

RULES OF PROCEDURE OF ARBITRAL TRIBUNALS

General Rules

1. These Rules of Procedure are established pursuant to Article 19.16 (Rules of Procedure) of the Agreement between Japan and Australia for an Economic Partnership (hereinafter referred to as “the Agreement”) and shall apply to arbitral tribunals established under Chapter 19 (Dispute Settlement) of the Agreement, unless the Parties otherwise agree. When a procedural question arises which is not covered by these Rules of Procedure, an arbitral tribunal may, pursuant to paragraph 2 or 3 of Article 19.16 (Rules of Procedure), adopt additional rules.
2. Terms used in Chapter 19 (Dispute Settlement) of the Agreement shall have the same meaning in these Rules of Procedure as in Chapter 19 (Dispute Settlement) of the Agreement. In addition:
 - (a) the term “administration personnel” in respect of an arbitrator means persons under the direction and control of the arbitrator other than arbitrators’ assistants;
 - (b) the term “arbitrators’ assistant” means a person who, under the terms of appointment by an arbitrator, conducts research or provides support for the arbitrator;
 - (c) the term “legal holiday” with respect to a Party means every Saturday and Sunday and any other day designated by that Party as a holiday in accordance with the laws and regulations of that Party; and
 - (d) the term “representatives of a Party” means officials of the Government of a Party and other personnel that a Party nominates as its representatives.
3. Unless the Parties otherwise agree, the Parties shall meet with the arbitral tribunal within 10 days after the date of establishment of the arbitral tribunal in order to determine the following matters:
 - (a) the administration of the proceedings, including remuneration and expenses that will be paid to the arbitrators which normally shall conform to the WTO’s approach to panellists’ expenses ; and
 - (b) such other matters that the Parties deem appropriate.
4. The date, time and venue for the meeting between the Parties and the arbitral tribunal referred to in Rule 3 shall be determined by the chair of the arbitral tribunal in consultation with the Parties and the other arbitrators.
5. If no agreement is reached between the Parties with respect to any matter referred to in Rule 3, the chair of the arbitral tribunal shall determine the matter in accordance with these Rules of Procedure and the Agreement. In any case, arbitrators’ remuneration and other costs shall be in conformity with the criteria referred to in Rule 3(a).

Code of Conduct of Arbitrators

6. Arbitrators, arbitrators' assistants and administration personnel shall comply with the Code of Conduct attached to these Rules of Procedure. Each person requested to serve as an arbitrator, arbitrators' assistant or administration personnel shall receive, at the time of the request, a copy of these Rules of Procedure including the Code of Conduct. Each person requested to serve as an arbitrator shall comply with the "Obligation of Self-Disclosure" in Section IV of the Code of Conduct, prior to his or her confirmation of appointment. The information provided by the person requested to serve as an arbitrator to the requesting Party shall be provided to the other Party:

- (a) in case where the person is requested to serve as an arbitrator other than the chair of the arbitral tribunal, upon his or her confirmation of appointment; and
- (b) in case where the person is nominated as a candidate to serve as chair of the arbitral tribunal, upon the proposal by the nominating Party to the other Party of the candidates to serve as the chair.

Timetable

7. The timetable fixed by the arbitral tribunal in accordance with paragraph 7 of Article 19.9 (Proceedings of Arbitral Tribunals) of the Agreement shall include precise deadlines for submissions by the Parties and provide sufficient time for the Parties to prepare their respective submissions. Unless the Parties otherwise agree, the order in which submissions are submitted shall be in accordance with Rule 12 and the Indicative Timetable attached to these Rules of Procedure. The Parties shall respect those deadlines.

8. The timetable referred to in Rule 7 shall provide for at least one substantive meeting and, where necessary, a subsequent substantive meeting of the arbitral tribunal with the Parties to allow each Party to present its case.

9. Any request by a Party for a preliminary ruling from the arbitral tribunal, including on jurisdictional issues, should be submitted as early as possible, and in any event no later than a Party's first written submission. Exceptions to this Rule may be granted upon showing good cause.

