

## ANNEX 19A

### RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

#### Section A: Definitions and General Provisions

##### Rule 1 Definitions

For the purposes of this Annex:

- (a) **“adviser”** means a person retained by a disputing Party to advise or assist the disputing Party in connection with the panel proceeding;
- (b) **“assistant”** means a person who is retained by a panellist pursuant to Rule 7 (Operation of the Panel) to conduct research or provide support to the panellist;
- (c) **“Code of Conduct”** means the Code of Conduct for Panellists established pursuant to Article 19.11 (Rules of Procedure and Code of Conduct) in Annex 19B (Code of Conduct for Dispute Settlement);
- (d) **“panellist”** means a member of a panel established under Article 19.8 (Composition of Panels);
- (e) **“proceeding”**, unless otherwise specified, means the proceeding of a panel under Chapter 19 (Dispute Settlement); and
- (f) **“representative”** means an employee of a government department or agency or of any other government entity of a Party, or any person appointed or retained by a government department or agency, or any other government entity of a Party, who represents, advises, or assists that Party for the purposes of a dispute under this Chapter.

##### Rule 2 General Provisions

1. Unless the Parties agree otherwise, these Rules of Procedure shall apply to proceedings of a panel established under Chapter 19 (Dispute Settlement).
2. In the event of an inconsistency between these Rules of Procedure and Chapter 19 (Dispute Settlement), the provisions of that Chapter shall prevail to the extent of the inconsistency.

3. Except as provided otherwise, any reference made in these Rules of Procedure to an Article is a reference to the appropriate Article in Chapter 19 (Dispute Settlement) of the Agreement.

## **Section B: Panel Procedures**

### **Rule 3 Notifications**

1. Any request, notice, written submission, or other document in a proceeding transmitted by:
  - (a) the panel shall be sent to both Parties at the same time;
  - (b) a Party to the panel shall be copied to the other Party at the same time; and
  - (c) a Party to the other Party shall be copied to the panel at the same time, where appropriate.
2. The notification to a Party of any document under Chapter 19 (Dispute Settlement), these Rules of Procedure, or the Code of Conduct shall be addressed to that Party's contact point designated pursuant to Article 19.23 (Contact Point).
3. The Parties or panel shall deliver any request, notice, written submission, or other document by email or, where appropriate, other electronic means (where possible in a searchable format) that provides a record of the sending thereof. Unless proven otherwise, any request, notice, written submission, or other document shall be deemed to be received on the date of its sending. The date of sending shall be determined according to the time zone in the capital city of the sending Party.
4. If it is not possible to deliver a document or any part thereof, including an exhibit or exhibits, in electronic form, the Party submitting the document shall inform the panel and the other Party of its inability to do so. That Party shall also deliver, by the most expeditious means practicable, a copy of the document or any part thereof, including an exhibit or exhibits, to each of the panellists and to the other Party.
5. If the last day for delivery of a document falls on a non-business day of a Party or on any other day on which the offices of the Government of a Party are closed, the document may be delivered on the next business day.

6. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the proceeding may be corrected by delivering a new document clearly indicating the changes. Any such correction shall not affect the timetable for the proceeding. Any disagreement regarding whether or not the correction is of a clerical nature shall be resolved by the panel after consulting the Parties.

#### **Rule 4 Appointment of Panellists**

1. If a panellist is to be selected by lot pursuant to Article 19.8 (Composition of Panels), the complaining Party shall promptly notify the responding Party in writing of the date, time, and venue of the selection by lot. The selection by lot shall take place no earlier than 7 days after the date of delivery of the notification. The responding Party shall have a reasonable opportunity to be present when the lot is drawn.
2. The Parties shall notify, in writing, each individual who has been selected to serve as a panellist pursuant to Article 19.8 (Composition of Panels) of their selection. Each individual shall confirm their availability to both Parties no later than 5 days after the date of delivery of the notification.
3. If an individual who has been selected to serve as a panellist does not confirm their availability within the time period provided for in paragraph 2, or notifies that they are unavailable, a new individual shall be selected. To that end, the procedure provided for in Article 19.8 (Composition of Panels) shall be repeated, starting with the selection method that led to the selection of the unavailable individual.
4. The panellists shall accept their appointment by signing the appointment contracts and returning a signed copy to the Parties. The Parties shall endeavour to ensure that, at the latest by the time all the selected panellists have confirmed their availability, they have agreed on the remuneration and the reimbursement of expenses of the panellists and assistants, and have prepared the necessary appointment contracts, with a view to having them signed promptly.

