

ANNEX 10-A
Rules of Procedures for Arbitration

Definitions

1. For purposes of this Chapter:

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

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

representative of a Party means any person appointed by a Party according to its domestic laws and regulations.

Logistical Administration

2. In case the arbitration panel proceedings are held in the territory of a Party, that Party shall be in charge of the logistical administration of arbitration proceedings, in particular the organization of hearings, unless otherwise agreed.

Notifications

3. Any request, notice, written submissions or other documents delivered by either Party or the arbitration panel shall be transmitted 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.

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 Trade, Industry, and Energy of Korea and, to the Ministry of Trade of Indonesia, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery¹ of a document falls on a legal holiday of either Party, the document may be delivered on the next business day.

First Submissions

8. The complaining Party shall deliver its first written submission within 30 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission within 30 days after the date of receipt of the complaining Party's first written submission.

Operation of Arbitration Panels

9. The chair of the arbitration panel shall preside at all of its meetings. The arbitration panel may delegate to the chair authority to make administrative and procedural decisions.

10. Except as otherwise provided for in this Chapter, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

11. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants of the arbitrators to be present during such deliberations.

12. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

13. Where a procedural question arises that is not covered by this Chapter, the arbitration panel, after consulting with the Parties, may adopt an appropriate procedure that is not inconsistent with this Chapter.

14. When the arbitration panel considers that there is a need to modify any time periods set out in this Chapter applicable in the proceedings, or to make any other procedural or administrative adjustment in the proceedings, it shall inform the Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

15. Unless otherwise agreed, the remuneration and expenses to be paid to the arbitrators will normally conform to WTO standards.

¹ For greater certainty, for purposes of this Annex, the delivery date is the date on which documents that have been submitted arrive at the intended place.

Hearings

16. Unless otherwise agreed, at least one hearing shall be held. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chair of the arbitration panel shall notify the Parties of the date, time and location of the hearing in writing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding, when the Parties decide to make the hearings open to the public in accordance with paragraph 21 of this Annex.

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

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

19. Representatives of a Party, advisers to a Party, experts, administration staff, interpreters, translators, court reporters, and assistants of the arbitrators may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Unless otherwise decided by the arbitration panel, only the representatives and advisers 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 representatives, advisers, interpreters and translators of that Party 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.

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 or experts 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. The Parties may comment on the transcript, and the arbitration panel will decide whether to reflect those comments.

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 the questions 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 seven days of the date of receipt.

Ex Parte Communications

28. There shall be no *ex parte* communications with the arbitration panel concerning matters under consideration by the arbitration panel.

29. No arbitrator may discuss any aspect of the subject matter of the proceedings 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 experts, may determine the time period that the experts are to submit their opinions or advice. If the 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 experts. In no case this additional period exceeds the half of the period established pursuant to 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 proceedings 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.

Amicus Curiae Submissions

32. Unless otherwise agreed, 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 juridical 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 factual and legal issues under consideration by the arbitration panel.

33. The submissions referred to in paragraph 32 shall contain a description of the person, whether natural or juridical, making the submission, including the nature of its activities and the source of its financing, and specify its nationality or place of establishment and the nature of the interest that person has in the arbitration proceedings. It shall be made in the common working language in accordance with paragraph 35.

34. The arbitration panel shall list in its ruling all the submissions that it has received and that conform to paragraphs 32 and 33. The arbitration panel shall not be obliged to address, in its ruling, the arguments made in such submissions. Any submission obtained by the arbitration panel under paragraphs 32 through 34 shall be submitted to the Parties for their comments.

Interpretation and Translation

35. Unless otherwise agreed during the consultations referred to in Article 10.5, and no later than the meeting referred to in paragraph 9 of this Annex, 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.

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

Computation of Time

37. All periods of time 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.

38. Where, by reason of the operation of paragraph 7, 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 last date of receipt of such document.

Other Proceedings

39. In accordance with paragraphs 3 and 4 of Article 10.14 and paragraphs 5 and 6 of Article 10.15, the referring Party shall deliver its first written submission within 15 days of the date the referral is made, and the Party complained against shall deliver its written counter-submission within 15 days of the date of receipt of the first written submission.

40. If appropriate, the arbitration panel shall fix the time periods 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 periods for arbitration panel proceedings set out in Articles 10.14 and 10.15 and this Annex.

41. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 10.14 and 10.15.