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The Conduct of International Arbitration

SAMUEL V. GOEKJIAN*

Today we will be discussing the conduct of an international arbitration proceeding. Arbitration is a broad and complicated field and it is going to be rather difficult, in a relatively short time, to give you an understanding of it, while avoiding confusing you by reference to the many arbitration rules and institutions that exist internationally. I will try, however, to give you a general overview of the subject and hope that, to the extent that I leave you confused, you can raise questions during the discussion period.

It is unfortunately true that there is relatively limited knowledge of international arbitration among American attorneys who are called upon to draft international contracts. One discovers this in the course of negotiating contracts on behalf of a foreign client where the other party is represented by an American lawyer. For example, earlier this week I was involved in a case where I was representing a foreign client. Counsel for the other party, an American attorney, took the position that he did not want to have an International Chamber of Commerce (ICC) arbitration, saying instead, "We want arbitration by the Swiss Court of Arbitration." Well, there is no such court. What the American attorney was in effect asking for was *ad hoc* arbitration, with the appointing authority, either of the chairman of the three-man tribunal or of the sole or single arbitrator, being the Swiss Federal Court.

One also discovers the limited nature of this knowledge when reviewing a contract at the time a dispute arises; for example, a client comes to you with a contract which you had not drafted or negotiated and says, "I have a dispute, and I want to go to arbitration. Please analyze the case and tell me what my rights are." You then discover that the arbitration clause is deficient in a number of respects: it provides for *ad hoc* arbitration without specifying an appointing authority or the applicable rules; or it provides for *ad hoc* arbitration, referring to one of the institutions as the appointing authority, without realizing that by so doing the parties may have gotten themselves into an

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institutional arbitration. I had this very experience a few years ago in a case where the agreement called for *ad hoc* arbitration, with each party appointing one arbitrator and the two arbitrators appointing the third, but if the two party arbitrators could not agree on the third arbitrator, the President of the International Chamber of Commerce would be asked to appoint the third arbitrator. The party arbitrators were in fact unable to agree on the third arbitrator, and the parties had to call on the President of the ICC to appoint him; the moment that appointment was made, it became an ICC arbitration and all of its institutional rules, including those governing costs and deposits, became applicable.

The situation is aggravated by the fact that, however limited the lawyer's knowledge may be, his client's knowledge is infinitely more limited. Laymen really do not understand the concept of international arbitration and generally think of it as a very speedy, informal, simple, and inexpensive procedure. It is none of these, and they are shocked when they discover it. The net effect of this is to turn laymen completely away from arbitration. In a recently completed and rather complex arbitration case, the award was not satisfactory to either party; as a result, we negotiated a post-award settlement agreement. The agreement was a simple one and it seemed logical to provide for *ad hoc* arbitration, before a single arbitrator, to resolve any disputes which might arise under it. The reaction of the other party was that, in the light of its experience in the original case, it would not agree to any form of arbitration, but would take the risk of court proceedings even if they turned out to be courts of a foreign country. Obviously, this was an overreaction to the problem, and arose primarily from the fact that that party's initial expectations of simple and speedy proceedings were not borne out by its actual experience in that particular international arbitration.

In most cases, arbitration is adopted because the parties cannot agree on court proceedings. Most American attorneys are even less familiar with court proceedings in foreign countries than they are with international arbitration; moreover, they tend to be suspicious of the objectivity of foreign courts, particularly of courts in developing countries. The same holds true for foreign parties and their attorneys. Consequently, each party insists upon the use of its own country's courts.

In some cases, parties will agree to submit themselves to the courts and the laws of a third country, but this raises both jurisdictional and substantive law problems, as, for example, the question

of whether the place for performance of the contract has any relationship to the country whose courts are selected. Whereas the substantive law question can be skirted, it is more difficult to avoid the jurisdictional issue.

The result of these difficulties is that the parties end up settling on arbitration, without necessarily knowing whether it offers them something better than court proceedings. My own recommendation to clients is that if agreement can be reached on court proceedings, whether in the United States, the other party's country, or in a third country, it is to be preferred to arbitration. This view is not necessarily shared by other attorneys active in arbitration (you probably find this advice rather unusual, coming as it does from a lawyer more than fifty percent of whose time is spent in arbitration); it is, however, the best advice I can give. It is, of course, subject to knowing something, however rudimentary, about the laws and court procedures of the country that is finally selected.

Essentially the same relatively superficial approach is used in selecting the type of arbitration to be utilized for the settlement of disputes. Most attorneys are unfamiliar with the many types of arbitration rules and forums that are available to them. Many of them select ICC arbitration because it is the type of arbitration that is most often mentioned. I have asked a number of lawyers why they selected ICC arbitration and whether they were aware of certain of its shortcomings. The answer I invariably received was, "It was the only one I had ever heard about, so I put it in the agreement." This is not exactly the best way to go about deciding what could be a very fundamental matter for a client.

RULES AND FORUMS FOR THE CONDUCT OF INTERNATIONAL ARBITRATION

There are a veritable plethora of rules and forums available; again, while it is not possible in one afternoon to discuss each of these in detail, I propose to mention some of the principle ones.

First of all, arbitration rules may be roughly divided into five types: (1) rules adopted and applicable on a world-wide basis;¹

1. The principal one of these is the arbitration rules adopted only two years ago by the United Nations Commission on International Trade Law, referred to as the UNCITRAL rules. These rules are interesting in two respects: they are not institutional and can be very easily utilized for *ad hoc* arbitrations; and they are as complete a set of arbitration rules as we have among the frequently used arbitration rules.

(2) rules adopted and applicable on a regional basis;² (3) rules established by national and state arbitration laws, and applicable to arbitrations taking place within the jurisdictions of such countries or states;³ (4) rules established by specialized arbitration institutions, and applicable either on a world-wide or regional basis;⁴ and (5) specialized arbitration rules and institutions, which have been established by various trade associations and exchanges, like the Coffee Exchange, and a number of international trade organizations.

Arbitration auspices or forums are usually divided into two types:⁵ (1) those arising automatically by the selection of one of the specialized arbitration institutions; and (2) those arising, in cases where non-institutional or *ad hoc* arbitration is to be utilized, by the selection of a specific place of arbitration.

Finally, there are three classifications into which institutional forums fall: (1) those operating on a world-wide basis, where the parties may be from, and the proceedings may take place in, any country;⁶ (2) those operating solely on a regional basis, where one of the parties must be from, and the proceedings must take place in, one of the countries in the region;⁷ and (3) those operating on a national basis, where, although the parties may be from any country, the arbitration takes place only in the country where the institution is located.⁸

2. These rules have generally been adopted and issued by such organizations as the Economic Commission for Europe, the Economic Commission for Asia and the Far East, and the Council for Mutual Economic Assistance; the latter are intended to apply to arbitrations involving entities from the Eastern European countries.

3. For examples of such rules, see Arbitration Act of the United Kingdom; the arbitration rules of the Swiss cantons (each of the Swiss cantons has its own arbitration laws); and the United States Arbitration Act, 8 U.S.C. §§ 1-14 (1970). In addition, many of the states of the United States have their own arbitration laws. See also the rules of such national institutions as the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter SCC Institute Rules), and the American Arbitration Association (hereinafter AAA Rules).

4. The principal one of these is the Rules of the International Chamber of Commerce Court of Arbitration (hereinafter ICC Rules). See also Rules of the International Centre for the Settlement of Investment Disputes, a World Bank-sponsored agency for settling disputes arising out of investment agreements in developing countries.

5. Sometimes the two turn out to be identical, in that when you do not use institutional arbitration rules, then you have, in effect, an *ad hoc* arbitration.

6. See ICC RULES.

7. The Inter-American Commercial Arbitration Commission (IACAC) is one of these institutions, as is the Council for Mutual Economic Assistance, which is the Eastern European grouping.

8. Examples of these are the American Arbitration Association (AAA), the Stockholm Chamber of Commerce (SCC), and the International Centre for the Set-

International arbitrations may be conducted under any combination of the above rules and forums. One can provide, for example, for an ICC arbitration in which the UNCITRAL rules, rather than the ICC rules, are to be applied by the tribunal, or *ad hoc* arbitration, in which the ICC rules are to be applied by the tribunal. We adopted the latter approach in a recent case; incidentally, we tried but failed to get the other party to agree to the use of the more complete UNCITRAL rules, and had to settle for the ICC rules, even though their use created the risk that if at some point guidance or clarification of the rules were required from the ICC, the ICC would take the position that the arbitration was no longer an *ad hoc* arbitration, but had become an ICC institutional arbitration.

THE DRAFTING OF AN ARBITRATION CLAUSE

Arbitration clauses can be either short-form or detailed. The short-form clause merely sets forth the institution under whose auspices the arbitration is to take place, and the rules that will be applicable to it, generally those of the institution. Many of the institutions, and some of the non-institutional rules, have published clauses of this type. The detailed form clause sets out the process of appointment of arbitrators, the time schedules applicable to the proceedings, and in some cases, detailed procedural rules.

The ICC model is a rather simple, short clause that says, "All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules." Note that a number of elections in this clause have been left open: the clause does not mention the place of arbitration, nor does it specify whether the applicable rule is one or three or five arbitrators.

The American Arbitration Association (AAA) model is also a very simple one, similar to that of the ICC, and says, "Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award

rendered by the arbitrator may be entered in any court having jurisdiction thereof.”⁹

The model of the Swedish Chamber of Commerce (SCC) is a bit more elaborate and requires specifying the number of members in the tribunal, the substantive law that is to be applicable, and the language in which the arbitration is to be carried out. It does not require specifying the place, because once the SCC rules are picked, the place of arbitration is automatically Stockholm.

Note that it is indispensable where *ad hoc* arbitration is selected, that is, where no specialized arbitration institution is to be utilized, that the detailed form clause be used. Many lawyers, probably as a matter of habit, use the detailed form clause even when an institution is to be utilized, although what they set out in the clause is already covered by the arbitration rules of the institution. First of all, this is unnecessary because it is covered by the rules; and second, it is very risky, because it may conflict with what the rules provide, and questions may arise later as to whether the parties intended to have an institutional arbitration or an *ad hoc* arbitration.

Before drafting the arbitration clause, a number of elections need to be made. The first of these elections is whether the arbitration proceedings should be conducted under the auspices and governed by the rules of one of the specialized arbitration institutions, and if so, which one, or as an *ad hoc* arbitration proceeding, and if so, what rules should govern. The factors to be weighed in the choice between institutional and *ad hoc* arbitration are the ease of establishing an arbitral tribunal,¹⁰ the extent of the costs,¹¹ including administrative

9. The wording “claim arising out of or relating to this contract, or the breach thereof” resolves one problem. For a long time people just wrote, “any controversy or claim arising out of this contract.” However, cases held the language “arising out of this contract” to mean that you could not claim that there was any fraud in the inducement of the contract. Instead you were limited to disputes that arose as a result of activities after the contract was signed. Now the AAA clause has been changed to read, “or relating to this contract.” Contrast the ICC provisions which cover claims, “in connection with this contract.”

10. A problem which arose in one case I had was that the parties did appoint an appointing authority in an *ad hoc* arbitration but failed to get that person's consent, and when the time came to go and ask him to appoint the arbitrator, the person refused to do so, stating that he had never given his consent.

