

Ref. 20751

21 April 2009
1 Annex

DECISION OF THE KOREA-EFTA JOINT COMMITTEE

No. 1 of 2009

(Adopted on 21 April 2009)

ADOPTION OF THE MODEL RULES OF PROCEDURE

THE JOINT COMMITTEE,

Noting that, pursuant to paragraph 1 of Article 9.6 of the Agreement, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure to be adopted by the Joint Committee; and

Having regard to paragraph 4 of Article 8.1 of the Agreement, allowing the Joint Committee to take decisions as provided for in the Agreement.

DECIDES:

1. The text set out in the Annex to this Decision entitled “Model Rules of Procedure” is adopted.
2. This Decision shall enter into force with immediate effect.
3. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.

MODEL RULES OF PROCEDURE

REFERRED TO IN PARAGRAPH 1 OF ARTICLE 9.6 OF THE FREE
TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
EFTA STATES (HEREINAFTER REFERRED TO AS "THE AGREEMENT")

Article 1

Definitions

1. For the purpose of these Model Rules of Procedure (hereinafter referred to as "Rules"):

- (a) "advisor" means any person retained by a Party to the dispute to advise or assist that Party in connection with the arbitration panel proceedings;
- (b) "assistant" means any person retained by the arbitrators to assist them in carrying out their tasks;
- (c) "candidate" means an individual who is under consideration for appointment as an arbitrator under Article 9.5 of the Agreement;
- (d) "days" means calendar days, unless otherwise specified;
- (e) "representative of a Party to the dispute" means an employee, or a natural or juridical person appointed by a Party to the dispute.

2. In the following, the terms "Party to the dispute", "complaining Party", "Party complained against" are used regardless of whether two or more Parties are involved in the dispute.

Article 2

Calculation of Periods of Time

1. All periods of time laid down in Chapter 9 and these Rules shall be calculated running from the day following the act or fact to which they refer. If the last day of such period is an official holiday or a non-working day in the State of the addressee, the period is extended until the first following working day.

2. At the beginning of the dispute settlement procedure, the Parties to the dispute shall inform each other of their respective official holidays and non-working days.

Article 3

Selection Criteria and Self-Disclosure Obligations for Candidates and Arbitrators

1. Arbitrators shall be selected from persons who fulfil the criteria set out in the first sentence of paragraph 7 of Article 9.5 of the Agreement. The arbitrators shall also have a wide spectrum of experience and specific expertise in matters relating to the dispute.

2. The arbitrators shall serve in their individual capacities and not as government representatives or representatives of any organisation.

3. A candidate shall disclose in writing to the Parties to the dispute any interest, relationship or matter that is likely to affect or give rise to justifiable doubts as to the candidate's independence or impartiality. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and circumstances.

4. Without limiting the generality of paragraph 3, candidates shall always disclose in writing to the Parties to the dispute:

- (a) any personal financial interest or any financial interest of their employer, partner, business associate or family member:
 - (i) in the arbitration panel proceedings or its outcome; and
 - (ii) in administrative proceedings, domestic court proceedings, other arbitration panel proceedings or any other proceedings, that involves issues under consideration in the arbitration panel proceedings at hand;
- (b) any past or existing financial, business, professional, family or social relationship with any interested party in the proceedings or its representatives or advisors, or any such relationship involving a candidate's employer, partner, business associate or family member; and
- (c) public advocacy or legal or other representation concerning an issue in dispute in the arbitration panel proceedings or involving the same goods or services.

Article 4

The Duties of Arbitrators

1. Upon selection an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the arbitration panel proceedings, and with fairness and diligence.

2. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraphs 3 and 4 of Article 3 and shall disclose them in writing to the Parties to the dispute. The obligation to disclose is a continuing duty which requires an arbitrator to disclose in writing to the Parties to the dispute any such interests, relationships and matters that may arise during any stage of the arbitration panel proceedings.

3. An arbitrator shall consider only those issues that are raised in the proceedings and necessary for a ruling and shall not delegate this duty to any other person.

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

5. 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 his or her duties.

6. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

7. An arbitrator shall not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

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

9. Any Party or arbitrator who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by an arbitrator which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time submit such evidence to the arbitration panel and the Parties to the dispute in a written statement specifying the relevant facts and circumstances.

Article 5

Withdrawal or Removal of Arbitrators

If an arbitrator dies, withdraws or is removed, the arbitration panel shall, after the appointment of a new arbitrator and after consulting the Parties to the dispute, decide on any necessary modifications to their working procedures or timetable, including whether a hearing should be repeated in whole or in part.