Written Submissions and Other Documents

10. A Party or the arbitral tribunal, respectively, shall deliver any request, notice, written submission or other document in accordance with the administration of the proceedings agreed by the Parties pursuant to Rule 3 or determined by the chair of the arbitral tribunal pursuant to Rule 5.
11. A copy of any document provided by a Party to the arbitral tribunal shall be provided at the same time to the other Party.
12. Each Party shall deliver to the arbitral tribunal its initial submission in writing setting out the facts of its case and its arguments, and shall do so within the following time limits:
 - (a) the complaining Party shall deliver its initial written submission no later than 10 days after the meeting between the Parties and the arbitral tribunal referred to in Rule 3 has concluded; and
 - (b) the Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the initial written submission of the complaining Party.
13. Minor errors of a clerical nature in any request, notice, written submission or other document related to the proceeding may be corrected by delivery of a new document clearly indicating the changes.
14. If the last day of a time limit for delivery of a document falls on a legal holiday in a Party or on any other day on which the offices of the Government of a Party are officially or by *force majeure* closed, the document may be delivered on the next working day.
15. Any request, notice, written submission or other document shall be delivered by electronic means wherever possible. A recipient of such a document shall acknowledge receipt to the sender immediately upon receiving the document.

Operation of Arbitral Tribunals

16. The chair of the arbitral tribunal shall preside at all of its meetings. The arbitral tribunal may delegate to the chair authority to make procedural decisions.
17. Except as otherwise provided for in these Rules of Procedure and the Agreement, the arbitral tribunal may perform its functions by any means, including by telephone or electronic means.
18. Only the arbitrators may participate in the deliberations of the arbitral tribunal. However, the arbitral tribunal may permit arbitrators' assistants, administration personnel, interpreters and translators to be present during its deliberations.
19. The arbitrators and any persons retained by the arbitral tribunal shall maintain the confidentiality of the arbitral tribunal proceedings, including the deliberations.

Meetings with the Parties

20. Unless otherwise provided for in the timetable pursuant to Rule 8, the chair of the arbitral tribunal shall fix the date and time of its substantive meetings with the Parties in consultation with the Parties and the other arbitrators. The Parties shall be notified in writing of the date and time of any such meetings.
21. Unless the Parties otherwise agree, the venue for the substantive meetings of the arbitral tribunal with the Parties shall be alternate between the capitals of the Parties, with the first substantive meeting to be held in the capital of the Party complained against.
22. The arbitral tribunal may convene additional substantive meetings with the Parties if the Parties so agree.
23. All arbitrators shall be present at substantive meetings with the Parties.
24. The following persons may attend substantive meetings of the arbitral tribunal with the Parties:
 - (a) representatives of the Parties;
 - (b) administration personnel, interpreters and translators of the arbitral tribunal; and
 - (c) arbitrators' assistants.
25. No later than five days before the date of a substantive meeting of the arbitral tribunal with the Parties, each Party shall deliver to the arbitral tribunal a list of the names of those persons who will make oral arguments or presentations at the substantive meeting on behalf of that Party and of other representatives who will be attending the substantive meeting.
26. At its first substantive meeting with the Parties, the arbitral tribunal shall provide an opportunity for each Party to present its case and to make a closing statement, with the complaining Party presenting first. The arbitral tribunal shall afford equal time to the complaining Party and the Party complained against.
27. Each Party shall deliver to the arbitral tribunal a rebuttal submission in writing at least 14 days before the second substantive meeting of the arbitral tribunal with the Parties.
28. At its second substantive meeting with the Parties, the arbitral tribunal shall provide an opportunity for each Party to present its rebuttal and to make a closing statement, with the Party complained against presenting first. The arbitral tribunal shall afford equal time to the Party complained against and the complaining Party.
29. The arbitral tribunal may direct questions to either Party at any time during a substantive meeting or in writing. The Parties shall respond promptly and fully to the arbitral tribunal's questions.