11. The International Chamber of Commerce (ICC) has a table of fees, but that in itself is not necessarily an indication of what the costs will be, because the ICC quite often goes beyond that schedule of fees. In an *ad hoc* arbitration, the parties work out the arrangements with the party arbitrators, and they present it to a third arbitrator.

fees,¹² the availability of sanctions,¹³ and the enforceability of the eventual award.¹⁴

If institutional arbitration is selected, the choice as to which institution to utilize turns on an analysis of their respective arbitration rules,¹⁵ with certain political factors to be taken into account.¹⁶ If *ad hoc* arbitration is selected, a choice has to be made as to the forum, or the place of the arbitration proceedings, and the rules to govern such proceedings, which can be institutional rules, the domestic arbitration rules of the place of arbitration, or the matter can be left to the discretion of the tribunal.

The second election to be made is whether the arbitral tribunal should consist of one, or three, or more arbitrators. The factors to be weighed are the relative cost and the problem of scheduling,¹⁷ on the one hand, and the advantages of having a party appointed arbitrator on the tribunal, on the other.

One thing to note is that it is generally very unlikely that the parties will agree on the sole arbitrator on their own initiative. What you must do then is to provide that they go to an appointing authority, some outside authority who will appoint the arbitrator. If you have three arbitrators, you provide for each party to appoint one, with the two arbitrators to agree on the third; you must also designate an authority to appoint the third in the event they do not agree.

12. While there is no administrative fee in an *ad hoc* arbitration, there is such a fee for any arbitration which is institutional. In the case of the ICC, those costs can be fairly substantial.

13. This is a necessity which weighs in favor of the institutional arbitration, particularly at the stage of initiating the arbitration. You have to have a body that has established deadlines and provisions for going ahead with an arbitration in the event that one of the parties becomes recalcitrant or continues playing around with dilatory tactics.

14. In *ad hoc* arbitration, you are never quite sure how enforceable the arbitration is going to be unless in drafting you provide for a system of registration, and you pick a place where there is such a system under the laws of the specified country. The ICC or SCC already provide for a system of filing and registration in accordance with the laws of the country in which the arbitration is held.

15. Obviously, institutional arbitration has a major advantage, not only because the rules provide for a method, but also because the institutions have had a lot of experience. They have access to people whom they can appoint as arbitrators, while *ad hoc* arbitration requires knowledge and very careful drafting.

16. For example, when negotiating with the Soviet Union, you will never get them to agree to an ICC arbitration, but they will accept the SCC Arbitration; so whatever the other considerations are, the political factors mitigate in favor of the SCC.

17. The issue is the tripling of all costs and the problem of scheduling when you have three people who have to find a week or two weeks or three weeks somewhere to sit and listen to you present witnesses or argument.

The third election to be made is the place where the arbitration proceeding is to be conducted. This election has to be made even where an institutional arbitration is selected. The factors to be weighed in the selection are the availability of facilities, the non-availability of recourse to the courts during the proceedings, the non-availability or limited availability of review of final awards by the local courts, and the availability of a procedure for court registration or endorsement of an award.

Finally, an election has to be made as to the procedural and substantive law to be applied by the arbitral tribunal. In theory, the arbitration rules specified in the arbitration clause govern the conduct of arbitration proceedings. These rules are unfortunately not very detailed, and thus leave many issues of procedure to be decided by the tribunal.

A number of rules specify that the tribunal shall look to the procedural laws of the place of arbitration, while others specify that the tribunal is free to adopt any procedural rules that it deems equitable. Some tribunals tend to apply the procedural laws of the country whose substantive laws have been specified by the parties as governing the contract, while others tend to apply the procedural laws of the place of arbitration.

One effective way of establishing procedural ground rules for the conduct of arbitration proceedings is through "Terms of Reference,"¹⁸ which are prepared by the arbitral tribunal in conjunction with the parties at the initial stages of the proceeding. The "Terms of Reference" is a document that guides the tribunal in terms of the issues that it has to decide, and the schedule within which it is going to have its deliberations and make its decision. While many feel that the document is superfluous and unnecessary,¹⁹ I am very strongly in favor of the Terms of Reference. I have found it to be a very useful document in setting out the procedural law that will be applied to a particular case, because it is in that document that you can cover the key aspects of conducting the proceeding; it is there that questions like discovery, the method of submitting documentary evidence, the method of submitting witness testimony, and the submission of pre-hearing or post-hearing briefs can be resolved.²⁰ The document

18. ICC RULES, art. 13.

19. Critics say that all the document does is force the arbitrators to try to decide the case before they have really seen all of the evidence.

20. It establishes a very firm schedule for submissions, as opposed to what the rules would do. The rules impose maximum dates for various submissions, but these

raises and resolves procedural issues very early in the proceeding and, once adopted, governs the procedural issues that arise in the case. These are matters which need to be resolved early because every issue that arises in the course of arbitration, particularly where you have three arbitrators, delays things another two to three months.

As to substantive law, the choices available to the parties are the substantive law of the country of one of the parties, the law of a third country, or silence as to any applicable law.

INITIATION OF ARBITRATION PROCEEDINGS

The manner of initiating an arbitration proceeding is generally set out in the rules specified in the arbitration clause. Under certain rules, an arbitration proceeding can be initiated by a simple letter to either the other party, or in the case of an institutional arbitration, to the institution.²¹ The contents of this letter or request are fairly minimal. It contains the name of the parties, the nature of the dispute, a statement of the claim, and the relevant contractual documents, including the arbitration clause.

I would like to discuss the importance of the language, "statement of the claim." Many attorneys, Europeans in particular, but also a number of Americans whose experience has been primarily with federal litigation where you have very simple, minimal pleadings, describe the bare essentials of the cause of action. Others, however, set out in the request for arbitration a lengthy statement of the facts and a discussion of both the contractual and the legal basis of the claim, attaching the principal evidentiary documents in addition to the contract. I happen to be a proponent of the second approach because, as opposed to litigation, arbitration demands the right atmosphere to be established as early as possible. The earliest point at which you can present your case and convey a preliminary impression of the rightness of your case is the time when you file your request for arbitration.

dates are subject to extension by application by either of the two parties or by the tribunal.

21. In order to initiate proceedings in the ICC, you have to file a request for arbitration with the ICC. The only other proceeding that can be initiated by the sending of a request for arbitration to the institution is the AAA. In still other institutional proceedings, you just file a demand or notice with the other party. The Inter-American Arbitration Commission asks that you send them two copies.

One of the things that you have to bear in mind is that arbitrators think that their role is to be equitably, rather than legally, right. Thus, you have to induce a feeling that your case is right, and that what you are asking for is equitable, as early in the proceedings as possible, while convincing the arbitrators that the other side's case is onerous. This theory is also applicable to the reply,²² which may be used to counteract the impact of the claimant's case.

THE CONSTITUTION OF THE TRIBUNAL

Where a single arbitrator has been specified in the arbitration clause, the initiating party must request the institution or, in *ad hoc* arbitrations, the appointing authority, to appoint the arbitrator. Where a three-arbitrator tribunal has been specified, it is up to the initiating party to nominate its arbitrator, either as part of its initiating submission or soon thereafter. The other party must nominate its arbitrator at the time of filing its response. The third arbitrator will then be nominated by the institution or by the appointing authority, or in those cases where the arbitration clause so specifies, by the two party arbitrators.²³

Under the Inter-American Commission's rules,²⁴ the parties may specify how many arbitrators they wish, either one or three, and how the arbitrators are to be appointed.²⁵ If the parties do not appoint arbitrators, then the Commission will give each of the parties a list of six names from a panel and have them come to an agreement on one of the six. If they cannot agree, then the Commission will pick somebody from the panel of six, without referring back to the parties.²⁶

22. This is only required in the case of an institutional arbitration, which under ICC rules has to be filed within thirty days.

23. If either one of the parties does not appoint its arbitrator within a given period of time, then the institution or appointing authority will appoint him. There was one case in which I was appointed as arbitrator because one of the parties kept delaying the appointment of its arbitrator. That party thereupon immediately appointed its own, and I was asked whether I would be willing to step down under those circumstances, which I agreed to do. This is a circumstance for which one must be prepared; the party was using this tactic as a way to delay the proceedings.

24. Rules of Procedure of the Inter-American Commercial Arbitration Commission, § 13 (1969).

25. Unless otherwise provided, or the case is so complex and the parties jointly request that there be three, the ICC will use a single arbitrator, as will the Inter-American Commission. Under the UNCITRAL rules, the assumption is three, if no number is specified, as it is for the SCC Rules. Under the AAA rules, it is only one, unless the AAA itself decides to appoint three.

26. In a recent case, all of us were dissatisfied with the third arbitrator and made our dissatisfaction known to the secretariat of the ICC Court of Arbitration. Two

The UNCITRAL rule is similar to the *ad hoc* rules. The parties each appoint one arbitrator, and the two arbitrators appoint the third. If they cannot agree, they are referred to an appointing authority, if one has been specified in the contract, and if not, then the appointment is made by the Secretary General of the Permanent Court of Arbitration in the Hague, who has given his implicit consent to acting in such capacity.

The tribunal is effectively constituted when satisfactory arrangements for costs, as called for under the applicable rules, are made, and when the Terms of Reference (where these are provided for under the applicable rules) are signed by the arbitrator or arbitrators and the parties.

Immediately upon the constitution of the tribunal, the Terms of Reference, if required, are prepared.²⁷ Then, in accordance with the schedule specified, documentary evidence is submitted to the tribunal and to the other party, accompanied by a detailed presentation of the party's claim or response and counterclaim, if any. In addition, the parties are generally free to submit any documents that they feel would support their case.

DOCUMENTARY SUBMISSIONS

The method of submission of documents is not spelled out in any great detail in any of the rules, and this is why the Terms of Reference are very important. You can describe how documents are going to be submitted, whether piecemeal or all at one time, accompanying a detailed presentation of claim or defense. This is important because the arbitrators are going to have to refer to documents; you may have to cite documents and unless they are well organized, you are going to have massive confusion.²⁸

The parties have a wide degree of discretion as to the submission of documents, which submission may include, *inter alia*, contractual

months after our case was over, he was appointed as the third arbitrator in a very major ICC case. The ICC said, "There is no basis for our turning him down," or, in other words, "There are no disqualification grounds for turning him down; he just does not happen to be a very good arbitrator."

27. If the parties cannot agree on the Terms of Reference, they submit conflicting ones and have a hearing to resolve the issue. Once signed, the arbitration proceeding has effectively started.

28. A number of people prey on this and submit documents in a very haphazard fashion in the hope of confusing the arbitrators.

documents, internal correspondence, memoranda to the files, and correspondence between the parties and with third parties.²⁹ There is a question as to whether correspondence with third parties after the dispute arises is in reality a witness statement. In one case, the opposing attorney submitted documents consisting of an exchange of correspondence between him and the attorney in an unrelated lawsuit involving our client, obtained after the final hearing, and claimed he was entitled to have the correspondence considered documentary evidence. We objected to this, asserting that the response of the other attorney constituted a witness statement and demanded the right to cross-examine him, as provided in the Terms of Reference.