#### **Rule 5 Organisational Meeting**

1. Unless the Parties agree otherwise, the Parties shall meet with the panel within 7 days of the date of establishment of the panel in order:

- (a) for the Parties to agree the remuneration and expenses to be paid to the panellists and their assistants, in accordance with Rule 16 (Remuneration and Expenses);
  - (b) for the panel to consult the Parties on the timetable for the proceedings including precise dates for the filing of submissions and the date of the oral hearing; and
  - (c) to discuss any other matter that the Parties or the panel deem appropriate.
2. The meeting referred to in paragraph 1 may be conducted by any means as agreed by the Parties including telephone, video conference or other electronic means of communication.

### **Rule 6 Timetable**

1. After consulting the Parties pursuant to Rule 5 (Organisational Meeting), a panel shall, as soon as practicable and whenever possible within 15 days of the date of establishment of the panel, fix the timetable for the panel process. The timetable shall provide sufficient time for the Parties to prepare their respective submissions and shall set precise deadlines for written submissions by the Parties.
2. If the panel considers there is a need to modify or adjust the timetable, the panel shall consult the Parties in writing of the proposed modification and the reason for it. The Panel may modify the timetable for the proceeding or make any adjustments as may be required.

### **Rule 7 Operation of the Panel**

1. The chair of the panel shall preside at all of its meetings. The panel may delegate to the chair the authority to make administrative and procedural decisions.
2. Panel deliberations shall be confidential. Only panellists may take part in the deliberations of the panel, but the panel may permit assistants or designated note-takers to be present during such deliberations.
3. The panel shall, where possible, take its decisions by consensus. If a panel is unable to reach consensus, it may take its decisions by majority vote.
4. Except as otherwise provided in this Annex, the panel may conduct its business by any means, including by email, telephone, facsimile

transmission, videoconference, or any other means of electronic communication.

5. The reports of the panel shall be drafted and presented in accordance with Article 19.12 (Reports of the Panel). The panellists shall not delegate their responsibility for the drafting of the reports as provided for in paragraph 1 of Article 19.12 (Reports of the Panel).
6. If a procedural question arises that is not covered by Chapter 19 (Dispute Settlement) or its Annexes, the panel, after consulting the Parties, or on the joint request of the Parties, shall adopt an appropriate rule of procedure that is not inconsistent with the Agreement or these Rules of Procedure.

### **Rule 8 Written Submissions**

1. Subject to Rule 6 (Timetable), the complaining Party shall deliver its first written submission to the panel no later than 14 days after the date of establishment of the panel. The responding Party shall deliver its first written submission to the panel no later than 30 days after the date of delivery of the complaining Party's first written submission. Copies shall be provided for each panellist.
2. The complaining Party shall deliver a rebuttal submission no later than 15 days after the date of delivery of the first written submission of the responding Party. In that case, the responding Party may submit its response no later than 15 days after the date of delivery of the rebuttal submission of the complaining Party.
3. No later than 12 days after the last day of the hearing, each Party may deliver to the panel a supplementary written submission responding to any matter that arose during the hearing, if requested by the panel. Each Party may provide written comments on the other Party's supplementary written submission no later than 10 days after receipt of the other Party's supplementary written submission.

### **Rule 9 Hearings**

1. The timetable established pursuant to Rule 6 (Timetable) shall provide for at least one hearing for the Parties to present their case to the panel. Based on the timetable determined pursuant to Rule 6 (Timetable), the chair of the panel shall fix the time of the hearing. The chair shall notify in writing to the Parties the time and location of the hearing. The panel shall seek to hold the hearing at least 14 days after the date of delivery of the written rebuttal submissions.

