

ANNEX 48**RULES OF PROCEDURE FOR DISPUTE SETTLEMENT****I. Definitions**

1. For the purposes of Title I of Part Six of this Agreement and of these Rules of Procedure, the following definitions apply:
 - (a) "administrative staff", in respect of an arbitrator, means individuals under the direction and control of an arbitrator, other than assistants;
 - (b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the arbitration proceedings;
 - (c) "arbitration tribunal" means a tribunal established under Article 740 of this Agreement;
 - (d) "arbitrator" means a member of the arbitration tribunal;
 - (e) "assistant" means an individual who, under the terms of appointment and under the direction and control of an arbitrator, conducts research or provides assistance to that arbitrator;

- (f) "complaining Party" means any Party that requests the establishment of an arbitration tribunal under Article 739 of this Agreement;
- (g) "registry" means an external body with relevant expertise appointed by the Parties to provide administrative support for the proceedings;
- (h) "respondent Party" means the Party that is alleged to be in violation of the covered provisions; and
- (i) "representative of a Party" means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement or any supplementing agreement.

II. Notifications

- 2. Any request, notice, written submission or other document of:
 - (a) the arbitration tribunal shall be sent to both Parties at the same time;
 - (b) a Party, which is addressed to the arbitration tribunal, shall be copied to the other Party at the same time; and
 - (c) a Party, which is addressed to the other Party, shall be copied to the arbitration tribunal at the same time, as appropriate.

3. Any notification referred to in rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
4. All notifications shall be addressed to the Legal Service of the European Commission and to the Legal Adviser of the Foreign, Commonwealth & Development Office of the United Kingdom, respectively.
5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration tribunal proceedings may be corrected by delivery of a new document clearly indicating the changes.
6. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the government of the United Kingdom, the time period for the delivery of the document shall end on the first following working day.

III. Appointment of arbitrators

7. If pursuant to Article 740 of this Agreement, an arbitrator is selected by lot, the co-chair of the Partnership Council of the complaining Party shall promptly inform the co-chair of the respondent Party of the date, time and venue of the lot. The respondent Party may, if it so chooses, be present during the lot. In any event, the lot shall be carried out with the Party or Parties that are present.

8. The co-chair of the complaining Party shall notify, in writing, each individual who has been selected to serve as an arbitrator of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment.
9. The co-chair of the Partnership Council of the complaining Party shall select by lot the arbitrator or chairperson, within five days from the expiry of the time period referred to in Article 740(2) of this Agreement, if any of the sub-lists referred in Article 752(1) of this Agreement:
 - (a) is not established, amongst those individuals who have been formally proposed by one or both Parties for the establishment of that particular sub-list; or
 - (b) no longer contains at least five individuals, amongst those individuals who remain on that particular sub-list.
10. The Parties may appoint a registry to assist in the organisation and conduct of specific dispute settlement proceedings on the basis of ad-hoc arrangements or on the basis of arrangements adopted by the Partnership Council pursuant to Article 759 of this Agreement. To that end, the Partnership Council shall consider no later than 180 days after the entry into force of this Agreement whether there are any necessary amendments to these Rules of Procedure.

IV. Organisational Meeting

11. Unless the Parties agree otherwise, they shall meet the arbitration tribunal within seven days of its establishment in order to determine such matters that the Parties or the arbitration tribunal deem to be appropriate, including:
- (a) if not determined earlier, the remuneration and expenses to be paid to the arbitrators, which shall in any case be in accordance with WTO standards;
 - (b) the remuneration to be paid to assistants; the total amount of the remuneration of an assistant or assistants of each arbitrator shall not exceed 50 % of the remuneration of that arbitrator;
 - (c) the timetable of the proceedings; and
 - (d) ad-hoc procedures to protect confidential information.

Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.

V. Written Submissions

12. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the arbitration tribunal. The respondent Party shall deliver its written submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

VI. Operation of the arbitration tribunal

13. The chairperson of the arbitration tribunal shall preside at all its meetings. The arbitration tribunal may delegate to the chairperson the authority to make administrative and procedural decisions.
14. Unless otherwise provided in Title I of Part Six of this Agreement or in these Rules of Procedure, the arbitration tribunal may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
15. Only arbitrators may take part in the deliberations of the arbitration tribunal, but the arbitration tribunal may permit their assistants to be present at its deliberations.
16. The drafting of any ruling, decision and report shall remain the exclusive responsibility of the arbitration tribunal and shall not be delegated.
17. Where a procedural question arises that is not covered by Title I of Part Six of this Agreement and its Annexes, the arbitration tribunal, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
18. When the arbitration tribunal considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Title I of Part Six of this Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consultation of the Parties, of the reasons for the change or adjustment and of the time period or adjustment needed.