Once submitted, the documents are deemed entered into evidence, without the necessity of laying a foundation or certification as to their authenticity. However, their relevance and authenticity may, of course, be attacked in both written submissions and oral argument before the tribunal, or at any time in the course of the proceedings.³⁰

Documentary evidence also includes the submission of legal memoranda accompanied by copies of the laws and court decisions cited by the parties in their detailed presentation of their respective cases.

One of the main differences between arbitration and court cases is that your arbitrators are not presumed to have knowledge of the law. If you cite a case, you have to submit a copy of the decision of the case. If you cite a law, you have to have a copy of the law. There are two presumptions that hold: (1) that they do not know the law, and even if they do know it, you should proceed as if they do not; and (2) that they have no access to legal libraries.

Everything has to be submitted in the form of documentation. The costs involved in submitting documentation to arbitration are staggering, because everything that you submit has to be in eight to ten copies. These are for the three arbitrators, the institution, the secretary of the tribunal, the other party, yourself, and one retained as a working copy. Literally thousands of pages may have to be submitted.

29. This can be included as long as the correspondence predates the dispute.

30. In one case, we submitted some documents which the other party attacked as not being relevant to the dispute, and they won. In yet another, the opposing party submitted a document which we discovered was a draft, and not the final document. We were able to attack its authenticity and to force the opposing party to bring in the final version or original.

THE SCOPE OF DISCOVERY

The scope of documentary discovery is generally very limited.³¹ Unless such discovery is expressly provided for in the Terms of Reference or is permitted by the specified applicable procedural law,³² discovery will generally take the form of requests by one party that the tribunal demand that the other party also submit specified documents referred to in previously submitted documents.³³

WITNESS TESTIMONY

Witness testimony may be presented either in written form, signed by the witness, or in person before the tribunal.³⁴ Each party may select the witnesses whose testimony it wishes the tribunal to have or hear, and unless the Terms of Reference expressly state otherwise, or the specified applicable procedural law makes provisions for it, the other party cannot compel testimonial discovery or the production of other witnesses within that party's control.

Cross-examination of the other party's witnesses is generally permitted, although under certain rules and in certain forums, such cross-examination must be carried out through the tribunal.³⁵ Where witness testimony has been submitted in written form, and the parties so agree, the witnesses may also be cross-examined by deposition and need not appear before the tribunal.³⁶ In a case that we finished

31. "Fishing expeditions" or the kind of broad discovery allowed in the United States is not permitted in international arbitration.

32. You can get a fairly effective amount of discovery by negotiation and inclusion in the Terms of Reference.

33. You learn about these from "footprints"—from documents that they have submitted and documents you have submitted, both of which may refer to other documents. Once you can identify the documents you need by date or content, and can show their relevance to the tribunal, you may ask the tribunal to order the other party to produce them. If the other party refuses to produce, there is no way that it can be compelled to do so, at least under the ICC Rules. On the other hand, if it does not produce, there is a very obvious negative implication on the tribunal, which is taken into account by the tribunal in formulating its decision.

34. As far as the ICC is concerned, the issue of whether it should be sworn to by the witness is up to the discretion of the tribunal. On the other hand, the AAA and UNCITRAL Rules automatically presume that they will be sworn.

35. Under the ICC Rules, for example, if the witness testifies in person, you may cross-examine him. If the witness evidence is written, you may ask for that witness to appear live for cross-examination.

36. This is a fairly recent practice, but one that some of us have developed as a result of the huge costs of having witnesses appear live. These costs include travel of the witnesses and their sitting around in expensive hotels while they are waiting for their turn, and the costs of the tribunal during the duration of the witness testimony.

last year, we had six and one-half weeks of hearings, just to listen to witnesses, because the other party refused to conduct the hearing on the basis of written witness statements and depositions. The result is that in a number of cases, we have succeeded in convincing counsel on the other side that the best way to handle the situation is to have witness statements prepared and exchanged between the parties. If the parties then want to cross-examine, we arrange for cross-examination, and the transcript of the cross-examination is attached to the witness statement, and is submitted to the tribunal. The net effect of this is that the only hearing that you need before the tribunal, once you have agreed on your Terms of Reference, is the final argument.

While a tribunal may decide a case solely on the basis of documentary evidence, a hearing for oral testimony and oral argument will be accorded if either of the parties so requests. Hearings for oral arguments are generally quite lengthy, although conducted rather informally. What the oral argument consists of is a detailed analysis of the documentary evidence, the witness testimony, and the laws and court decisions submitted by both parties. It may last several days.

During oral argument, members of the tribunal are entitled to ask questions on any point raised by either party, although under certain rules, such questions are posed solely by the chairman of the tribunal. The tribunal is also entitled to call its own expert witnesses, if it is not satisfied with the conflicting testimony of the parties' expert witnesses.³⁷

Transcripts of oral hearings are not generally made, although if both parties request them, tribunals will grant the request. However, where witness testimony is presented orally, transcripts will be made. In most of the rather complex cases that come up for arbitration today, the custom is to have transcripts of witness testimony made so you can make reference to them during the course of the proceedings.

There is nothing in the rules that states what kinds of briefs or other submissions you can make; they merely say, "Such other written statements as may be agreed to by the tribunal." Here again, the

37. Under the ICC Rules, a tribunal is permitted to appoint its own experts where there are disputes between the expert witnesses that are submitted by each side; it generally asks the parties to submit lists of names and, if they coincide, the tribunal will pick the one that the lists have in common.

Terms of Reference become of prime importance as to the nature and the kinds of documents that you may submit, which may include pre-hearing and post-hearing briefs, and detailed submissions of claim and defense, which like the briefs, discuss both the facts and the law.

Final awards must be in writing, and except in the United Kingdom, must set out the reasons on which the award is based. Awards generally are issued within thirty to sixty days after the final hearing and require a majority vote where there is more than one arbitrator.³⁸

Some institutions, such as the ICC Court of Arbitration, will review the award as to form and will also require the payment by the party or parties of all costs before the award is issued to the parties. There is a lot of opposition in Europe to Court of Arbitration review of anything but form. Therefore, a compromise was worked out in the 1975 amendment to the rules, which now state that the parties may draw the tribunal's attention to points of substance. This was a necessary compromise because as the cases have gotten progressively more complex, the awards have gotten poorer; they have become much more ambiguous and confusing.

The ICC provides that the tribunal fix the costs and allocate them between the parties.³⁹ The costs include the fees of the arbitrators, the ICC administrative fee, the expenses of the arbitrators, interpreters, hearing rooms, stenographers, and the normal legal costs of the parties. The normal practice is to leave out the legal costs of the parties, with each party absorbing its own, and to split the rest fifty-fifty. In some cases, it is assumed that the costs will be split fifty-fifty unless the tribunal decides otherwise, and in other cases, it is within the discretion of the tribunal.

SPECIAL PROBLEM AREAS

There are five basic problem areas which I think you have to be aware of as they affect the kind of planning you do, both at the drafting stage and at the proceeding stage. These are:

38. No minority opinions are permitted by the ICC. The UNCITRAL Rules require a majority vote, a written opinion, and reasons for the decision. The Inter-American Commercial Arbitration Commission, on the other hand, requires that there be a majority vote and written opinion, but does not say anything about reasons. Since the civil code prevails in Latin America, the IACAC rules can be presumed to require them, because the civil code requires that awards be reasoned. This applies to the SCC and the AAA as well.

39. ICC RULES, art. 20.

(1) The difficulty tribunals encounter in applying sanctions against dilatory tactics, which has led to arbitrations becoming progressively lengthier. Except for very simple cases, the average length of an international arbitration from initiation to award now exceeds three years;

(2) The reluctance of tribunals to compel the production of even specific documents or witnesses, or to issue other interlocutory orders, where one party strenuously objects, has facilitated the use of misrepresentations and outright denials of existing facts by some parties and has made it difficult to establish the truth in such cases;

(3) The lack of any requirement of establishing foundation and relevancy, which has tended to make the handling of documentary evidence both confusing and onerous for the tribunal;

(4) The costs of arbitration, which have been getting out of hand; and

(5) The existence of a significant number of awards which have tended to be either incomplete or ambiguous.

CONCLUSION

A significant proportion of attorneys who include arbitration clauses in international contracts have a quite limited knowledge as to what exactly international arbitration involves. Their clients have even less knowledge or understanding of the arbitration process and conceive of it as a very simple, speedy, and informal proceeding—a mistaken assumption. In most cases, arbitration is adopted as the method for resolution of disputes primarily because neither party will accept resolution through court proceedings in the other party's judicial system, rather than because either the attorney or the client has opted for it as being better than court proceedings. In many cases, it has proven not to be, because of a number of shortcomings.

Despite these shortcomings, however, arbitration is an extremely useful, if not indispensable, method for resolving disputes arising out of international transactions. At the present time, several arbitration institutions are aware of these shortcomings, and efforts are being made to eliminate them, or at least to soften their negative impact.

APPENDIX A

*Arbitration Institute**of the*

STOCKHOLM CHAMBER OF COMMERCE

Suggested Arbitration Clause

"Any dispute in connection with this agreement shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce."

The parties are advised to make the following additions to the clause, as required:

"The arbitral tribunal shall be composed of members (a sole arbitrator)."

"The law of shall govern the matter regulated by the agreement."

"The arbitration proceedings shall be conducted in the language."

RULES

*of the**Arbitration Institute**of the*

STOCKHOLM CHAMBER OF COMMERCE

Adopted by the Stockholm Chamber of Commerce and in force from 1 October 1976.

(Translation)

ORGANIZATION ETC.

RULE 1

The Arbitration Institute of the Stockholm Chamber of Commerce is an organ within the Stockholm Chamber of Commerce for dealing with matters of arbitration. Its objects are—

to assist in accordance with these Rules in the final settlement of disputes which have reference to trade or industry,

to assist, pursuant to its own decision in each case, in proceedings which wholly or partly differ from those contemplated by these Rules, and

to provide information concerning arbitration matters.

RULE 2

The Institute shall have a Board composed of three members who shall be appointed for a period of three years by the Executive Committee of the Chamber of Commerce. One of the members, who shall act as Chairman, shall be a judge having experience of disputes of a commercial or industrial nature, while one of the others shall be a practising lawyer, and one a person who enjoys the confidence of the business community.

Each member shall have a personal deputy appointed by the Executive Committee for the same three-year period as the member. The deputy shall have the same qualifications as the member for whom he is a deputy.

For special reasons, the Executive Committee may remove a member or a deputy.

If a member or a deputy resigns during his term of office, the Executive Committee will nominate another person to serve as member or deputy during the balance of the term.

References below to "the Chairman" or "members" apply equally to a deputy serving in the place of the Chairman or a member.

RULE 3

Two members of the Board shall form a quorum. If no majority is attained, the Chairman shall have a casting vote. Decisions of the Board are final and cannot be reviewed by the Chamber of Commerce.

RULE 4

The Institute shall have a secretariat composed of one or several persons employed by the Chamber of Commerce. The secretariat shall be under the direction of a Secretary who shall possess the academic qualifications prescribed for judicial posts.

ARBITRATION RULES

RULE 5

Applicable Arbitration Law

The Swedish law of arbitration shall apply with the additions and modifications stated in these Rules.

RULE 6

Arbitral Tribunal

Three arbitrators shall be appointed if the parties have not agreed on the number of arbitrators.

If the parties have agreed that the dispute is to be decided by a sole arbitrator, then the appointment shall be made by the Institute. In other cases each party appoints an equal number of arbitrators and the Institute one arbitrator, who shall be chairman of the tribunal.