2. Unless the Parties agree otherwise, the hearing shall be held in the capital of the responding Party.
3. On request of a Party, or on its own initiative, a panel may convene additional hearings if the Parties so agree. Any additional hearings shall alternate between the capital cities of the Parties.
4. Unless the Parties agree otherwise, the Party in whose capital city the hearing is held shall be responsible for the logistical arrangements for the hearing, in particular the organisation of the venue.
5. All presentations and statements made at hearings shall be made in the presence of the Parties to the dispute.
6. All panellists shall be present during the entirety of each hearing. If a replacement panellist has been appointed after a hearing has occurred but before the panel's report is published, the panel may hold a new hearing if a Party requests, or if the panel considers a new hearing to be appropriate.
7. The following persons may also be present at hearings:
  - (a) representatives of the Parties;
  - (b) administrative personnel, translators, and designated note-takers of the panel; and
  - (c) panellists' assistants.

Any such arrangements established by the panel may be modified with the agreement of the Parties.
8. Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,<sup>1</sup> except that the panel shall close the hearing for any discussion of confidential information.<sup>2</sup> Attendance in the hearing room shall be limited to the persons referred to in paragraphs 6 and 7.
9. The Parties to the dispute shall make available to the panel written versions of their oral statements before the panel no later than 7 days after the last day of the relevant hearing. For greater certainty, this does not include responses to any questions asked orally during the hearing.
10. No later than five days before the date of a hearing, each Party shall deliver to the panel and to the other Party a list of names of the persons

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<sup>1</sup> For greater certainty, the expression "open for the public to observe" does not include physical presence at the hearing. To facilitate public observation of a hearing, that hearing may be transmitted electronically to the public at the time of the hearing at a different venue or at a later date or time, or through any other procedure as both Parties consider appropriate.

<sup>2</sup> For greater certainty, hearings held in closed session shall be confidential.

who shall make oral arguments or presentations in the hearing on behalf of that Party, and of other representatives and advisers who shall be attending the hearing.

11. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the responding Party are afforded equal time to present their case.
12. As a general rule, the panel shall conduct the hearing in the following manner:

*Argument*

- (a) argument of the complaining Party;
- (b) argument of the responding Party;

*Rebuttal Argument*

- (c) the reply of the complaining Party;
- (d) the counter-reply of the responding Party;

*Closing Argument*

- (e) closing statement of the complaining Party; and
- (f) closing statement of the responding Party.

13. The panel may direct questions to a Party at any time during the hearing.
14. The panel may decide, after consulting the Parties, to hold a virtual or hybrid hearing and make appropriate arrangements, taking into account the rights of due process.
15. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments and, if required, address any inaccuracies in the transcript.

**Rule 10**  
**Written Questions from the Panel**

1. The panel may direct questions in writing to either Party at any time during the proceedings. The Parties shall respond promptly and fully in writing to any request by the panel for such information. Any question directed by the panel to one Party shall be copied to the other Party.

2. Each Party shall also provide a copy of its response to such questions to the other Party at the same time as it is delivered to the panel. Each Party shall be given a reasonable opportunity to provide written comments on the response of the other Party.

**Rule 11**  
**No *Ex Parte* Communications**

1. The panel shall not meet or contact a Party in the absence of the other Party.
2. Neither Party shall meet or contact any panellists in relation to the dispute in the absence of the other Party. Any contact between a Party and a person who is under consideration for selection as a panellist shall be limited to issues relating to that person's availability and the appointment contract.
3. No panellist shall discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other Party or the other panellists.

**Rule 12**  
**Technical Advice**

1. On request of a Party, or on its own initiative, the panel may, subject to consultations with the Parties, seek information or technical advice from any individual or body that it deems appropriate. If the Parties agree that the panel should not seek information or technical advice, the panel shall resume without the information or technical advice.
2. Any information or technical advice received by the panel pursuant to paragraph 1 shall be provided to the Parties for comment. Where the panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

**Rule 13**  
**Confidential Information**

1. Each Party shall treat as confidential any information submitted by the other Party which that Party has designated as confidential.
2. If a Party designates information as confidential, it shall on the request of the other Party, provide the panel and the other Party with a non-

confidential summary of that information no later than 10 days after the date of request.