VII. Replacement

19. When a Party considers that an arbitrator does not comply with the requirements of Annex 49 and for that reason should be replaced, that Party shall notify the other Party within 15 days from when it obtained sufficient evidence of the arbitrator's alleged failure to comply with the requirements of that Annex.
20. The Parties shall consult within 15 days of the notification referred to in rule 19. They shall inform the arbitrator of his or her alleged failure and they may request the arbitrator to take steps to ameliorate the failure. They may also, if they so agree, remove the arbitrator and select a new arbitrator in accordance with Article 740 of this Agreement.
21. If the Parties fail to agree on the need to replace the arbitrator, other than the chairperson of the arbitration tribunal, either Party may request that this matter be referred to the chairperson of the arbitration tribunal, whose decision shall be final.

If the chairperson of the arbitration tribunal finds that the arbitrator does not comply with the requirements of Annex 49, the new arbitrator shall be selected in accordance with Article 740 of this Agreement.

22. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons established under Article 752 of this Agreement. His or her name shall be drawn by lot by the co-chair of the Partnership Council from the requesting Party, or the chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final.

If this person finds that the chairperson does not comply with the requirements of Annex 49, the new chairperson shall be selected in accordance with Article 740 of this Agreement.

VIII. Hearings

23. On the basis of the timetable determined pursuant to rule 11, after consulting with the Parties and the other arbitrators, the chairperson of the arbitration tribunal shall notify the Parties of the date, time and venue of the hearing. That information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public.
24. Unless the Parties agree otherwise, the hearing shall be held in London if the complaining Party is the Union and in Brussels if the complaining Party is the United Kingdom. The respondent Party shall bear the expenses derived from the logistical administration of the hearing.
25. The arbitration tribunal may convene additional hearings if the Parties so agree.
26. All arbitrators shall be present during the entirety of the hearing.
27. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:
 - (a) representatives of a Party;
 - (b) advisers;

- (c) assistants and administrative staff;
- (d) interpreters, translators and court reporters of the arbitration tribunal; and
- (e) experts, as decided by the arbitration tribunal pursuant to Article 751(2) of this Agreement.

28. No later than five days before the date of a hearing, each Party shall deliver to the arbitration tribunal and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.
29. The arbitration tribunal shall conduct the hearing in the following manner, ensuring that the complaining Party and the respondent Party are afforded equal time in both argument and rebuttal argument:

Argument

- (a) argument of the complaining Party;
- (b) argument of the respondent Party.

Rebuttal Argument

- (a) reply of the complaining Party;

(b) counter-reply of the respondent Party.

30. The arbitration tribunal may direct questions to either Party at any time during the hearing.
31. The arbitration tribunal shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the arbitration tribunal may consider those comments.
32. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 10 days after the date of the hearing.

IX. Questions in Writing

33. The arbitration tribunal may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
34. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the arbitration tribunal. The other Party shall have an opportunity to provide comments in writing on the Party's responses within five days after the delivery of such copy.

X. Confidentiality

35. Each Party and the arbitration tribunal shall treat as confidential any information submitted by the other Party to the arbitration tribunal that the other Party has designated as confidential. When a Party submits to the arbitration tribunal a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information which shall be disclosed to the public.
36. Nothing in these Rules of Procedure shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.
37. The arbitration tribunal shall hold the relevant parts of the session in private when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the arbitration tribunal hearings when the hearings are held in closed session.

XI. *Ex parte* contacts

38. The arbitration tribunal shall not meet or communicate with a Party in the absence of the other Party.
39. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

XII. *Amicus curiae* submissions

40. Unless the Parties agree otherwise within five days of the date of the establishment of the arbitration tribunal, the arbitration tribunal may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party that are independent from the governments of the Parties, provided that they:
- (a) are received by the arbitration tribunal within 10 days of the date of the establishment of the arbitration tribunal;
 - (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
 - (c) are directly relevant to a factual or a legal issue under consideration by the arbitration tribunal;
 - (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives and its source of financing;
 - (e) specify the nature of the interest that the person has in the arbitration proceedings; and
 - (f) are drafted in English.

41. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 10 days of the delivery, to the arbitration tribunal.
42. The arbitration tribunal shall list in its report all the submissions it has received pursuant to rule 40. The arbitration tribunal shall not be obliged to address in its report the arguments made in such submissions, however, if it does, it shall also take into account any comments made by the Parties pursuant to rule 41.

XIII. Urgent cases

43. In cases of urgency referred to in Article 744 of this Agreement, the arbitration tribunal, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure. The arbitration tribunal shall notify the Parties of such adjustments.

XIV. Translation and interpretation

44. The language of proceedings before the arbitration tribunal shall be English. Rulings, reports and decisions of the arbitration tribunal shall be issued in English.
45. Each party shall bear its own costs of the translation of any documents submitted to the arbitration tribunal which are not originally drafted in English, as well as any costs relating to interpretation during the hearing related to its representatives or advisers.

XV. Other Procedures

46. The time periods laid down in these Rules of Procedure shall be adjusted in accordance with the special time periods provided for the adoption of a report or decision by the arbitration tribunal in the proceedings provided for in Articles 747 to 750 of this Agreement.
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