

ANNEX 12-1 CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS

Definitions

1. For the purposes of Chapter 12 (Dispute Settlement):

proceeding, unless otherwise specified, means an Arbitration Panel proceeding under Chapter 12 (Dispute Settlement); and

staff, in respect of an arbitrator, means persons under the direction and control of the arbitrator.

Responsibilities to the Process

2. Every arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former arbitrators must comply with the obligations established in paragraphs 16, 17, 18 and 19.

Disclosure Obligations

3. Prior to confirmation of his or her selection as an arbitrator under Article 12.8 (Composition and Establishment of the Arbitration Panel), the arbitrator shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, the arbitrator shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Annex and shall disclose them. The obligation to disclose is a continuing duty which requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the proceeding. The arbitrator shall disclose such interests, relationships and matters by communicating them in writing to the Joint Committee for consideration by the Parties.

Duties

5. Upon selection, an arbitrator shall perform an arbitrator's duties thoroughly and expeditiously throughout the course of the proceeding.
6. An arbitrator shall carry out all duties fairly and diligently.
7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a decision and shall not delegate the duty to decide to any other person.
8. An arbitrator shall take all reasonable steps to ensure that the arbitrator's staff comply with paragraphs 2, 3, 4, 17, 18 and 19 of this Annex.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

10. An arbitrator shall not communicate matters concerning actual or potential violations of this Annex unless the communication is made to the Joint Committee in order to ascertain whether that arbitrator has violated or may violate this Annex.

Independence and Impartiality of Arbitrators

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

12. 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 the arbitrator's duties.

13. An arbitrator shall not use his or her position on the Arbitration Panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator.

14. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgement.

15. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Arbitrators

16. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the Arbitration Panel.

Confidentiality

17. An arbitrator or former arbitrator shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

18. An arbitrator shall not disclose an Arbitration Panel ruling or parts thereof prior to its publication.

19. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an Arbitration Panel, or any arbitrator's view.

Responsibilities of Staff

20. Paragraphs 2, 3, 4, 16, 17, 18 and 19 of this Annex shall apply also, *mutatis mutandis*, to staff.

ANNEX 12-2

RULES OF PROCEDURE FOR ARBITRATION

Definitions

1. For the purposes of Chapter 12 (Dispute Settlement):

advisor means a person retained by a Party to advise or assist that Party in connection with the Arbitration Panel proceeding;

Arbitration Panel means a panel established under Article 12.8 (Composition and Establishment of Arbitration Panel);

arbitrator means a member of an Arbitration Panel established under Article 12.8 (Composition and Establishment of Arbitration Panel);

complaining Party means a Party that requests consultation under Article 12.4 (Consultations);

Party complained against means the Party to which a request for consultation is made under Article 12.4 (Consultations); and

representative of a Party means any person appointed by a Party.

Logistical Administration

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 submission or other document delivered by either Party or the Arbitration Panel shall be transmitted by delivery against acknowledgment of receipt, registered post, courier, facsimile transmission 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 the Ministry of Economy of the Republic of Turkey or its successor and to the Ministry of International Trade and Industry of Malaysia or its successor, respectively.

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 either Party, the document may be delivered on the next business day.

Preliminary Session

8. Unless the Parties otherwise agree, they shall meet with the Arbitration Panel within seven days of 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.

9. In this session, at the request of either Party, the Arbitration Panel shall decide, whether the matter is urgent.

First Submissions

10. Unless Parties otherwise agree, the complaining Party shall deliver its first written submission no later than 21 days after the date of establishment of the Arbitration Panel. The Party complained against shall deliver its written counter-submission no later than 25 days after the date of delivery of the first written submission.

Operation of Arbitration Panels

11. The chairperson of the Arbitration Panel shall preside at all of its meetings. An Arbitration Panel may delegate to the chairperson authority to make administrative and procedural decisions.

12. Except as otherwise provided in this Agreement, the Arbitration Panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

13. Only arbitrators may take part in the deliberations of the Arbitration Panel. The drafting of any decision and ruling shall remain the exclusive responsibility of the Arbitration Panel and shall not be delegated.

14. Where a procedural question arises that is not covered by this Agreement, the Arbitration Panel may adopt an appropriate procedure, in consultation with the Parties, 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. Unless the Parties otherwise agree, at least one hearing but not more than two shall be held. The chairperson 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.

17. Unless the Parties otherwise agree, the hearing shall be held in Kuala Lumpur where the complaining Party is the Republic of Turkey, or in Ankara, where the

complaining Party is Malaysia.

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

19. Representatives of a Party, advisors to a Party, administration staff, interpreters, translators and rapporteurs may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Only the representative(s) and advisor(s) of a Party may address the Arbitration Panel.

20. No later than five days before the date of a hearing, each Party shall deliver to the Arbitration Panel 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 advisors who will be attending the hearing.

21. The hearings of the Arbitration Panels shall be closed to the public. The Parties may decide to open the hearings partially or completely to the public. The Arbitration Panel shall meet in closed sessions when the submissions and arguments of a Party contain business confidential information.

22. 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; and
- (b) argument of the Party complained against.

rebuttal argument

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

23. The Arbitration Panel may direct questions to either Party at any time during a hearing.

24. 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.

25. Within 10 days of the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arises during the hearing.

Questions in Writing

26. The Arbitration Panel may at any time during the proceedings address questions in writing to a Party or both Parties. The Arbitration Panel shall deliver the written questions to the Party whom the questions are addressed and shall send a copy of them to the other Party.

27. 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 of the date of delivery.

Ex Parte Contacts

28. The Arbitration Panel shall not meet or contact a Party in the absence of the other Party.

29. 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.

Suspension of Time Periods on Request of Technical Advice

30. The Arbitration Panel, consulting with the Parties and technical experts determine the time period that the technical experts are to submit their opinion or advice. If the technical experts cannot submit their opinions or advice within the period established pursuant to the first sentence of this paragraph, the Arbitration Panel, consulting with the Parties may give additional time to technical experts. In no case this additional period exceeds the half of the period established pursuant to the first sentence of this paragraph.

31. 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.

Translation and Interpretation

32. The common working language for the proceedings of the Arbitration Panel shall be English. If a Party decides to use interpretation during the proceedings, the arrangement and the cost shall be borne by that Party.

33. Any document submitted for use in any proceedings pursuant to this Chapter shall be in English. If any original document is not in English, the Party submitting it for use in the proceedings shall provide a translation of that document.

Computation of Time

34. All time periods laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

35. Where, by reason of the operation of paragraph 7 of this Annex, 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

36. If an Arbitration Panel is established for the purposes of Articles 12.13 (Implementation) and 12.15 (Review), the Party making a request under these Articles shall deliver its first written submission within 10 days of the date the request is submitted, and the responding Party shall deliver its written counter-submission within 15 days of the date of delivery of the first written submission.

37. 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 Articles 12.13 (Implementation) and 12.15 (Review) and this Annex.

38. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 12.13 (Implementation) and 12.15 (Review).