**Rule 14**  
**Public Release of Documents**

1. Subject to the protection of confidential information, each Party may release a copy of the request for consultations and the request for establishment of a panel to the public. The timetable for hearings may be released to the public if both Parties agree.
2. Subject to the protection of confidential information, a Party may disclose statements of its own positions to the public, including releasing to the public its own written submissions, written versions of oral statements, and written responses to requests or questions from the panel.<sup>3</sup>

**Section C: Ancillary Provisions**

**Rule 15**  
**Replacement of Panellists**

1. If a Party considers that a panellist has violated the requirement to comply with the Code of Conduct, that Party shall notify the other Party no later than 5 days after the date on which it obtained sufficient evidence of the panellist's alleged failure to comply with the Code of Conduct.
2. The Parties shall consult no later 15 days after the date of the notification referred to in paragraph 1. They shall inform the panellist of the alleged non-compliance and may request the panellist to take steps to remedy it. If the Parties agree, the Parties may remove the panellist and select a new panellist in accordance with Article 19.8 (Composition of Panels).
3. Any period of time applicable to the panel proceedings shall be suspended for a period beginning on the date a panellist resigns, is removed, or is authorised to seek to remedy the non-compliance, and ending on the date a replacement panellist is appointed or the non-compliance has ceased after amelioration.

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<sup>3</sup> A Party releasing such written submissions, written versions of oral statements, and written responses to requests or questions from the panel, shall pay due regard to withhold information contained in them that pertains specifically to the other Party's position.

4. If the Parties fail to agree on the need to replace a panellist other than the chair of the panel, either Party may refer this matter to the chair of the panel, whose decision shall be final.
5. If the chair of the panel finds that the panellist does not comply with the requirements of Code of Conduct, the panellist shall be removed and a new panellist shall be selected in accordance with Article 19.8 (Composition of Panels).
6. If the Parties fail to agree on the need to replace the chair, they will consult with each other and determine a mutually agreeable pathway to resolve the matter.

### **Rule 16 Remuneration and Expenses**

1. Unless the Parties agree otherwise, the costs of the panellists and other expenses associated with the conduct of the panel proceedings shall be borne by each Party in accordance with Article 19.22 (Expenses).
2. Each panellist shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding, as well as the time and expenses of their assistants. The panel shall keep a record and render a final account to the Parties of its administrative expenses.
3. Unless the Parties agree otherwise, remuneration for panellists shall be paid based on the rate for non-governmental panellists used by the World Trade Organization on the date a Party makes a written request for the establishment of a panel under Article 19.7 (Request for Establishment of a Panel).
4. Unless the Parties agree otherwise, expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Party makes a written request for the establishment of a panel under Article 19.7 (Request for Establishment of a Panel).
5. Each panellist may hire one assistant to provide research, translation, or interpretation support, unless a panellist requires an additional assistant and the disputing Parties agree that, due to exceptional circumstances, the panellist should be permitted to hire an additional assistant. Unless the Parties agree otherwise, the total remuneration of an assistant or all assistants of a panellist shall not exceed 50% of the remuneration of that panellist.
6. If the panel seeks information or technical advice pursuant to Rule 12 (Technical Advice), the amount and details of the remuneration and expenses an expert is to receive shall be determined by the Parties and

shall be borne by the Parties in equal share. Experts shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding.

7. In case of resignation or removal of a panellist, assistant, expert, or if the Parties reach a mutually agreed solution, the Parties will make payment of the remuneration and expenses owed, using resources provided equally by the Parties, on submission of a final account, following the procedures in paragraphs 2 and 6, as applicable.
8. A Party may at any time in the proceedings make reasonable request to the panel to furnish a statement of its costs to date in the proceedings and to provide an estimate of the additional work that is required.