If an arbitrator appointed by a party dies, the party shall appoint another arbitrator in his place.

If an arbitrator appointed by a party resigns or is discharged by reason of disqualification, any lawful excuse or failure to perform his duties in an adequate manner, the Institute shall appoint another arbitrator after consulting the party.

If a party fails to appoint an arbitrator, then the Institute shall make the appointment.

RULE 7

Registration Fee and Deposit

The claimant shall pay a registration fee and both parties shall deposit with the Institute a sum to cover the costs of the proceedings. The Institute may later decide that additional amounts are to be deposited.

If the registration fee and/or a requested deposit remains unpaid in whole or in part the Institute shall decide—

- a) if the opposite party shall be given an opportunity to deposit further amounts, and
- b) if the proceedings shall be stayed in whole or in part.

RULE 8

Request for Arbitration

The request for arbitration shall be made in writing by application from a party to the Institute seeking its assistance pursuant to these Rules. At the same time the registration fee shall be paid to the Institute.

The request for arbitration should contain—

- a) a statement of the names and addresses of the parties,
- b) a brief account of the dispute,
- c) a preliminary statement of the relief claimed by the claimant,
- d) transcripts of the agreement on which the claim is based and of the arbitration agreement if the latter is not included in the former, and
- e) a statement identifying the arbitrator or arbitrators appointed by the claimant (cf. Rule 6).

RULE 9

Measures of the Institute after Request

If it is obvious that the Institute lacks jurisdiction over the dispute, the case shall be dismissed.

If jurisdiction is assumed, the request shall be communicated to the respondent and he shall be asked to submit a reply to the Institute which shall contain—

- a) a brief statement commenting on the request made by the claimant pursuant to Rule 8, and
- b) a statement identifying the arbitrator or arbitrators appointed by the respondent (cf. Rule 6).

If the respondent desires to raise any objection concerning the validity or applicability of the arbitration agreement or alleging disqualification in any arbitrator appointed by the claimant, such objection should be made in the reply together with a statement of the grounds therefor.

If the respondent desires to make a counterclaim or plead a set-off, a preliminary statement to that effect should be made in the reply. Any counterclaim or plea by way of set-off may be based only on a legal relationship covered by the arbitration agreement.

The respondent's reply shall be communicated to the claimant who may comment on any such objections and pleas as are referred to in the third and fourth paragraphs of this Rule. If the claimant desires to allege disqualification in any arbitrator appointed by the respondent, he should so state and give the reasons therefor.

RULE 10

Amplification. Time Limits

The Institute may request a party to amplify any submission to the Institute. If a party fails to comply with such a request, the Institute may decide to impose a sanction of the kind referred to in Rule 7, second paragraph, b).

If the Institute has requested a party to do any act within a specified time, such time may be extended by the Institute.

RULE 11

Decision of the Institute

When the exchange of written submissions pursuant to Rules 8-10 has been concluded, then, unless it is obvious that jurisdiction is lacking, the Institute shall—

- a) appoint a chairman of the arbitral tribunal and, if necessary, another arbitrator pursuant to Rule 6,
- b) determine the place of arbitration unless the parties have done so, and
- c) fix the amount of the deposit and the time within which each party shall pay his share thereof.

The decisions of the Institute shall be communicated to the parties.

RULE 12

As soon as the arbitral tribunal has been appointed and the deposit paid, the Institute shall refer the case to the arbitral tribunal.

RULE 13

Resignation of an Arbitrator, etc.

If a party alleges disqualification in an arbitrator, the Institute shall rule on such objection. The grounds of disqualification are those specified in the Swedish Arbitration Act.

Provision is made in Rule 9, third and fifth paragraphs, regarding the proper time for alleging disqualification in an arbitrator appointed by the opposite party. If a party at a later stage desires to challenge an arbitrator appointed by a party, or if he desires to challenge an arbitrator appointed by the Institute, then he shall do so within 30 days from the time when the disqualifying circumstance became known to him.

The Institute may decide to discharge an arbitrator on the ground of disqualification, any lawful excuse or failure to perform his duties in an adequate manner.

If an arbitrator dies, resigns or is discharged pursuant to the third paragraph of this Rule, another arbitrator shall be appointed in accordance with the provisions of Rule 6.

When an arbitrator is replaced in the course of the proceedings, the tribunal in its new composition decides to what extent the proceedings must be repeated.

RULE 14

Statement of Claim and Defence

1. The arbitral tribunal shall request the claimant to submit a statement of claim which should contain—
 - a) the specific relief claimed,
 - b) the circumstances which constitute the material facts on which the claimant relies in support of his claim, and
 - c) a statement of the principal evidence which the claimant desires to adduce.
2. The statement of claim, when received, shall be communicated to the respondent who shall be requested to submit a defence, which should contain—
 - a) a statement as to whether and to what extent the respondent accepts or opposes the relief claimed by the claimant,
 - b) the respondent's objections,
 - c) a statement of the principal evidence which the respondent desires to adduce, and, where applicable,
 - d) a specific counterclaim or plea by way of set-off, the material facts relied on in support thereof, and a statement of the evidence with respect thereto.

RULE 15

The Procedure Generally

Guided by the wishes of the parties, the arbitral tribunal shall decide without delay on the procedure to be followed. An oral hearing shall, as a rule, be arranged. The tribunal will fix time limits for taking procedural steps. The tribunal may, particularly during the preliminary proceedings, empower the chairman of the tribunal to take any necessary action for the conduct of the proceedings.

RULE 16

Voting

When a vote is taken, that opinion shall prevail which has received more votes than any other opinion, and in the case of an equality of votes, the opinion supported by the chairman shall prevail.

RULE 17

Time for Making Award

An award shall be made not later than one year after the appointment of the arbitral tribunal. Provided, however, that the Institute may, at the request of a party or the arbitral tribunal, for good reasons extend this period.

RULE 18

Separate Awards

A separate issue or part of the matter in dispute between the parties may, at the request of a party, be decided by a separate award. If any party objects, such an award may be rendered only if there are special reasons therefor.

RULE 19

Award

The award shall contain an order or declaration and the reasons therefor. It must be signed by all the arbitrators. An arbitrator may attach a dissenting opinion to the award.

The arbitral tribunal shall state in the award the amounts of compensation due to the Institute for administrative costs and to the arbitral tribunal. The parties are jointly and severally liable for the payment of such sums.

The arbitral tribunal shall further state in the award if and to what extent a party shall compensate the opposite party in respect of any amount for which he is liable pursuant to the foregoing paragraph, and his other costs in connection with the case.

Should a settlement be made before an award is rendered, the arbitral tribunal shall have power to decide that the parties are to pay a reasonable amount as compensation to the Institute and the arbitrators. If a settlement is made before the arbitral tribunal has been appointed, the Institute will determine its own compensation.

RULE 20

Interpretation and Correction of an Award

If a party so requests within 60 days after receiving the award, the arbitral tribunal shall give a written interpretation thereof. Any obvious miscalculation or clerical error shall also be corrected by the tribunal. Each party shall be given an opportunity to state his views. Unless the arbitral tribunal otherwise decides, the award already rendered shall be enforceable.

A decision to amend these Rules shall not be effective unless the proposed amendment has been approved by the Chamber of Commerce at an ordinary meeting.

These Rules shall enter into force on 1 October 1976 and will replace the former Statutes of the Arbitration Institute of the Stockholm Chamber of Commerce.

If a party invokes an arbitration agreement concluded prior to 1 October 1976 which refers to arbitral proceedings under the auspices of the Institute, the former States shall apply unless the parties have otherwise agreed.

APPENDIX B

RULES FOR THE INTERNATIONAL
CHAMBER OF COMMERCE
COURT OF ARBITRATION*

In force as from 1 June 1975

*Article 1**Court of Arbitration.*

1. The Court of Arbitration of the International Chamber of Commerce is the international arbitration body attached to the International Chamber of Commerce. Members of the Court are appointed by the Council of the International Chamber of Commerce. The function of the Court is to provide for the settlement by arbitration of business disputes of an international character in accordance with these Rules.

2. In principle, the Court meets once a month. It draws up its own internal regulations.

3. The Chairman of the Court of Arbitration or his deputy shall have power to take urgent decisions on behalf of the Court, provided that any such decision shall be reported to the Court at its next session.

4. The Court may, in the manner provided for in its internal regulations, delegate to one or more groups of its members the power to take certain decisions provided that any such decision shall be reported to the Court at its next session.

5. The Secretariat of the Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce.

*Article 2**Choice of arbitrators.*

1. The Court of Arbitration does not itself settle disputes. Insofar as the parties shall not have provided otherwise, it appoints, or con-

* These rules supercede the previous ICC Rules of Conciliation and Arbitration, reproduced in Vol.I pp. 273-289. The present Rules were provided by the courtesy of the ICC, 38 Cours Albert 1er, 75008 Paris. The ICC holds the copyright on the Rules.

firms the appointments of, arbitrators in accordance with the provisions of this Article. In making or confirming such appointment, the Court shall have regard to the proposed arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals.

2. The disputes may be settled by a sole arbitrator or by three arbitrators. In the following Articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be.

3. Where the parties have agreed that the disputes shall be settled by a sole arbitrator, they may, by agreement, nominate him for confirmation by the Court. If the parties fail so to nominate a sole arbitrator within 30 days from the date when the Claimant's Request for Arbitration has been communicated to the other party, the sole arbitrator shall be appointed by the Court.

4. Where the dispute is to be referred to three arbitrators, each party shall nominate in the Request for Arbitration and the Answer thereto respectively one arbitrator's confirmation by the Court. Such person shall be independent of the party nominating him. If a party fails to nominate an arbitrator the appointment shall be made by the Court.

The third arbitrator, who will act as chairman of the arbitral tribunal, shall be appointed by the Court, unless the parties have provided that the arbitrators nominated by them shall agree on the third arbitrator within a fixed time limit. In such a case the Court shall confirm the appointment of such third arbitrator. Should the two arbitrators fail, within the time limit fixed by the parties or the Court, to reach agreement on the third arbitrator, he shall be appointed by the Court.

5. Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such a case the parties shall each have a period of 15 days within which to nominate an arbitrator.

6. Where the Court is to appoint a sole arbitrator or the chairman of an arbitral tribunal, it shall choose a National Committee of the International Chamber of Commerce from which it shall request a proposal. The sole arbitrator or the chairman of an arbitral tribunal shall be chosen from a country other than those of which the parties are nationals. However, in suitable circumstances and provided that neither of the parties objects, the sole arbitrator or the chairman of

the arbitral tribunal may be chosen from a country of which any one of the parties is a national.

Where the Court appoints an arbitrator on behalf of a party which has failed so to do, it shall request a proposal from the National Committee of the country of which that party is a national. If the country of which such party is a national has no National Committee, the Court is at liberty to choose any person whom it regards as suitable.

7. Should an arbitrator be challenged by one of the parties, the Court, as sole judge of the grounds of challenge, shall make a decision which shall be final.

8. If an arbitrator dies or is prevented from carrying out his functions or has to resign consequent upon a challenge or for any other reason, or if the Court, after having considered the arbitrator's observations, decides that the arbitrator is not fulfilling his functions in accordance with the Rules or within the prescribed time limits, he shall be replaced. In all such cases the procedure indicated in the preceding paragraphs 3, 4 and 6 shall be followed.

