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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 April 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and the Republic of Singapore

Delegations will find attached document COM(2018) 197 final - ANNEX 9.

Encl.: COM(2018) 197 final - ANNEX 9



Brussels, 18.4.2018
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ANNEX 9

ANNEX

to the

Proposal for a Council Decision

**on the signing, on behalf of the European Union, of the Free Trade Agreement between
the European Union and the Republic of Singapore**

RULES OF PROCEDURE FOR ARBITRATION

General provisions

1. In Chapter Fourteen (Dispute Settlement) and under this Annex:
 - "adviser" means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;
 - "arbitrator" means a member of an arbitration panel established under Article 14.5 (Establishment of the Arbitration Panel);
 - "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;
 - "complaining Party" means any Party that requests the establishment of an arbitration panel under Article 14.4 (Initiation of Arbitration Procedure);
 - "Party complained against" means the Party that is alleged to be in violation of the provisions referred to in Article 14.2 (Scope);

- "arbitration panel" means a panel established under Article 14.5 (Establishment of the Arbitration Panel);
 - "representative of a Party" means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.
2. This Annex shall apply to dispute settlement proceedings under Chapter Fourteen (Dispute Settlement) unless the Parties agree otherwise.
 3. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. The Parties shall share equally the expenses derived from organisational matters, including the expenses of the arbitrators.

Notifications

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

5. A Party shall provide an electronic copy of each of its written submissions and rebuttals to each of the arbitrators and simultaneously to the other Party. A paper copy of the document shall also be provided.
6. All notifications shall be addressed to the Director, North America and Europe Division, Singapore Ministry of Trade and Industry and to the Directorate-General for Trade of the European Commission of the Union, respectively.
7. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may, unless the other Party objects, be corrected by delivery of a new document clearly indicating the changes.
8. If the last day for delivery of a document falls on an official legal holiday of Singapore or of the Union, the document shall be delivered on the next business day.
9. Depending on the object of the provisions under dispute, all requests and notifications addressed to the Trade Committee in accordance with Chapter Fourteen (Dispute Settlement) shall also be copied to the other relevant specialised committees established under the Agreement.

Commencing the arbitration

10. a) If pursuant to Article 14.5 (Establishment of the Arbitration Panel) or to Rules 22, 24 or 51 of this Annex, the arbitrators are selected by lot, representatives of both Parties are entitled to be present when lots are drawn.

- (b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties or the arbitration panel deems appropriate, including the remuneration and expenses to be paid to the arbitrators. Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.
11. (a) Unless the Parties agree otherwise within seven days from the date of establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:
- "to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel made pursuant to Article 14.4; to rule on the compatibility of the measure in question with the provisions referred to in Article 14.2 by making findings of law and/or fact, together with the reasons thereof; and to issue a ruling in accordance with Articles 14.7 and 14.8."
- (b) Where the Parties have agreed on the terms of reference of the arbitration panel, they shall notify such agreement to the arbitration panel forthwith.

Initial submissions

12. The complaining Party shall deliver its initial written submission no later than twenty days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than twenty days after the date of delivery of the initial written submission.

Working of arbitration panels

13. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.
14. Unless otherwise provided in Chapter Fourteen (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
15. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
16. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
17. Where a procedural question arises that is not covered by Chapter Fourteen (Dispute Settlement) and its Annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
18. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed.

Replacement

19. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 14.5 (Establishment of the Arbitration Panel).
20. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct under Annex 14-B (hereinafter referred to as "Code of Conduct"), and for this reason should be replaced, this Party should notify the other Party within fifteen days from the time at which it came to know of the circumstances underlying the arbitrator's non-compliance with the Code of Conduct.
21. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 14.5 (Establishment of the Arbitration Panel).
22. If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator did not comply with the requirements of the Code of Conduct, a new arbitrator shall be selected.

The Party which had selected the arbitrator who needs to be replaced, shall select one arbitrator from among the remaining relevant individuals on the list established under paragraph 2 of Article 14.20 (Lists of Arbitrators). If the Party fails to select an arbitrator within five days of the finding of the chairperson of the arbitration panel, the chair of the Trade Committee or the chair's delegate shall select an arbitrator, by lot from the remaining relevant individuals on the list established under paragraph 2 of Article 14.20 (Lists of Arbitrators), within ten days of the finding of the chairperson of the arbitration panel.

Should the list provided for in paragraph 2 of Article 14.20 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 4 of Article 14.5 (Establishment of the Arbitration Panel), the Party which had selected the arbitrator who needs to be replaced or, if that Party fails, the chair of the Trade Committee or the chair's delegate shall select an arbitrator within five days of the finding of the chairperson of the arbitration panel:

- (a) where the Party had failed to propose individuals, from among the remaining individuals proposed by the other Party pursuant to paragraph 2 of Article 14.20 (Lists of Arbitrators);
- (b) where the Parties had failed to agree on a list of names pursuant to Article paragraph 2 of Article 14.20 (Lists of Arbitrators), from among the individuals the Party had proposed pursuant to paragraph 2 of Article 14.20 (Lists of Arbitrators).

23. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 14.5 (Establishment of the Arbitration Panel).
24. If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to a neutral third party. If the Parties are unable to agree on a neutral third party, such matter shall be referred to one of the remaining members on the list referred to under paragraph 1 of Article 14.20 (Lists of Arbitrators). Her or his name shall be drawn by lot by the chair of the Trade Committee, or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson did not comply with the requirements of the Code of Conduct, the Parties shall agree on the replacement. If the Parties fail to agree on a new chairperson, the chair of the Trade Committee, or the chair's delegate, shall select by lot from among the remaining members on the list referred to under paragraph 1 of Article 14.20 (Lists of Arbitrators). The remaining members on the list shall exclude, where relevant, the person who decided that the original chairperson did not comply with the requirements of the Code of Conduct. The selection of the new chairperson shall be done within five days of the finding of the need to replace the chairperson.

25. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in Rules 19, 20, 21, 22, 23 and 24 of this Annex.

Hearings

26. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other arbitrators, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings unless the hearing is closed to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.
27. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Singapore and in Singapore if the complaining Party is the Union.
28. The arbitration panel may convene additional hearings if the Parties so agree.
29. All arbitrators shall be present during the entirety of any hearings.
30. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
 - (a) representatives of the Parties;
 - (b) advisers to the Parties;
 - (c) administrative staff, interpreters, translators and court reporters; and
 - (d) arbitrators' assistants.

Only the representatives of and advisers to the Parties may address the arbitration panel.

31. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel, and simultaneously to the other party, a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

32. The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public. Where the hearings are open to the public, unless the Parties agree otherwise:
 - (a) public viewing shall take place via simultaneous closed circuit television broadcast to a separate viewing room at the venue of the arbitration;
 - (b) registration for public viewing of the hearings shall be required;
 - (c) no audio or video recording or photography shall be permitted in the viewing room;
 - (d) the panel shall have the right to call for a closed session of any of the hearings in order to address issues related to any confidential information.

The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. Exceptionally, the panel shall have the right to conduct the hearings in a closed session at any time on its own initiative or at the request of either Party.

33. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Submissions

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

Rebuttals

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

34. The arbitration panel may direct questions to either Party at any time during the hearing.
35. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.
36. Each Party may deliver to the arbitration panel and simultaneously to the other Party a supplementary written submission concerning any matter that arose during the hearing within ten days of the date of the hearing.

Questions in writing

37. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
38. Each Party shall also provide a copy of its written response to the arbitration panel's questions to the arbitration panel and simultaneously to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of receipt.

Confidentiality

39. The Parties and their advisers shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with Rule 32 of this Annex, the deliberations and interim panel report, and all written submissions to, and communications with, the panel. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party's submission to the arbitration panel contains confidential information, that Party shall also provide, upon request of the other Party, within fifteen days, a non-confidential version of the submission that could be disclosed to the public. Nothing in this Annex shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

Ex parte contacts

40. The arbitration panel shall not meet, hear or otherwise contact a Party in the absence of the other Party.
41. No arbitrators may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other arbitrators.

Amicus curiae submissions

42. Unless the Parties agree otherwise within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or legal persons of the Parties, provided that they are made within ten days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual issue under consideration by the arbitration panel.
43. The submission shall contain a description of the person making the submission, whether natural or legal, including its nationality or place of establishment the nature of their activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rule 46 of this Annex.
44. The arbitration panel shall list in its ruling all the submissions it has received that conform to Rules 42 and 43 of this Annex. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any submission obtained by the arbitration panel under this Annex shall be submitted to the Parties for their comments.

Urgent cases

45. In cases of urgency referred to in Chapter Fourteen (Dispute Settlement), the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in this Annex as appropriate and shall notify the Parties of such adjustments.

Translation and interpretation

46. During the consultations referred to in Article 14.3 (Consultations), and no later than the meeting referred to in Rule 10(b) of this Annex, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
47. Any Party may provide comments on any translated version of a document drawn up in accordance with this Annex.
48. In the event of any divergence over the interpretation of this Agreement, the arbitration panel shall take account of the fact that this Agreement was negotiated in English.

Calculation of time-limits

49. Where, by reason of the application of Rule 8 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Other procedures

50. This Annex is also applicable to procedures established under paragraph 2 of Article 14.10 (Reasonable Period of Time for Compliance), paragraph 2 of Article 14.11 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling), paragraph 3 of Article 14.12 (Temporary Remedies in Case of Non-compliance), paragraph 2 of Article 14.13 (Review of Any Measure Taken to Comply After the Suspension of Obligations). The time-limits laid down in this Annex shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.
51. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under paragraph 2 of Article 14.10 (Reasonable Period of Time for Compliance), paragraph 2 of Article 14.11 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling), paragraph 3 of Article 14.12 (Temporary Remedies in Case of Non-compliance), paragraph 2 of Article 14.13 (Review of Any Measure Taken to Comply After the Suspension of Obligations), the procedures set out in Article 14.5 (Establishment of the Arbitration Panel) shall apply. The time limit for the notification of the ruling shall be extended by fifteen days.

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

- "arbitrator" means a member of an arbitration panel established under Article 14.5 (Establishment of the Arbitration Panel);
- "candidate" means an individual whose name is on the list of arbitrators referred to in Article 14.20 (Lists of Arbitrators) and who is under consideration for selection as an arbitrator under Article 14.5 (Establishment of the Arbitration Panel);
- "assistant" means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;
- "proceeding", unless otherwise specified, means an arbitration panel proceeding under Chapter Fourteen (Dispute Settlement);
- "staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

Responsibilities to the process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Arbitrators shall not take instructions from any organisation or government with regard to matters before a Panel. Former arbitrators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of his or her selection as an arbitrator under Chapter Fourteen (Dispute Settlement), a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.
4. A candidate or arbitrator shall only communicate matters concerning actual or potential violations of this Code of Conduct to the Trade Committee for consideration by the Parties.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the Trade Committee, in writing, for consideration by the Parties.

Duties of arbitrators

6. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

Independence and impartiality of arbitrators

10. An arbitrator must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.
11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
12. An arbitrator may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
13. An arbitrator may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former arbitrators

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived any advantage from the decision or ruling of the arbitration panel.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to affect the interest of others.
17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with Chapter Fourteen (Dispute Settlement).
18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view regarding the deliberations.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his or her expenses, as well as the time and expenses of his or her assistants.

Mediators

20. The disciplines described in this Code of Conduct applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators.