

ANNEX IX

REFERRED TO IN PARAGRAPH 1 OF ARTICLE 109

RULES OF PROCEDURE OF AN ARBITRAL PANEL

Annex IX

Rules of Procedure of the Arbitral Panel

General provisions

1. For the purposes of this Agreement and Chapter 11:
 - (a) “arbitral panel” means an arbitral panel established pursuant to Article 109;
 - (b) “complaining Party” means a Party that requests the establishment of an arbitral panel under Article 109; and
 - (c) “responding Party” means a Party that has been complained against pursuant to Article 109.

Notifications

2. Any request, notice, written submissions or other document shall be delivered by either Party or the arbitral 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.
3. A Party shall provide a copy of each of its written submissions to the other Party and to each of the panelists. A copy of the document shall also be provided in electronic format.
4. All notifications shall be made and delivered to each Party.
5. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitral panel proceeding 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 legal holiday of a Party, the document may be delivered on the next business day.

Commencing the arbitration

7. Unless the Parties otherwise agree, they shall meet with the arbitral panel within 15 days following the composition of the arbitral panel in order to determine such matters that the Parties or the arbitral panel deems appropriate.

Initial submissions

8. The complaining Party shall deliver its initial written submission no later than 20 days after the composition of the arbitral panel. The responding Party shall deliver its written counter-submission no later than 30 days after the date of delivery of the initial written submission. The arbitration panel shall, after inviting the views of the Parties to the dispute, decide which further written submission shall be required from the Parties to the dispute or may be presented by them and shall fix the period of time communicating such statements.

Operation of arbitral panels

9. The chair of the arbitral panel shall preside at all of its meetings.
10. Except as otherwise provided in these rules, the arbitral panel may conduct its activities by any appropriate means, including telephone, facsimile transmissions or computer links.
11. Only panelists may take part in the deliberations of the arbitral panel.
12. The drafting of the report shall remain the exclusive responsibility of the arbitral panel.
13. Where a procedural question arises that is not covered by these rules, an arbitral panel may adopt an appropriate procedure that is not inconsistent with this Agreement.
14. When the arbitral 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 and, following consultations with the Parties, indicate the period or adjustment needed.

Hearings

15. The Chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitral panel. The Chair shall notify in writing to the Parties of the date, time and location of the hearing. Unless either of the Parties disagrees, the arbitral panel may decide not to convene a hearing.
16. Unless the Parties otherwise agree, the hearing shall be held in the responding Party's territory. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organization of hearings, unless otherwise agreed.
17. The arbitral panel may convene additional hearings if the Parties so agree.
18. All panelists shall be present at hearings.
19. No later than five days before the date of a hearing, each Party shall deliver a list of the names of those representatives and advisors who will be attending the hearing.
20. The hearings of the arbitral panel shall be held in closed sessions.
21. The arbitral panel may direct questions to either Party at any time during a hearing.
22. Within 30 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

23. The arbitral panel may at any time during the proceedings address questions in writing to one or both Parties. The arbitral panel shall deliver the written questions to the Party to whom the questions are addressed.

24. A Party to whom the arbitral panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitral panel. Each Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

Confidentiality

25. The Parties shall maintain the confidentiality of the arbitral panel's hearings. Each Party shall treat as confidential the information submitted by the other Party to the arbitral panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral 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 is received, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public, provided that adequate measures are taken to maintain the confidentiality of the other Party's submission.

Ex parte contacts

26. The arbitral panel shall not meet or contact a Party in the absence of the other Party.

27. Neither Party may contact any panelist in relation to the dispute in the absence of the other Party or other panelists.

28. No panelist may discuss any aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other panelists.

Working language

29. The working language of the dispute settlement proceedings shall be English.

30. Written submissions, documents, oral arguments or presentations at the hearings, the initial and final report of the arbitral panel, as well as all other written or oral communications between the Parties and the arbitral panel, shall be conducted in the working language.

Computation of time

31. Where anything under this Agreement or these rules is to be done, or the arbitral 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.