Article 3

Request for arbitration.

1. A party wishing to have recourse to arbitration by the International Chamber of Commerce shall submit its Request for arbitration to the Secretariat of the Court, through its National Committee or directly. In this latter case the Secretariat shall bring the Request to the notice of the National Committee concerned.

The date when the Request is received by the Secretariat of the Court shall, for all purposes, be deemed to be the date of commencement of the arbitral proceedings.

2. The Request for arbitration shall inter alia contain the following information:

- a) names in full, description, and addresses of the parties,
- b) a statement of the Claimant's case,
- c) the relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve clearly to establish the circumstances of the case,
- d) all relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of Article 2 above.

3. The Secretariat shall send a copy of the Request and the documents annexed thereto to the Defendant for his Answer.

Article 4

Answer to the request.

1. The Defendant shall within 30 days from the receipt of the documents referred to in paragraph 3 of Article 3 comment on the proposals made concerning the number of arbitrators and their choice and, where appropriate, nominate an arbitrator. He shall at the same time set out his defence and supply relevant documents. In exceptional circumstances the Defendant may apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the Defendant's comments on the proposals made with regard to the number of arbitrators and their choice and also, where appropriate, the nomination of an arbitrator. If the Defendant fails so to do, the Secretariat shall report to the Court, which shall proceed with the arbitration in accordance with these Rules.

2. A copy of the Answer and of the documents annexed thereto, if any, shall be communicated to the Claimant for his information.

Article 5

Counter-claim.

1. If the Defendant wishes to make a counter-claim, he shall file the same with the Secretariat, at the same time as his Answer as provided for in Article 4.

2. It shall be open to the Claimant to file a Reply with the Secretariat within 30 days from the date when the counter-claim was communicated to him.

Article 6

Pleadings and written statements, notifications or communications.

All pleadings and written statements submitted by the parties, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat.

All notifications or communications from the Secretariat and the arbitrator shall be validly made if they are delivered against receipt or

forwarded by registered post to the address or last known address of the party for whom the same are intended as notified by the party in question or by the other party as appropriate.

Notification or communication shall be deemed to have been effected on the day when it was received, or should, if made in accordance with the preceding paragraph, have been received by the party itself or by its representative.

Article 7

Absence of agreement to arbitrate.

Where there is no prima facie agreement between the parties to arbitrate or where there is a agreement but it does not specify the International Chamber of Commerce, and if the Defendant does not file an Answer within the period of 30 days provided by paragraph 1 of Article 4 or refuses arbitration by the International Chamber of Commerce, the Claimant shall be informed that the arbitration cannot proceed.

Article 8

Effect of the agreement to arbitrate.

1. Where the parties have agreed to submit to arbitration by the International Chamber of Commerce, they shall be deemed thereby to have submitted ipso facto to the present Rules.

2. If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.

3. Should one of the parties raise one or more pleas concerning the existence or validity of the agreement to arbitrate, and should the Court be satisfied of the prima facie existence of such an agreement, the Court may, without prejudice to the admissibility or merits of the plea or pleas, decide that the arbitration shall proceed. In such a case any decision as to the arbitrator's jurisdiction shall be taken by the arbitrator himself.

4. Unless otherwise provided, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void or allegation that it is inexistent provided that he upholds the validity of the agreement to arbitrate. He shall continue to have

jurisdiction, even though the contract itself may be inexistent or null and void, to determine the respective rights of the parties and to adjudicate upon their claims and pleas.

5. Before the file is transmitted to the arbitrator, and in exceptional circumstances even thereafter, the parties shall be at liberty to apply to any competent judicial authority for interim or conservatory measures, and they shall not by so doing be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrator.

Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat of the Court of Arbitration. The Secretariat shall inform the arbitrator thereof.

Article 9

Deposit to cover costs of arbitration.

1. The Court shall fix the amount of the deposit in a sum likely to cover the costs of arbitration of the claims which have been referred to it.

Where, apart from the principal claim, one or more counter-claims are submitted, the Court may fix separate deposits for the principal claim and the counter-claim or counter-claims.

2. As a general rule, the deposits shall be paid in equal shares by the Claimant or Claimants and the Defendant or Defendants. However, any one party shall be free to pay the whole deposit in respect of the claim or the counter-claim should the other party fail to pay a share.

3. The Secretariat may make the transmission of the file to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the deposit to the International Chamber of Commerce.

4. When the Terms of Reference are communicated to the Court in accordance with the provisions of Article 13, the Court shall verify whether the requests for deposit have been complied with.

The Terms of Reference shall only become operative and the arbitrator shall only proceed in respect of those claims for which the deposit has been duly paid to the International Chamber of Commerce.

*Article 10**Transmission of the file to the arbitrator.*

Subject to the provisions of Article 9, the Secretariat shall transmit the file to the arbitrator as soon as it has received the Defendant's Answer to the Request for Arbitration, at the latest upon the expiry of the time limits fixed in Articles 4 and 5 above for the filing of these documents.

*Article 11**Rules governing the proceedings.*

The rules governing the proceedings before the arbitrator shall be those resulting from these Rules and, where these Rules are silent, any rules which the parties (or, failing them, the arbitrator) may settle, and whether or not reference is thereby made to a municipal procedural law to be applied to the arbitration.

*Article 12**Place of arbitration.*

The place of arbitration shall be fixed by the Court, unless agreed upon by the parties.

*Article 13**Terms of reference.*

1. Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the documents or in the presence of the parties and in the light of their most recent submissions, a document defining his Terms of Reference. This document shall include the following particulars:

- a) the full names and description of the parties,
- b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made,
- c) a summary of the parties' respective claims,
- d) definition of the issues to be determined,
- e) the arbitrator's full name, description and address,
- f) the place of arbitration,

g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitrator to act as amiable compositeur,

h) such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the Court of Arbitration or the arbitrator.

2. The document mentioned in paragraph 1 of this Article shall be signed by the parties and the arbitrator. Within two months of the date when the file has been transmitted to him, the arbitrator shall transmit to the Court the said document signed by himself and by the parties. Upon the arbitrator's request, the Court may, in exceptional circumstances, extend this time limit.

Should one of the parties refuse to take part in the drawing up of the said document or to sign the same, the Court, if it is satisfied that the case is one of those mentioned in paragraphs 2 and 3 of Article 8, shall take such action as is necessary for its approval. Thereafter the Court shall set a time limit for the signature of the statement by the defaulting party and on expiry of that time limit the arbitration shall proceed and the award shall be made.

3. The parties shall be free to determine the law to be applied by the arbitrator to the merits of the dispute. In the absence of any indication by the parties as to the applicable law, the arbitrator shall apply the law designated as the proper law by the rule of conflict which he deems appropriate.

4. The arbitrator shall assume the powers of an amiable compositeur if the parties are agreed to give him such powers.

5. In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages.

Article 14

The arbitral proceedings.

1. The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties together in person if one of them so requests; and failing such a request he may of his own motion decide to hear them.

In addition, the arbitrator may decide to hear any other person in the presence of the parties or in their absence provided they have been duly summoned.

2. The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and/or hear them in person.

3. The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.

Article 15

1. At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat of the Court.

2. If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.

3. The arbitrator shall determine the language or languages of the arbitration, due regard being paid to all the relevant circumstances and in particular to the language of the contract.

4. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitrator and of the parties, persons not involved in the proceedings shall not be admitted.

5. The parties may appear in person or through duly accredited agents. In addition, they may be assisted by advisers.

Article 16

The parties may make new claims or counter-claims before the arbitrator on condition that these remain within the limits fixed by the Terms of Reference provided for in Article 13 or that they are specified in a rider to the document, signed by the parties and communicated to the Court.

Article 17

Award by consent.

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with Article 10, the same shall be recorded in the form of an arbitral award made by consent of the parties.

*Article 18**Time-limit for awards.*

1. The arbitrator shall make his award within six months of the date of signing the document mentioned in Article 13.
2. The Court may, in exceptional circumstances and pursuant to a reasoned request from the arbitrator, or if need be on its own initiative extend this time limit if it decides that it is necessary so to do.
3. Where no such extension is granted and, if appropriate, after application of the provisions of Article 2 (8), the Court shall determine the manner in which the dispute is to be resolved.

*Article 19**Awards by three arbitrators.*

When three arbitrators have been appointed, the award is given by a majority decision. If there be no majority, the award shall be made by the Chairman of the arbitral tribunal alone.

*Article 20**Decision as to costs of arbitration.*

1. The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.
2. The costs of the arbitration shall include the arbitrator's fees and the administrative costs fixed by the Court in accordance with the scale annexed to the present Rules, the expenses, if any, of the arbitrator, the fees and expenses of any experts, and the normal legal costs incurred by the parties.
3. The Court may fix the arbitrator's fees at a figure higher or lower than that which would result from the application of the annexed scale if in the exceptional circumstances of the case this appears to be necessary.

*Article 21**Scrutiny of award by the Court.*

Before signing an award, whether partial or definitive, the arbitrator shall submit it in draft form to the Court. The Court may lay down

modifications as to the form of the award and, without affecting the arbitrator's liberty of decision, may also draw his attention to points of substance. No award shall be signed until it has been approved by the Court as to its form.

Article 22

Making of award.

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date when it is signed by the arbitrator.

Article 23

Notification of award to parties.

1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitrator; provided always that the costs of the arbitration have been fully paid to the International Chamber of Commerce by the parties or by one of them.

2. Additional copies certified true by the Secretary-General of the Court shall be made available, on request and at any time, to the parties but to no one else.

3. By virtue of the notification made in accordance with paragraph 1 of this article, the parties waive any other form of notification or deposit on the part of the arbitrator.

Article 24

Finality and enforceability of award.

1. The arbitral award shall be final.

2. By submitting the dispute to arbitration by the International Chamber of Commerce, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

Article 25

Deposit of award.

An original of each award made in accordance with the present Rules shall be deposited with the Secretariat of the Court.

The arbitrator and the Secretariat of the Court shall assist the parties in complying with whatever further formalities may be necessary.

Article 26

General rule.

In all matters not expressly provided for in these Rules, the Court of Arbitration and the arbitrator shall act in the spirit of these Rules and shall make every effort to make sure that the award is enforceable at law.

APPENDIX I

Statutes of the Court

Article 1

Appointment of members.

The members of the Court of Arbitration of the International Chamber of Commerce are appointed for a term of two years by the Council of that Chamber pursuant to Article III, 3i of the Constitution, on the proposal of each National Committee.

Article 2

Composition.

The Court of Arbitration shall be composed of a Chairman, of five Vice-Chairmen, of a Secretary General and of one or several Technical Advisers chosen by the Council of the International Chamber of Commerce either from among the members of the Court or apart from them, and of one member for, and appointed by, each National Committee.

The chairmanship may be exercised by two Co-Chairmen; in this case, they shall have equal rights, and the expression "the Chairman," used in the Rules of Conciliation and Arbitration, shall apply to either of them equally.

When a member of the Court does not reside in the city where International Headquarters of the International Chamber of Commerce is situated, the Council may appoint an alternate member.

If the Chairman is unable to attend a session of the Court, he shall be replaced by one of the Vice-Chairmen.

