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Settlement of commercial disputes: Revision of the UNCITRAL Arbitration Rules

Proposal by the Government of Switzerland

Note by the Secretariat*

I. Introduction

1. In preparation for the forty-ninth session of the Working Group the Government of Switzerland submitted two proposals concerning the Revision of the UNCITRAL Arbitration Rules regarding articles 19 and 26 for consideration by the Working Group. The English language version of these proposals was submitted to the Secretariat on 8 September 2008. The text communicated by the Government of Switzerland is reproduced as an annex to this note, in the form in which it was received by the Secretariat.

* The submission of this document was delayed because it contains proposals received on 8 September 2008.



Annex

UNCITRAL Arbitration Rules – Revision

Article 19, paragraph 3 – proposed amended version

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim or rely on a claim for the purpose of a set-off.

The arbitral tribunal shall have jurisdiction to hear a set-off defence even if the claim on which the set-off is based does not fall within the scope of the arbitration agreement, and even if such claim is the object of a different arbitration agreement or of a forum selection clause, provided that the requirements for a set-off under the substantive law applicable to the main claim are fulfilled.

A counter-claim is admissible only if it falls within the scope of an arbitration agreement between the parties to arbitrate under these Rules and has a sufficient link to the main claim.

Article 26 – proposed short version

1. The arbitral tribunal may, at the request of a party, grant interim measures that it considers necessary for a fair and efficient resolution of the dispute. Upon application of any party or, in exceptional circumstances, on its own initiative, it may also modify, suspend or terminate the measures granted.

2. Before ruling on a request for interim measures, the arbitral tribunal may order any other party not to frustrate the requested measure. Such preliminary orders may be made before the request has been communicated to any other party, provided the communication is made at the latest together with the preliminary order and such other party is afforded immediately an opportunity to be heard.

[alternatively: delete article 15 (3) which in any event is in conflict with the practice of those arbitral institutions and arbitral tribunals which require the parties to make their submissions to the institution or tribunal which then passes copies to the other parties.]

3. The arbitral tribunal may require the party requesting an interim measure or a preliminary order to provide appropriate security.

4. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure or preliminary order was requested or granted.

5. The arbitral tribunal may rule at any time on claims for compensation of any damage wrongfully caused by the interim measure or preliminary order.

6. A request for interim measures of whatever kind addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.