30. The Parties shall provide written versions of their oral statements made at a substantive meeting to the arbitral tribunal as soon as possible thereafter and, at the latest within three days after the date of the substantive meeting.

31. A transcript of each meeting of the arbitral tribunal with the Parties shall be delivered by the arbitral tribunal as soon as possible after it is prepared to the Parties, except as otherwise determined in accordance with Rule 3 or 5.

32. Within 10 days after the date of any substantive meeting of the arbitral tribunal with the Parties, each Party may deliver a supplementary written submission responding to any matter that arose during the substantive meeting.

Factual Evidence

33. A Party shall submit all factual evidence to the arbitral tribunal no later than the first substantive meeting, except with respect to evidence necessary for the purposes of rebuttals or answers to questions. Exceptions to this Rule may be granted upon showing good cause. The other Party shall be accorded a period of time for comment, as appropriate, on any new factual evidence submitted after the first substantive meeting.

Ex Parte Communications

34. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

35. The arbitral tribunal shall not meet one Party in the absence of the other Party. Any presentations and oral statements made by a Party shall be made in the presence of the other Party.

36. Except as provided for in Rule 16, no arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other arbitrators.

Language and Translation

37. Unless the Parties otherwise agree, the proceedings of the arbitral tribunal shall be conducted in English and Japanese. This shall apply to all oral and written submissions.

38. Each Party shall bear the cost of translating its own written submission into the native language of the other Party. The Parties shall bear in equal shares the costs of interpretation at a meeting of the arbitral tribunal with the Parties.

39. Unless the Parties otherwise agree, the Party in whose capital a meeting is held shall be responsible for organising interpretation services for the meeting.

Computation of Time

40. Where anything under these Rules of Procedure is to be done, or the arbitral tribunal requires anything to be done, within a number of days after or before 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.

41. Where 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 later date of receipt of such document.

Expenses

42. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings.

Attachment A

Indicative Timetable for an Arbitral Tribunal

Note 1: The following timetable is for the proceedings of an arbitral tribunal established pursuant to Article 19.6 (Establishment and Composition of Arbitral Tribunals) of the Agreement. The timetable is indicative only and may be modified to take into account the circumstances of the dispute.

Note 2: The first indicative time period (a.) runs from the next day of the date of establishment of the arbitral tribunal. Subsequent indicative time periods (b. through h.) run from the next day of the date of conclusion of the action referred to in the previous item.

Arbitral tribunal established on [insert date]:

a.	Meeting to determine the administration of the proceedings:	10 days ¹
b.	Receipt of first written submissions of the Parties:	
	1. Complaining Party	10 days ²
	2. Party complained against:	20 days ³
c.	Date of first substantive meeting with the Parties:	2-3 weeks
d.	Receipt of written rebuttals of the Parties:	3 weeks
e.	Date of second substantive meeting with the Parties:	2 weeks ⁴
f.	Issuance of draft award to the Parties:	6-8 weeks
g.	Deadline for the Parties to provide comments on the draft award:	15 days ⁵
h.	Issuance of award to the Parties:	15 days ⁶
	Total time:	23-26 weeks ⁷

¹ This period is specified in Rule 3.

² This period is specified in Rule 12(a).

³ This period is specified in Rule 12(b).

⁴ Under Rule 27, each Party shall deliver a rebuttal submission at least 14 days before the second substantive meeting.

⁵ This period is specified in paragraph 6 of Article 19.12 (Award) of the Agreement.

⁶ Under paragraph 6 of Article 19.12 (Award) of the Agreement, the draft award is submitted to the Parties at least 30 days prior to the date set for issuance of the final award.

⁷ Paragraph 6 of Article 19.9 (Proceedings of Arbitral Tribunals) of the Agreement: “The period for the arbitral tribunal proceedings, from the date of its establishment until the date on which it issues its award to the Parties, shall not exceed six months, unless the Parties otherwise agree.”