Article 3

Function and powers.

The function of the Court of Arbitration is to ensure the application of the Rules of Conciliation and Arbitration of the International Chamber of Commerce and the Court has all the necessary powers for that purpose. It is further entrusted, if need be, with laying before the Commission on International Commercial Arbitration any proposals for modifying the Rules of Conciliation and Arbitration of the International Chamber of Commerce which it considers necessary.

*Article 4**Deliberations and Quorum.*

The decisions of the Court shall be taken by a majority vote, the Chairman having a casting vote in the event of a tie.

The deliberations of the Court shall be valid when at least six members are present.

The Secretary General of the International Chamber of Commerce, the Secretary General of the Court and the Technical Adviser or Advisers shall attend in an advisory capacity only.

APPENDIX II

Schedule of

Conciliation and Arbitration Costs

(in force as from 1st January 1972)

1. *Registration Fee.* Each party to a dispute submitted to the ICC for conciliation and arbitration shall be liable for a registration fee of US \$50 and no application will be entertained unless accompanied by this deposit.

The registration fee shall also be payable by each party if the ICC is called upon to appoint an arbitrator or arbitrators outside the procedure of its Court of Arbitration.

The registration fee is not recoverable and becomes the property of the ICC.

Costs of Conciliation. Before a case is considered by the Conciliation Committee, each party shall contribute to the cost of the conciliation procedure by paying half the costs to be calculated in accordance with the table of administrative charges hereinafter set out.

Where the sum in dispute in any such case is not stated, the Secretariat shall fix the costs.

3. *Costs of Arbitration.*

a) The costs of arbitration comprise the fee of the arbitrator (or arbitrators) and the administrative charge, and may furthermore include personal expenses of the arbitrator(s) and the cost of any expertise as well as similar expenses.

b) Before a case (or counterclaim) can be submitted to the arbitrator(s), the parties, or, failing this, the claimant (or counterclaimant, as the case may be), shall pay a deposit covering the fee of the arbitrator(s) and the administrative charge (fixed in accordance with the hereinafter set out).

c) The Court shall fix the fee of the arbitrator(s) in accordance with the table hereinafter set out or, where the sum in dispute is not stated, at its discretion.

d) When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the fee up to a maximum of three times the fee payable to one arbitrator.

e) When arbitration is preceded by attempted conciliation, half of the administrative charge paid in respect of the said attempt shall be credited to the administrative charge of the arbitration.

f) Before any expertise can be commenced, the parties, or one of them, shall pay a deposit sufficient to cover the expected fee and expenses as determined by the arbitrator(s).

g) If a case, not preceded by attempted conciliation, is withdrawn before it reaches the arbitrator(s), any deposit made shall be returned to the parties, after deduction of a sum equal to half the administrative charge.

4. *Scale of Administrative Charge and Fees.* To calculate the administrative charge and the fee the percentages applied to each successive slice of the sum in dispute are to be added together.

a) Administrative charge

<i>Sum in dispute (in US dollars)</i>			<i>Administrative charge (*) in %</i>
From	0 to	25,000	3 (min. \$200)
From	25,000 to	100,000	2
From	100,000 to	500,000	1.5
From	500,000 to	1,000,000	1
From	1,000,000 to	2,000,000	0.5
From	2,000,000 to	5,000,000	0.2
From	5,000,000 to	10,000,000	0.1
From	10,000,000 to	100,000,000	0.05
Over	100,000,000	0.02

b) Arbitrator's fees

<i>Sum in dispute (in US dollars)</i>			<i>Fees(**) Minimum</i>	<i>(in %) Maximum</i>
From	0 to	25,000	(min. \$800)	10
From	25,000 to	100,000	1.5	6
From	100,000 to	500,000	0.8	3
From	500,000 to	1,000,000	0.5	2
From	1,000,000 to	2,000,000	0.3	1.5
From	2,000,000 to	5,000,000	0.2	0.6
From	5,000,000 to	10,000,000	0.1	0.3
From	10,000,000 to	100,000,000	0.1	0.15
Over	100,000,000	0.05	0.1

(*) See paras. no. 2, 3(b), 3(a), 3(g)

(**) See paras. no. 3(c), 3(d)

Standard ICC Arbitration Clause

The ICC recommends all parties wishing to make reference to ICC arbitration in their foreign contracts to use the following standard clause:

“All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

French

“Tous différends découlant du présent contrat seront tranchés définitivement suivant le Règlement de Conciliation et d'Arbitrage de la Chambre de Commerce Internationale plusieurs arbitres nommés conformément à ce Règlement.”

German

“Alle aus dem gagenwärtigen Verträge sich ergebenden Streitigkeiten werden nach der Vergleichs-und Schiedsgerichtsordnung der Internationalen Handelskammer von einem oder mehreren gemäss dieser Ordnung ernannten Schiedsrichtern endgültig entschieden.”

Spanish

“Todas las desavenencias que deriven de este contrato seran resueitas definitivamente de acuerdo con el Reglamento de Conciliación y Arbitraje de la Cámara de Comercio Internacional por uno ó más árbitros nombrados conforme a este Reglamento.”

Arabic

camera

Attention is called to the fact that the laws of certain countries require that parties to contracts expressly accept arbitration clauses, sometimes in a precise and particular manner.

The parties may—if they so desire—stipulate, in the arbitration clause itself, the national law applicable to the contract. The parties free choice of the place of arbitration is not limited by the ICC.

APPENDIX C

COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION

As amended and in effect Nov. 1, 1973*

Section 1. AGREEMENT OF PARTIES—The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association or under its Rules. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

Section 2. NAME OF TRIBUNAL—Any Tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the Commercial Arbitration Tribunal.

Section 3. ADMINISTRATOR—When parties agree to arbitrate under these Rules, or when they provide for arbitration by the American Arbitration Association and an arbitration is initiated thereunder, they thereby constitute AAA the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

Section 4. DELEGATION OF DUTIES—The duties of the AAA under these Rules may be carried out through Tribunal Administrator, or such other officers or committees as the AAA may direct.

Section 5. NATIONAL PANEL OF ARBITRATORS—The AAA shall establish and maintain a National Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

Section 6. OFFICE OF TRIBUNAL—The general office of a Tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its Regional Offices.

Section 7. INITIATION UNDER AN ARBITRATION PROVISION IN A CONTRACT—Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party may give notice to the other party of his intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, remedy sought, and

*Reproduced text provided by American Arbitration Association.

(b) By filing at any Regional Office of the AAA two (2) copies of said notice, together with two (2) copies of the arbitration provisions of the contract, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

The AAA shall give notice of such filing to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with the AAA within seven days after notice from the AAA, in which event he shall simultaneously send a copy of his answer to the other party. If a monetary claim is made in the answer the appropriate fee provided in the Fee Schedule shall be forwarded to the AAA with the answer. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

Section 8. CHANGE OF CLAIM—After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with AAA, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the AAA. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

Section 9. INITIATION UNDER A SUBMISSION—Parties to any existing dispute may commence an arbitration under these Rules by filing at any Regional Office two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee as provided in the Fee Schedule.

Section 10. FIXING OF LOCALE—The parties may mutually agree on the locale where the arbitration is to be held. If the locale is not designated within seven days from the date of filing the Demand or Submission the AAA shall have power to determine the locale. Its decision shall be final and binding. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven days after notice of the request, the locale shall be the one requested.

Section 11. QUALIFICATIONS OF ARBITRATOR—Any Arbitrator appointed pursuant to Section 12 or Section 14 shall be neutral, subject to disqualification for the reasons specified in Section 18. If the agreement of the parties names an Arbitrator or specifies any other method of appointing an Arbitrator, or if the parties specifically

agree in writing, such arbitrator shall not be subject to disqualification for said reasons.

Section 12. APPOINTMENT FROM PANEL—If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand or Submission, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

Section 13. DIRECT APPOINTMENT BY PARTIES—If the agreement of the parties names an Arbitrator or specifies a method of appointing an Arbitrator, that designation or method shall be followed. The notice of appointment, with name and address of such Arbitrator, shall be filed with the AAA by the appointment party. Upon the request of any such appointing party, the AAA shall submit a list of members from the Panel from which the party may, if he so desires, make the appointment.

If the agreement specifies a period of time within which an Arbitrator shall be appointed, and any party fails to make such appointment within that period, the AAA shall make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within seven days thereafter such Arbitrator has not been so appointed, the AAA shall make the appointment.

Section 14. APPOINTMENT OF NEUTRAL ARBITRATOR BY PARTY-APPOINTED ARBITRATORS—If the parties have appointed their Arbitrators or if either or both of them have been appointed as provided in Section 13, and have authorized such Arbitrators to appoint a neutral Arbitrator within a specified time and no appointment

is made within such time or any agreed extension thereof, the AAA shall appoint a neutral Arbitrator who shall act as Chairman.

If no period of time is specified for appointment of the neutral Arbitrator and the parties do not make the appointment within seven days from the date of the appointment of the last party-appointed Arbitrator, the AAA shall appoint such neutral Arbitrator, who shall act as Chairman.

If the parties have agreed that their Arbitrators shall appoint the neutral Arbitrator from the Panel, the AAA shall furnish to the party-appointed Arbitrators, in the manner prescribed in Section 12, a list selected from the Panel, and the appointment of the neutral Arbitrator shall be made as prescribed in such Section.

Section 15. NATIONALITY OF ARBITRATOR IN INTERNATIONAL ARBITRATION—If one of the parties is a national or resident of a country other than the United States, the sole Arbitrator or the neutral Arbitrator shall, upon the request of either party, be appointed from among the nationals of a country other than that of any of the parties.

Section 16. NUMBER OF ARBITRATORS—If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the AAA, in its discretion, directs that a greater number of Arbitrators be appointed.

Section 17. NOTICE TO ARBITRATOR OF HIS APPOINTMENT—Notice of the appointment of the neutral Arbitrator, whether appointed by the parties or by the AAA, shall be mailed to the Arbitrator by the AAA, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

Section 18. DISCLOSURE AND CHALLENGE PROCEDURE—A person appointed as neutral Arbitrator shall disclose to the AAA any circumstances likely to affect his impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from such Arbitrator or other source, the AAA shall communicate such information to the parties, and, if it deems it appropriate to do so, to the Arbitrator and others. Thereafter, the AAA shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

Section 19. **VACANCIES**—If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

Section 20. **TIME AND PLACE**—The Arbitrator shall fix the time and place for each hearing. The AAA shall mail to each party notice thereof at least five days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

Section 21. **REPRESENTATION BY COUNSEL**—Any party may be represented by Counsel. A party intending to be so represented shall notify the other party and the AAA of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

Section 22. **STENOGRAPHIC RECORD**—The AAA shall make the necessary arrangements for the taking of a stenographic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record as provided in Section 49.

Section 23. **INTERPRETER**—The AAA shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service.

Section 24. **ATTENDANCE AT HEARINGS**—Persons having a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons.

Section 25. **ADJOURNMENTS**—The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

Section 26. **OATHS**—Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person or, if required by law or demanded by either party, shall do so.

Section 27. **MAJORITY DECISION**—Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

Section 28. **ORDER OF PROCEEDINGS**—A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel, if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions or other examination. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

Section 29. **ARBITRATION IN THE ABSENCE OF A PARTY**—Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

Section 30. **EVIDENCE**—The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties,

except where any of the parties is absent in default or has waived his right to be present.

