

ANNEX 6 – 1

RULES OF PROCEDURE FOR ARBITRATION

General provisions

1. The definitions in Chapter 6 (Dispute Settlement) shall apply to this Annex. In addition, for the purposes of this Annex and Annex 6 – 2 (Code of Conduct for Arbitrators):

- (a) **“adviser”** means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;
- (b) **“assistant”** means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;
- (c) **“candidate”** means an individual who is under consideration for selection as an arbitrator under Article 6.8 (Composition and Establishment of the Arbitration Panel);
- (d) **“representative”** means an employee or any person appointed by a government department, an agency or any other public entity of a Party who represents that Party for the purposes of a dispute under this Agreement;
- (e) **“staff”**, in respect of an arbitrator, means any person under the direction and control of the arbitrator, other than an assistant.

2. This Annex shall apply to dispute settlement proceedings under Chapter 6 (Dispute Settlement) unless the Parties agree otherwise.

3. The complaining Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed.

Notifications

4. The Parties and the arbitration panel shall transmit simultaneously to the relevant parties any request, notice, written submission or other document by e-mail, with a paper copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.

5. All notifications shall be addressed to the relevant contact points of the Parties, as designated under Article 7.2 (Contact Points).

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may, unless the other Party objects, be corrected by delivery, in accordance with Rules 4 and 5 of this Annex, of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on an official public holiday of either Party, the document shall be delivered on the next business day.

Commencing the arbitration

8. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven (7) days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators. Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.

Initial written submissions

9. The complaining Party shall deliver its written submission no later than twenty-one (21) days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written submission no later than twenty-one (21) days after the date of delivery of the complaining Party's written submission.

Working of arbitration panels

10. 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.

11. Unless otherwise provided in Chapter 6 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

12. 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.

13. It shall be the exclusive responsibility of the arbitration panel to consider all issues raised during the proceedings and draft any decision, and this responsibility shall not be delegated.

14. Where a procedural question arises that is not covered by Chapter 6 (Dispute Settlement) or Annexes 6 – 1 (Rules of Procedure for Arbitration) and 6 – 2 (Code of Conduct for Arbitrators), including in case of urgency, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

15. When the arbitration panel considers that there is a need to modify any time limit or procedure covered by Chapter 6 (Dispute Settlement) or Annexes 6 – 1 (Rules of Procedure for Arbitration) and 6 – 2 (Code of Conduct for Arbitrators), it shall inform the Parties in writing of the reasons for the modification recommended. The Parties may mutually agree to modify any time limit or procedure.

Replacement of Arbitrators

16. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 6.8 (Composition and Establishment of the Arbitration Panel).

17. Where a Party considers that an arbitrator does not comply with the requirements of paragraph 7 of Article 6.8 (Composition and Establishment of the Arbitration Panel) or Annex 6 – 2 (Code of Conduct for Arbitrators), and for this reason should be replaced, this Party should notify the other Party within fifteen (15) days from the time at which it came to know of the circumstances underlying the arbitrator's non-compliance.

18. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of paragraph 7 of Article 6.8 (Composition and Establishment of the Arbitration Panel) or Annex 6 – 2 (Code of Conduct for Arbitrators), the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 6.8 (Composition and Establishment of the Arbitration Panel).

19. 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.

20. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of paragraph 7 of Article 6.8 (Composition and Establishment of the Arbitration Panel) or Annex 6 – 2 (Code of Conduct for Arbitrators), the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 6.8 (Composition and Establishment of the Arbitration Panel).

21. If the Parties fail to agree on the need to replace the chairperson, such matter shall be referred to the Director-General of the WTO. The decision by the Director-General of the WTO on the need to replace the chairperson shall be final. In the event that the Director-General of the WTO is a national of Kazakhstan or Singapore, the Deputy Director-General of the WTO or the officer next in

seniority who is not such a national shall be requested to make the necessary determination.

22. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided in Rules 16 through 22 of this Annex.

Hearings

23. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other arbitrators, and confirm this in writing to the Parties. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

24. Unless the Parties agree otherwise, the hearing shall be held in the territory of the complaining Party.

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

26. All arbitrators shall be present during the entirety of any hearings.

27. The following persons may attend the hearing:

- (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 of and advisers to the Parties may address the arbitration panel.

28. No later than three (3) days before the date of a hearing, each Party shall deliver to the arbitration panel, and simultaneously 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 or advisers who will be attending the hearing.

29. 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:

Submissions

- (a) submission of the complaining Party;
- (b) submission of the Party complained against;

Rebuttals

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

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

31. With the agreement of the arbitration panel, a Party may submit a supplementary written submission responding to any matter that arose during the hearing. The other Party shall also be given the opportunity to provide written comments on any such supplementary written submission.

Questions in writing

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

33. Each Party shall also provide a copy of its written response to the arbitration panel's questions to the arbitration panel and simultaneously to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within seven (7) days of the date of receipt.

Confidentiality

34. The Parties and their advisers and representatives, all arbitrators, former arbitrators and their assistants and staff, and all attendees and experts at the arbitration panel hearings shall maintain the confidentiality of the hearings, the deliberations and interim panel report, and all written submissions to, and communications with, the arbitration panel. This includes any information submitted by a Party to the arbitration panel which that Party has designated as confidential. Nothing in this Annex 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.

Ex parte contacts

35. The arbitration panel shall not meet, hear or otherwise contact a Party in the absence of the other Party.

36. No arbitrator may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other arbitrators.

Language and translation

37. All proceedings pursuant to Chapter 6 (Dispute Settlement) and all communications with, documents submitted to and reports issued by the arbitration panel shall be in the English language.

38. Each Party shall bear the responsibility of preparing English-language translations of any documents that it submits during the proceedings.

Calculation of time limits

39. Where, by reason of the application of Rule 7, 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.

Other procedures

40. This Annex is also applicable to procedures set out in paragraphs 3 and 6 of Article 6.12 (Implementation of the Arbitration Panel Report), paragraph 4 of Article 6.13 (Compensation and Suspension of Concessions or Other Obligations) and paragraph 1 of Article 6.14 (Compliance Review). The time limits laid down in this Annex shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.