Article 6

Operation of Arbitration Panels

1. The Chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the Chair the authority to make administrative and procedural decisions related to the proceedings of the dispute at hand. The Chair shall be responsible for organizing the proceedings, in particular the organization of hearings, unless otherwise agreed by the Parties to the dispute.

2. Except as otherwise provided for in these Rules, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions, video conferences or emails.

3. Only arbitrators may take part in the deliberations of the arbitration panel but the arbitration panel may permit their assistants, administration personnel, interpreters or translators to be present during such deliberations.

4. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel.

5. Where a procedural question arises that is not covered by these Rules, the arbitration panel may adopt an appropriate procedure that is not inconsistent with this Agreement.

Article 7

Commencing the Arbitration

Unless the Parties to the dispute agree otherwise, they shall meet with the arbitration panel within 15 days following the date of its establishment in order to determine such matters that the Parties to the dispute or the arbitration panel deem appropriate, including the administration of and the timetable for the arbitration panel proceedings, deadlines for written submissions and, if not already agreed upon, the remuneration and expenses to be paid to the arbitrators, which shall normally conform to the WTO standards.

Article 8

Written Submissions

1. Unless otherwise agreed by the Parties to the dispute the complaining Party shall deliver its initial written submission no later than 25 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 35 days after the date of receipt of the initial written submission.

2. 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.

Article 9

Hearings

1. The Chair shall fix the location, date and time of a hearing in consultation with the Parties to the dispute and the other members of the arbitration panel.

2. The arbitration panel may convene additional hearings if the Parties to the dispute so agree.

3. All arbitrators shall be present at all hearings.

4. The following persons may attend hearings irrespective of whether the arbitration panel proceedings are open to the public or not:

- (a) representatives of a Party to the dispute;
- (b) advisors of a Party to the dispute;
- (c) administration personnel to assist in the arbitration panel proceedings, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

5. No later than five days before the date of a hearing, each Party to the dispute shall deliver a list of the names of the persons who will make oral arguments or presentations at the hearing on behalf of that Party to the dispute and of other representatives or advisors who will attend the hearing, together with a list of any witnesses that will participate.

6. The arbitration panel proceedings shall be conducted so that the complaining Party and the Party complained against are afforded equal time. In addition to presenting their arguments, the Parties shall be offered the possibility of presenting rebuttal arguments.

7. The arbitration panel may direct questions to any Party to the dispute or persons participating at the hearing at any time during a hearing.

8. 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 to the dispute.

9. Within 15 days after the date of the hearing, each Party to the dispute may deliver a supplementary written submission responding to any matter that arose during the hearing.

Article 10

Questions in Writing

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

2. A Party to the dispute to whom the arbitration panel addresses written questions shall deliver a copy of its written reply to the arbitration panel and to the other Parties to the dispute within a deadline fixed by the arbitration panel. Each Party to the dispute may submit written comments on the reply within ten days after the date of receipt.

Article 11

Confidentiality

1. The Parties to the dispute, the arbitrators and any other individuals involved in the arbitration proceedings shall at all times maintain the confidentiality of information disclosed during hearings held in closed session and of any information identified by a Party to the dispute as confidential.
2. In case of a public hearing and where a Party to the dispute runs the risk of disclosing confidential information, adequate measures must be adopted to maintain the confidentiality of such information.

Article 12

Ex-Parte Contacts

1. The arbitration panel shall not meet or discuss matters under consideration with a Party to the dispute in the absence of any other Party to the dispute.
2. No arbitrator may discuss matters under consideration with any or all Parties to the dispute in the absence of the other arbitrators.

Article 13

Role of Experts

On request of a Party to the dispute or on its own initiative, the arbitration panel may seek scientific information and technical advice from any natural or juridical person or body that it deems appropriate. The Parties to the dispute have to be informed in writing thereof. Any information so obtained shall be submitted to the Parties to the dispute for comments.

Article 14

Notifications

1. Any request, notice, written submissions or other document shall be considered received when it has been delivered against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the receipt thereof.
2. A Party to the dispute shall provide a copy of each of its written submissions to the other Parties to the dispute and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

3. 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.

Article 15

Language

1. The language used in the proceedings of the arbitration panel and for the panel report shall be English.
2. Each Party to the dispute shall arrange for, and bear the costs of, any translation of its submissions into the English language.
