

## ANNEX 14-B

### RULES OF PROCEDURE FOR ARBITRATION

#### ARTICLE 1: GENERAL PROVISIONS

1. For the purposes of Chapter Fourteen and this Annex:

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

**arbitrator** means a member of an arbitration panel established under Article 14.5;

**assistant** means a person who, under the terms of appointment of an arbitrator, conducts researches or provides assistance;

**representative of a Party** means an employee of, or any person appointed by, a government or a government department of a Party according to its law;

**complaining Party** means any Party that requests the establishment of an arbitration panel under Article 14.4;

**Party complained against** means the Party that is alleged to be in violation of the provisions referred to in Article 14.2;

**arbitration panel** means a panel established under Article 14.5; and

**day** means a calendar day.

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. The Parties shall share the expenses derived from organisational matters, including the expenses of the arbitrators.

#### ARTICLE 2: NOTIFICATIONS

1. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document 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.

2. 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.

3. All notifications shall be addressed to the Ministry of Foreign Affairs and Trade of Korea, or its successor and to the Directorate-General for Trade of the European Commission, respectively.

4. 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.

5. If the last day for delivery of a document falls on a legal holiday of Korea or the European Union, the document may be delivered on the next business day.

#### ARTICLE 3: COMMENCING THE ARBITRATION

1. (a) If pursuant to Article 14.5, the members of the arbitration panel are selected by lot, the chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in Article 14.5.3. The selection shall be done in the presence of a representative of each Party unless a Party fails to appoint its representative.

(b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters as the Parties or the arbitration panel deems appropriate, including the remuneration and expenses to be paid to the arbitrators, which will be in accordance with WTO standards.

2. (a) Unless the Parties agree otherwise, within five days from the date of establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

“to examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 14.2 and to make a ruling in accordance with Article 14.7.”

(b) The Parties must notify the agreed terms of reference to the arbitration panel within two days of their agreement.

#### ARTICLE 4: INITIAL SUBMISSIONS

The complaining Party shall deliver its initial written submission no later than 20 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.

## ARTICLE 5: WORKING OF ARBITRATION PANELS

1. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.
2. Unless otherwise provided for in this Agreement, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
4. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.
5. Where a procedural question arises that is not covered by the provisions of this Agreement, an arbitration panel may adopt an appropriate procedure that is compatible with those provisions.
6. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed. The time limits of Article 14.7.2 shall not be modified.

## ARTICLE 6: REPLACEMENT

1. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 14.5.3.
2. Where a Party considers that an arbitrator does not comply with the requirements of Annex 14-C and for this reason should be replaced, the Party should notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of Annex 14-C.
3. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of Annex 14-C, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 14.5.3.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If the chairperson finds that an arbitrator does not comply with the requirements of Annex 14-C, he or she shall select a new arbitrator by lot among the pool of individuals referred to under Article 14.18.1 of which the original arbitrator was a member. If the original arbitrator was chosen by the Parties pursuant to Article 14.5.2, the replacement shall be selected by lot among the pool of individuals that have been proposed by the complaining Party and by the Party complained against under Article 14.18.1.

4. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of Annex 14-C, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 14.5.3.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals selected to act as chairpersons under Article 14.18.1. His or her name shall be drawn by lot by the chair of the Trade Committee, or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson does not comply with the requirements of Annex 14-C, he or she shall select a new chairperson by lot among the remaining pool of individuals referred to under Article 14.18.1 who may act as chairperson.

5. Any selection by lot provided for in paragraphs 1, 3 and 4 shall be done in the presence of a representative of each Party unless a Party fails to appoint its representative, and within five days of the date of the submission of the request.

6. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in paragraphs 1 through 4.

#### ARTICLE 7: HEARINGS

1. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public. Unless the Parties disagree, the arbitration panel may decide not to convene a hearing.

2. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Korea and in Seoul if the complaining Party is the EU Party.

3. The arbitration panel may convene additional hearings if the Parties so agree.

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

5. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

6. 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 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.

7. The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public. The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential commercial information.

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

9. The arbitration panel may direct questions to either Party at any time during the hearing.

10. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

11. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 10 days of the date of the hearing.

#### ARTICLE 8: QUESTIONS IN WRITING

1. The arbitration panel may at any time during the proceedings address questions in writing to a Party or both Parties. Each Party shall receive a copy of any questions put by the arbitration panel.

2. A Party shall also provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of delivery.

#### ARTICLE 9: CONFIDENTIALITY

The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with Article 7.7 of this Annex. Each Party and its advisers shall treat as confidential any information submitted by

the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration 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, whichever is later. Nothing in this Article 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.

#### ARTICLE 10: EX PARTE CONTACTS

1. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
2. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

#### ARTICLE 11: AMICUS CURIAE SUBMISSIONS

1. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or legal persons of the Parties, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual and legal issues under consideration by the arbitration panel.
2. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment, the nature of its activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding.
3. The arbitration panel shall list in its ruling all the submissions it has received that conform to paragraphs 1 and 2. The arbitration panel shall not be obliged to address in its ruling the factual or legal arguments made in such submissions. Any submission obtained by the arbitration panel under this Article shall be submitted to the Parties for their comments.

#### ARTICLE 12: URGENT CASES

In cases of urgency referred to in Article 14.7.2, the arbitration panel shall adjust the time limits referred to in this Annex as appropriate.

#### ARTICLE 13: TRANSLATION AND INTERPRETATION

1. During the consultations referred to in Article 14.3, and no later than the meeting referred to in Article 3.1(b) of this Annex, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

2. If the Parties are unable to agree on a common working language, each Party shall expeditiously arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party and the Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

3. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.

4. The costs incurred for translation of an arbitration panel ruling shall be borne equally by the Parties.

5. Any Party may provide comments on any translated version of a document drawn up in accordance with this Article.

#### ARTICLE 14: CALCULATION OF TIME-LIMITS

Where, by reason of the application of Article 2.5 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

#### ARTICLE 15: OTHER PROCEDURES

This Annex is also applicable to procedures established under Articles of 14.9.2, 14.10.2, 14.11.3 and 14.12.2. The time limits laid down in this Annex shall be adjusted in line with the special time limits provided for the adoption of an arbitration panel ruling in those other procedures.