Section 31. EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS—The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the AAA for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

Section 32. INSPECTION OR INVESTIGATION—Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the AAA to advise the parties of his intention. The Arbitrator shall set the time and the AAA shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

Section 33. CONSERVATION OF PROPERTY—The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Section 34. CLOSING OF HEARINGS—The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 31 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

Section 35. REOPENING OF HEARINGS—The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. If the reopening

of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

Section 36. **WAIVER OF ORAL HEARING**—The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

Section 37. **WAIVER OF RULES**—Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

Section 38. **EXTENSIONS OF TIME**—The parties may modify any period of time by mutual agreement. The AAA for good cause may extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any such extension of time and its reason therefor.

Section 39. **COMMUNICATION WITH ARBITRATOR AND SERVING OF NOTICES**—

(a) There shall be no communication between the parties and a neutral Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the AAA for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Section 40. **TIME OF AWARD**—The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the par-

ties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

Section 41. FORM OF AWARD—The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

Section 42. SCOPE OF AWARD—The Arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The Arbitrator, in his award, shall assess arbitration fees and expenses in favor of any party and, in the event any administrative fees or expenses are due the AAA, in favor of the AAA.

Section 43. AWARD UPON SETTLEMENT—If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

Section 44. DELIVERY OF AWARD TO PARTIES—Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

Section 45. RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS—The AAA shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

Section 46. APPLICATIONS TO COURT—

(a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) The AAA is not a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any Federal or State Court having jurisdiction thereof.

Section 47. ADMINISTRATIVE FEES—As a nonprofit organization, the AAA shall prescribe an administrative fee schedule and a

refund schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the Arbitrator in his award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the refund schedule.

The AAA, in the event of extreme hardship on the part of any party, may defer or reduce the administrative fee.

Section 48. FEE WHEN ORAL HEARINGS ARE WAIVED—Where all Oral Hearings are waived under Section 36 the Administrative Fee Schedule shall apply.

Section 49. EXPENSES—The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the Arbitrator and of AAA representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise, or unless the Arbitrator in his award assesses such expenses or any part thereof against any specified party or parties.

Section 50. ARBITRATOR'S FEE—Members of the National Panel of Arbitrators serve without fee in commercial arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee.

Any arrangements for the compensation of a neutral Arbitrator shall be made through the AAA and not directly by him with the parties.

Section 51. DEPOSITS—The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the Arbitrator's fee if any, and shall render an accounting to the parties and return any unexpended balance.

Section 52. INTERPRETATION AND APPLICATION OF RULES—The Arbitrator shall interpret and apply these Rules insofar

as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.

ADMINISTRATIVE FEE SCHEDULE

The administrative fee of the AAA is based upon the amount of each claim as disclosed when the claim is filed, and is due and payable at the time of filing.

Amount of Claim	Fee
Up to \$10,000	3% (minimum \$100)
\$10,000 to \$25,000	\$300, plus 2% of excess over \$10,000
\$25,000 to \$100,000	\$600, plus 1% of excess over \$25,000
\$100,000 to \$200,000	\$1,350, plus ½% of excess over \$100,000

The fee for claims in excess of \$200,000 should be discussed with the AAA in advance of filing.

When no amount can be stated at the time of filing, the administrative fee is \$200, subject to adjustment in accordance with the above schedule as soon as an amount can be disclosed.

If there are more than two parties represented in the arbitration, an additional 10% of the initiating fee will be due for each additional represented party.

OTHER SERVICE CHARGES

\$50.00 payable by a party causing an adjournment of any scheduled hearing;

\$25.00 payable by each party for each hearing after the first hearing which is either clerked by the AAA or held in a hearing room provided by the AAA.

REFUND SCHEDULE

If the AAA is notified that a case has been settled or withdrawn before a list of arbitrators has been sent out, all the fee in excess of \$100.00 will be refunded.

If the AAA is notified that a case has been settled or withdrawn thereafter but before the due date for the return of the first list, two-thirds of the fee in excess of \$100.00 will be refunded.

If the AAA is notified that a case is settled or withdrawn thereafter but at least 48 hours before the date and time set for the first hearing, one-half of the fee in excess of \$100.00 will be refunded.

APPENDIX D

RULES OF PROCEDURE OF THE INTER-AMERICAN
COMMERCIAL ARBITRATION COMMISSION*

In effect 1 April 1969

(Document AAA-19-2M-6/69 of the Inter-American
Arbitration Commission)

I. RULES A PART OF THE ARBITRATION AGREEMENT

1. *Agreement of Parties*—The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever, in the Submission or other written agreement, they have provided for arbitration by the Inter-American Commercial Arbitration Commission or under its Rules. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

II. TRIBUNALS

2. *Name of Tribunal*—Any Tribunal constituted by the parties for the settlement of their dispute under these Rules, shall be called the Inter-American Commercial Arbitration Tribunal, hereinafter referred to as Tribunal.

3. *Administrator*—When parties agree to arbitrate under these Rules or provide for arbitration by the Inter-American Commercial Arbitration Commission and an arbitration is initiated thereunder, they thereby constitute the Commission the Administrator of the arbitration. The authority and obligations of the Administrator are limited in the manner prescribed in the agreement of the parties and in these Rules.

4. *Executive Duties*—The duties of the Commission may be carried out through such officers of the Commission or such Clerks, Committees or Agents as the Commission may direct, and the Commission may designate the notary wherever the prevailing law requires the intervention of such official.

* Reproduced from Register of Texts of Conventions and Other Instruments Concerning International Trade Law, Volume II, United Nations, 1973.

5. *Panels of Arbitrators*—The Commission shall establish and maintain Panels of Arbitrators and shall appoint Arbitrators therefrom in the manner prescribed in these Rules, and such Arbitrators shall hereinafter be referred to as “Panel Arbitrators”.

6. *Office of Tribunal*—The general office of a Tribunal is the headquarters of the Commission, or such agency as it may designate.

III. INITIATION OF THE ARBITRATION

7. *Initiation under an Arbitration Provision in a Contract*—Any party to a contract containing a clause providing for arbitration by the Commission or under its Rules, or any party to a contract containing a general arbitration clause, when the parties have agreed by stipulation or otherwise, to arbitrate under the Rules of the Commission, may commence an arbitration in the following manner:

(a) By such party giving written notice to the other party of intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved if any, the remedy sought; and

(b) By filing with the Administrator at any of its offices two copies of said notice, together with two copies of the contract or such parts thereof as relate to the dispute, including the arbitration provisions. The Administrator shall give notice of such filing to the other party.

The party upon whom the demand for arbitration is made may, if he so desires, file an answering statement with the Administrator within thirty days after notice from the Administrator, in which event he shall also send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim made is denied. Failure to file an answer shall not operate to delay the arbitration.

After the filing of the claim, and answer if any, if either party desires to make any new or different claim such claim shall be made in writing and filed with the Commission and a copy thereof mailed to the other party who shall have a period of thirty days from the date of such mailing within which to file an answer with the Commission.

However, after the Arbitrator is appointed no new or different claim may be submitted to him except with the consent of the Arbitrator and all other parties.

8. *Initiation under a Submission*—Parties to any existing dispute may commence an arbitration under these Rules by filing at any office of the Commission two copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties, and containing a statement of the matter in dispute, the amount of money involved if any, and the remedy sought.

9. *Administrative Fee*—The Initial Fee in the amount prescribed in the Schedule in Rule IX shall be paid to the Commission by each of the parties at the time of initiating the arbitration.

10. *Fixing of Locality*—The parties may mutually agree on the locality where the arbitration is to be held. If the locality is not designated in the contract or Submission, or if within fifteen days from the date of filing the Demand or Submission, the parties do not notify the Commission of such designation, it shall have power to determine the locality and its decision shall be final and binding on both parties. In the event, however, that any party requests that the hearing be held in a specific locale and the other party files no objection thereto within fifteen days after notice of the request, the locale shall be that requested by the party.

IV. APPOINTMENT OF ARBITRATOR

11. *Qualifications*—No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

12. *Appointment from Panels*—If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission or copy of a Demand, as required under Rule III, the Commission shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the Panels. Each party to the dispute shall have fifteen days from the date of the mailing of such lists in which to examine said list, cross off any names to which he objects and number the remaining names indicating the order of his preference, and return the list to the Commission. When any party or both parties fail to return the list within the time specified all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference if any, the Commission shall endeavor to obtain the acceptance of an Arbitrator to serve. If the parties fail to agree

upon any of the persons named or if those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Commission shall have power to make the appointment from other members of the Panels without the submission of any additional lists.

13. *Direct Appointment by Parties*—If the Submission or other agreement of the parties names an Arbitrator or specifies any direct method by which an Arbitrator is to be appointed, that designation or method shall be followed. These rules recognize as valid any method for the appointment of the Arbitrators mutually chosen by the parties, that is in conformity with the governing arbitration law. The notice of appointment, with name and address of such Arbitrator, shall be filed with the Commission by the appointing party. Upon the request of any such appointing party, the Commission shall submit a list of members of the Panels from which the party may, if he so desires, make the appointment.

If the Submission or other agreement specifies a period of time within which an Arbitrator shall be appointed, and any party fails to make such appointment within that period, the Commission shall have power to make the appointment.

If no period of time is specified in the Submission or other agreement, the Commission shall notify the parties to make the appointment and if within thirty days thereafter such Arbitrator has not been so appointed, the Commission shall then have power to make the appointment.

14. *Appointment of Additional Arbitrator by Named Arbitrators*—If the parties have named their Arbitrators or either or both of them have been named as provided in Section 13, and have authorized such Arbitrators to appoint an additional Arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the parties, under these Rules, authorize the Commission to appoint such additional Arbitrator who shall act as Chairman.

If no period of time is specified by the parties within which such Arbitrators are to appoint an additional Arbitrator, a period of fifteen days from the date of the appointment of the named Arbitrator last appointed, shall be allowed for their appointment of the additional Arbitrator. In the event of their failure to make the appointment within such fifteen days, the parties, under these Rules, authorize the Commission to appoint such additional Arbitrator who shall act under the agreement with the same force and effect as if he had been appointed by the named Arbitrators and he shall act as Chairman.

If the parties have agreed that their named Arbitrators shall appoint the additional Arbitrator from the Panels, the Commission shall furnish to the named Arbitrators, in the manner prescribed in Section 12, a list selected from the Panels and the appointment of the additional Arbitrator shall be made as prescribed in such Section.

15. *Designation of Number of Arbitrators*—If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the Commission in its discretion specifically directs that a greater number of Arbitrators be appointed, provided that the number of Arbitrators shall be uneven.

16. *Notice of Appointment of Arbitrator*—Notice of the appointment of the Arbitrator, whether appointed by the parties or by the Commission, shall be mailed to the Arbitrator by the Commission and the signed acceptance of the Arbitrator shall be filed with the Commission prior to the opening of the first hearing. Together with such notice to the Arbitrator, the Commission shall enclose a copy of the Rules and call attention to the requirements of Section 11 and 17 of these Rules.

17. *Disclosures by Arbitrator of Disqualification*—At the time of receiving his notice of appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the Commission shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall in writing, so advise the Commission. If either party declines to waive the presumption disqualification, the vacancy thus created shall be filled in the same manner as the original appointment was made.