Attachment B
Code of Conduct

I. Scope

1. This Code of Conduct shall apply to each person serving as an arbitrator, arbitrator's assistant or administration personnel involved in the proceedings of an arbitral tribunal (hereinafter referred to as "covered person") established under Article 19.6 (Establishment and Composition of Arbitral Tribunals) of the Agreement.
2. Each arbitrator shall take all reasonable measures to ensure that his or her assistants or administration personnel comply with Parts IV to VII of this Code of Conduct. The Parties may agree to exempt any covered person, other than an arbitrator, from application of a part or all of this Code of Conduct.

II. Governing Principle

Each arbitrator shall be independent and impartial, and shall avoid direct or indirect conflicts of interest. Furthermore, each arbitrator and former arbitrator shall respect the confidentiality of proceedings of the arbitral tribunal. Through the observance of such standards of conduct the integrity and impartiality of dispute settlement proceedings conducted pursuant to Chapter 19 (Dispute Settlement) of the Agreement are preserved.

III. Observance of the Governing Principle

To ensure the observance of the Governing Principle of this Code of Conduct, each arbitrator is expected:

- (a) to adhere strictly to the provisions of Chapter 19 (Dispute Settlement) of the Agreement and the Rules of Procedure;
- (b) to maintain confidentiality;
- (c) to disclose the existence or development of any interest, relationship or matter that the arbitrator could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that arbitrator's independence or impartiality; and
- (d) to take due care in the performance of his or her duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

IV. Obligation of Self-Disclosure

1. Each person requested to serve as an arbitrator, at the time of the request, shall receive a copy of this Code of Conduct from the requesting Party. Any such person, prior to confirmation of his or her appointment, shall disclose in writing to the requesting Party any information relevant to the matter under dispute, such as:
 - (a) financial interests (e.g. investments, loans, shares, interests, other debts), business interests (e.g. directorship or other contractual interests) and property interests relevant to the dispute in question;
 - (b) professional interests relevant to the dispute in question (e.g. any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
 - (c) other active interests relevant to the dispute in question (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
 - (d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements); and
 - (e) employment or family interests relevant to the dispute in question (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).
2. The obligation of self-disclosure referred to in paragraph 1 shall also apply to the arbitrator after the confirmation of his or her appointment and throughout the proceedings. During the course of proceedings, the arbitrator shall disclose in writing to the Parties any information relevant to paragraph 1 when he or she becomes aware of it.
3. In meeting these disclosure requirements, personal privacy shall be respected. The application of these disclosure requirements shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve as arbitrators.

V. Performance of Duties

1. In performing his or her duties, each arbitrator shall recognise that prompt settlement of disputes is essential to the effective functioning of the Agreement.
2. An arbitrator shall carry out all duties fairly and diligently.
3. To ensure transparency and impartiality, no arbitrator may discuss any aspect of the subject matter referred to the arbitral tribunal, in the absence of either Party or in the absence of the other arbitrators.

4. An arbitrator shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the Rules of Procedure.
5. An arbitrator shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to both Parties or is necessary to ascertain whether that arbitrator has violated or may violate this Code of Conduct.

VI. Independence and Impartiality of Arbitrators

1. An arbitrator shall be independent and impartial. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment, and shall not be influenced by self-interest, outside pressure, political considerations and loyalty to a Party or fear of criticism.
2. An arbitrator shall avoid entering into any relationship or acquiring any financial interests that are likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.
3. An arbitrator shall not accept any benefit that would in any way affect, or appear to affect, the arbitrator's duties.
4. An arbitrator shall not use the arbitrator's position on the arbitral tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such position.

VII. Confidentiality

1. Each covered person shall at all times maintain the confidentiality of non-public information acquired during deliberations and proceedings of the arbitral tribunal. No covered person shall at any time use such information to gain personal advantage or advantage for others.
2. No covered person shall disclose the award of the arbitral tribunal, or make any statements on the arbitral tribunal's proceedings or the issues in dispute, until the final award is made available to the public in accordance with paragraph 7 of Article 19.12 (Award) of the Agreement.
3. A covered person shall not at any time disclose which arbitrators are associated with any majority or minority opinions in the award of the arbitral tribunal.