

Article 9

Questions in Writing

1. The arbitration panel may at any time during the arbitration panel proceedings address questions in writing to the disputing Parties.
2. Each of the disputing Parties shall receive a copy of any questions put by the arbitration panel and the written responses thereto.
3. The disputing Party that was not the addressee of the questions shall be given the opportunity to provide written comments on the other disputing Party's reply within ten days after the date of receipt.

Article 10

Resignation Removal or Inability to act of Arbitrators

If an arbitrator resigns, is removed or is unable to act, the arbitration panel shall, after the appointment of a new arbitrator and after consulting the disputing Parties, decide on any necessary modifications to their working procedures or timetable, including whether a hearing should be repeated in whole or in part.

Article 11

Procedural or Administrative Adjustments

Unless otherwise agreed by the disputing Parties, an arbitration panel may, in consultation with the disputing Parties, modify any time period established pursuant to Chapter 12 of the Agreement and these rules and make such other procedural or administrative adjustments as may be required in the arbitration panel proceedings. Prior to the consultation with the disputing Parties, the arbitration panel shall inform the disputing Parties of the reasons for the modification or adjustment with an indication of the period or adjustment needed.

SECTION III
GENERAL PROVISIONS

Article 12

Notifications

1. A written submission, request, notice or other document shall be considered received when it has been delivered against receipt, registered post, courier, facsimile, electronic transmission or any other means of communication that provides a record of the receipt thereof.
2. A Party's written communications shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other Party to the dispute. A copy of the written communication shall be provided in electronic format.
3. Minor errors of a clerical nature in any written submission, request, notice or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

Article 13

Confidentiality

1. The disputing Parties, the arbitrators and any other individuals involved, such as experts, interpreters and translators, in the arbitration proceedings shall treat as confidential any information submitted to the arbitration panel and designated as confidential.
2. During open hearings and where a disputing Party runs the risk of disclosing confidential information, adequate measures shall be adopted by the arbitration panel to maintain the confidentiality of such information.
3. Where a disputing Party to the dispute submits a confidential version of its written submissions to the arbitration panel it shall, at the request of the other Party to the dispute, also provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Nothing in these rules shall preclude any disputing Party from disclosing statements of its own positions to the public.

Article 14

Third Party Participation

These rules shall apply *mutatis mutandis* to any Party participating in the arbitration panel proceedings pursuant to Article 12.7 of the Agreement, unless otherwise specified in the Agreement or these rules.

Article 15

Language

1. The initial and final reports of the arbitration panel shall be in English.
2. In presenting oral arguments the disputing Parties have the right to use either their own language or English.
3. Written submissions shall be in English with a Spanish translation or in Spanish with an English translation.

Article 16

Calculation of Time Periods

1. All time periods laid down in Chapter 12 of the Agreement and these rules shall be calculated from the day following the day when the communication is received. If the last day of such period is an official holiday or a non-working day in the Party to which the communication is addressed, the period is extended to the next working day. The disputing Parties shall inform each other of their respective official holidays and non-working days when commencing the arbitration.
2. Where a disputing Party receives a document on a date other than the date on which the same document is received by the other disputing Party, a time period depending on such receipt shall be calculated from the later date.

Article 17

Experts

1. At the request of a disputing Party or on its own initiative, the arbitration panel may seek information and technical advice from any individual or body which it deems appropriate. The disputing Parties shall be informed in writing thereof.
2. Any information or technical advice so obtained shall be submitted to the disputing Parties, who shall be offered the opportunity to comment on such information or technical advice.

Article 18

Costs

1. Each disputing party shall bear the cost for the translation of its written submissions, its administration costs and its other costs related to the preparation and the carrying out of the proceedings.
 2. Unless the arbitration panel decides otherwise, *inter alia* because of the particulars of the case and other circumstances that may be deemed relevant, all other costs, including the costs for the panellists and the administrative costs for the oral hearings including interpretation, shall be borne by the disputing Parties in equal shares.
 3. The fees of the arbitration panel shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
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