18. *Vacancies*—If any Arbitrator should resign, die, withdraw, refuse or be unable or disqualified to perform the duties of his office, the Commission shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as the original appointment was made and the matter shall be reheard by the new Arbitrator.

V. PROCEDURE FOR ORAL HEARING

19. *Time and Place*—The Commission shall fix the time and place for each hearing. The Commission shall mail at least thirty days prior thereto notice thereof to each party, unless the parties by mutual agreement waive such notice or modify the terms thereof.

20. *Representation by Counsel*—Any party may be represented by counsel. A party intending to be so represented shall notify the other party and file a copy of such notice with the Commission at least three days prior to the date set for the hearing at which counsel is first to appear. When the initiation of an arbitration is made by counsel, or the reply of the other party is by counsel, such notice is deemed to have been given.

21. *Taking of a Stenographic Record*—The Commission shall make the necessary arrangements for the taking of a stenographic record of the testimony whenever such record is requested by one or more parties. The requesting party or parties shall deposit the estimated cost of such record with the Commission.

22. *Interpreters and Translators*—The Commission shall make the necessary arrangements for the services of an interpreter or translator upon the request of one or more of the parties who shall deposit the cost of such service with the Commission.

23. *Attendance at Hearings*—Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

24. *Adjournments*—The Arbitrator for good cause shown may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

25. *Oaths*—Before proceeding with the first hearing, or with the examination of the file as provided under Rule VI, each Arbitrator may take an oath of office, and if required by law, shall do so. The Arbitrator shall require witnesses to testify under oath administered by any duly qualified person when required by law.

26. *Majority Decision*—Whenever there is more than one Arbitrator, all decisions of the Arbitrators may be by majority vote. The award may also be made by majority vote unless the concurrence of all is expressly required by the arbitration agreement or by law.

27. *Order of Proceeding*—A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of a Minute. The Minute shall set forth the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and the receipt by the Arbitrator of the Submission or of the statement of the claim, and answer if any.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator, and when so received shall be numbered and made part of the record.

The complaining party or his counsel shall then present his claim and proofs to witnesses who shall submit to questions or other examination. The defending party or his counsel shall then present his defense and proofs, and his witnesses who shall submit to questions or other examination. The Arbitrator may in his discretion vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

28. *Arbitration in the Absence of a Party*—Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the other party to submit such evidence as he may require for the making of an award.

29. *Evidence*—The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties except where any of the parties is absent in default or has waived his right to be present.

30. *Evidence by Affidavit and Filing of Documents*—The Arbitrator may receive and consider the evidence of witnesses by affidavit, but may give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the Commission for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

31. *Inspection or Investigation*—Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the Tribunal Clerk to advise the parties of his intention to make an inspection or investigation. The Arbitrator shall set the time and the Tribunal Clerk shall notify the parties

thereof. Any party who so desires may be present at such inspection or investigation. In the event that the parties, or any of them, are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford an opportunity for the receipt of comment or testimony in relation thereto.

32. *Conservation of Property*—The Arbitrator may issue such orders as may be deemed necessary to safeguard the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.

33. *Closing of Hearings*—The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a Minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of the briefs. If documents are to be filed as provided in Section 31 and the date set for their receipt is later than that set for the receipt of briefs, then such later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

34. *Reopening of Hearings*—The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party for good cause shown, at any time before the award is made, except if the reopening of the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract the Arbitrator may reopen the hearings, and the Arbitrator shall have 30 days from the closing of the reopened hearings within which to make an award.

VI. PROCEDURE FOR OTHER THAN ORAL HEARINGS

35. *Waiver of Oral Hearing*—The parties by written agreement may submit their dispute to arbitration by other than oral hearing. The arbitration shall be conducted under these Rules except such provisions thereof as are inconsistent with this Rule.

If no method is specified by the parties, the Commission shall notify the parties to present their proofs in the following manner: The parties shall submit to the Commission their respective contentions in writing, including a statement of facts duly sworn to, together with

such other proofs as they may wish to submit. These statements and proofs may be accompanied by written arguments or briefs. All documents shall be submitted within thirty days from the date of the notice to file such statement and proofs in such number of copies as the Commission may request. It shall forthwith transmit to each party a copy of the statement and proofs submitted by the other party. Each party may reply to the other's statement and proofs, but upon the failure of any party to make such a reply within a period of thirty days after the mailing of such documents to him, he shall be deemed to have waived the right to reply.

If, after such due notice, a party fails to present his contentions in writing, a statement of the facts or proofs within the said period of thirty days, he shall be deemed in default and the Commission shall proceed with its determination of the controversy. The Commission, however, may open the default for sufficient cause at any time prior to the filing of the award.

The Commission shall then transmit all proofs and documents to the Arbitrator who shall have been appointed in any manner provided for in Rule IV. The Arbitrator shall have ten days from the date of their delivery to him within which to request a party or parties to produce additional proof. The Commission shall notify the parties of such request and the party or parties shall submit such additional proof within fifteen days from the date of the receipt of such notice. The Commission, upon receipt thereof, shall forthwith transmit to each party a copy of the additional statement and proofs submitted by the other party. Each party may make a reply to such statement and proofs but upon the failure of any party to make such a reply within a period of fifteen days after the receipt by him of such documents, he shall be deemed to have waived the right to reply.

Upon mailing or delivery to the Arbitrator of all documents submitted as provided above, the arbitration shall be deemed closed and the time limit within which the Arbitrator shall make his award shall begin to run.

VII. SPECIAL PROVISIONS

36. *Adjustments and Voluntary Settlement*—The agreement to arbitrate under these Rules shall not preclude any of the parties before resorting to arbitration from having recourse to inquiries and impartial investigation or from amicably adjusting their controversy.

The Commission, at any stage of the dispute, may in its discretion communicate with the parties for the purpose of obtaining a

negotiated or voluntary settlement of the controversy. The Commission may further make or authorize inquiries into the facts for the purpose of facilitating a settlement of the controversy or making recommendations to the parties. The Commission may use its good offices for the above purposes without charge to the parties and in the interest of good inter-American relations.

37. *Waiver of Rules*—Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

38. *Extensions of Time*—The parties may modify any period of time by mutual agreement. The Commission for good cause may extend any period of time established by these Rules, except the time for making the award. The Commission shall notify the parties of any such extension of time.

39. *Serving of Notices*—Each party to a Submission or other agreement which provides for arbitration under these Rules shall be deemed to have consented and shall consent that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for the entry of judgment on an award made thereunder may be served upon such party (a) by registered mail addressed to such party or his representative at his last known address or (b) by personal service on such party or his representative within or without the State wherein the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted such party.

VIII. THE AWARD

40. *Time*—The award shall be rendered promptly and, unless otherwise agreed by the parties, or specified by law, not later than thirty days from the date of closing the hearings, or if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the Arbitrator.

41. *Form*—The award shall be in writing and shall be signed either by the sole Arbitrator or by a majority if there be more than one. It shall be executed in the manner required by law.

42. *Scope*—The arbitrator in his award may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific per-

formance of a contract. The Arbitrator, in his award, may assess the arbitration fees and expenses in favor of any party or of the Commission.

43. *Award upon Settlement*—If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award in his discretion.

44. *Delivery of Award to Parties*—Parties shall accept as legal delivery of the award (a) the placing of the award or a true copy thereof in the registered mail by the Commission, addressed to such party at his last known address or to his attorney, or (b) personal service of the award, or (c) the filing of the award in any manner which may be prescribed by law.

45. *Release of Documents for Judicial Proceedings*—The Commission shall, upon the written request of a party, furnish to such party at his expense, certified facsimilies of any papers in the Commission's possession that may be required in judicial proceedings relating to the arbitration.

46. *Notice of Compliance*—The Commission, for the purpose of closing the record, may request either party to notify it of compliance with the award or of a voluntary settlement by the parties.

IX. FEES AND EXPENSES

47. *Schedule of Administrative Fees*—An administrative fee in the amount prescribed in the following schedule shall be paid to the Administrator by each of the parties at the time of initiating the arbitration. When a matter is withdrawn or settled subsequent to the filing of a demand for arbitration or a submission agreement, the administrative fee is not returnable.

Where Amount involved is disclosed:—

Initial Fee:

1½% for each party of the amount involved up to \$10,000; the minimum fee for each party, no part of which is refundable, is \$25;

plus 1% for each party of the amount involved in excess of \$10,000 to \$25,000;

plus ½% for each party of the amount involved in excess of \$25,000 to \$100,000;

plus ¼% for each party of the amount involved in excess of \$100,000 to \$200,000;

plus $\frac{1}{10}\%$ for each party of the amount involved in excess of \$200,000.

The fee is based upon the amount of the claim as disclosed when the arbitration is initiated, and such fee is payable by each party. If, however, a claim in a larger amount is disclosed in the answer or in any amendments of the claim or answer filed later, an additional fee in accord with the above schedule shall be paid by the claimant for such larger amount.

Where Amount involved is not disclosed:—

Initial Fee for each party (*Fees for both parties* to be advanced by the filing party): \$100.00 Subject (a) to adjustment with the Administrator, or (b) subject to adjustment in accordance with preceding schedule if an amount is subsequently disclosed.

Hearing Fees:—

The hearing fee payable before each hearing is:
\$30.00 or 50% of Initial Fee—whichever is lower amount.

Adjournment Fee:—

\$10.00 payable only by party causing adjournment of hearing duly called by notice or as the Arbitrator may direct.

Overtime Fee:—

\$2.00 per hour payable by each party (chargeable after 6:00 P.M. weekdays or 12 noon Saturdays).

Apportionment of Fees:—

The Arbitrator may award to either party and against the other, an amount equal to the fee, or any part thereof, which was paid by such party to the Arbitrator.

The Administrator, in the event of proved extreme hardship on the part of any party, may waive the established fees or any portion thereof.

48. *Fee When Oral Hearings are Waived*—Fee where all Oral Hearings are waived under Section 35 shall be the Initial Fee as determined under Section 47 hereof.

49. *Expenses*—The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The total cost of the stenographic record, if any is made, and all transcript thereof, shall be prorated equally among all parties ordering copies, unless they shall otherwise agree among themselves.

All other expenses of the arbitration including required traveling and other expenses of the Arbitrator and Commission, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties unless they agree otherwise, or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

The Arbitrator may award to the Commission any expenses advanced or incurred by it and any fees due and remaining unpaid by any party responsible therefor.

50. *Arbitrator's Fee*—If the parties desire to compensate the Arbitrator but do not agree upon the rate or amount of the compensation, it shall be fixed by the Commission.

Any arrangements for the compensation of a panel arbitrator shall be made through the Commission and not directly by him with the parties.

51. *Deposits*—The Commission may require the parties to deposit in advance with the Commission such sums of money as it deems necessary to defray the expenses of the arbitration, including the Arbitrator's fee if any, and shall render an accounting to the parties and return any unexpended balance.

X. INTERPRETATION AND APPLICATION OF RULES

52. *Interpretation and Application of Rules*—The Arbitrator shall interpret and apply these Rules in so far as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules it shall be decided by majority vote. If that is unobtainable either an Arbitrator or a party may refer the question to the Commission for final decision. All other Rules shall be interpreted and applied by the Commission.