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ANNEX 17-A

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

RULE 1

Scope

1. In accordance with Article 17.21 (Rules of procedure), these Rules of Procedure apply to consultations and panel procedures under Chapter 17 (Dispute settlement).
2. In the event of an inconsistency between these Rules of Procedure and Chapter 17 (Dispute settlement), Chapter 17 (Dispute settlement) shall prevail to the extent of the inconsistency.

RULE 2

Definitions

For the purposes of this Annex:

- (a) "adviser" means a person retained by a Party to advise or assist that Party in connection with a panel procedure;

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- (b) "assistant" means a person who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist or ADR provider;
- (c) "non-working day" means, with regard to a Party, Saturday, Sunday and any other day officially designated by that Party as a public holiday and published in the Official Journal of the European Union or the Official Gazette of India, respectively; and
- (d) "representative of a Party" means an employee of, or any person appointed by, a government department, agency or any other public entity of a Party who represents that Party for the purposes of a dispute under Chapter 17 (Dispute settlement).¹

RULE 3

Notifications

1. Any request, notice, written submission or other document (hereinafter referred to as "notification") of:

- (a) the panel shall be delivered to both Parties at the same time;

¹ For greater certainty, a non-governmental organisation shall not be a representative of a Party, unless agreed by the Parties.

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(b) a Party, addressed to the panel, shall be copied to the other Party at the same time; and

(c) a Party, addressed to the other Party, shall be copied to the panel at the same time.

2. Any notification shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

3. The date of sending shall be determined according to the time zone in Brussels, if the sending Party is the European Union, or New Delhi, if the sending Party is India.

4. Notifications shall be addressed to the Directorate-General responsible for Trade of the European Commission and to the Foreign Trade (Europe) Division of the Department of Commerce, Ministry of Commerce and Industry, Government of the Republic of India, respectively, or to their designated contact point.

5. Minor errors of a clerical nature in a notification related to a panel procedure may be corrected by delivering a new notification clearly indicating the changes. Such corrections shall not affect the timetable for the procedure. Any disagreement regarding whether or not the correction is of a clerical nature shall be resolved by the panel after consulting the Parties.

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6. If the last day for the delivery of a notification falls on a non-working day of the institutions of the European Union or of the Government of the Republic of India, or on any other day on which the offices of the European Union or of the Government of the Republic of India are officially closed, the time period for the delivery of the document shall end on the next working day.

RULE 4

Appointment of panellists

1. For the purposes of Article 17.7(9) (Establishment and composition of a panel), the complaining Party shall select by lot:
 - (a) a panellist from the individuals who have been formally proposed by a Party as panellists for its sub-list pursuant to points (a) or (b) of Article 17.8(2) (List of panellists), as applicable, or, in the absence of those, from the individuals who have been formally proposed by the other Party for that Party's sub-list;
 - (b) a chairperson from the individuals who have been formally proposed by one or both Parties for the sub-list of chairpersons pursuant to point (c) of Article 17.8(2) (List of panellists); if both Parties have formally proposed individuals for the sub-list of chairpersons, the complaining Party shall ensure that an equal number of names shall be drawn from each Party's proposals to constitute a joint pool of candidates from which the selection by lot shall be made.

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2. The complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of their selection. Each individual shall confirm their availability to both Parties within five days after the date of delivery of the notification.

3. The panellists shall accept their appointment by signing the appointment contracts. 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. The remuneration and expenses of the panellists shall be based on WTO standards on the date a complaining Party makes a request for the establishment of a panel pursuant to Article 17.7 (Establishment and composition of a panel). The remuneration and expenses of an assistant or assistants of a panellist shall not exceed 50 % of the remuneration and expenses of that panellist.

RULE 5

Organisational meeting and timetable

1. Unless the Parties agree otherwise, they shall meet the panel within seven days after the establishment of the panel in order to discuss such matters as the Parties or the panel deem appropriate, including the timetable of the panel procedure.

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2. The organisational meeting may be conducted by any means, including telephone, video-conference or other electronic means of communication, unless the Parties agree that it shall take place in person.

3. After consulting the Parties, the panel shall, as soon as practicable after the establishment of the panel and no later than seven days after the organisational meeting, determine the timetable of the panel procedure.

RULE 6

Written submissions

1. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the panel, and no later than 15 days in cases of urgency. The Party complained against shall deliver its written submission no later than 30 days after the date of delivery of the written submission of the complaining Party, and no later than 25 days in cases of urgency.

2. If it is not possible to deliver a document, or any part thereof, including an exhibit, in electronic format, the Party submitting the document shall inform the panel and the other Party thereof and deliver, by the most expeditious means practicable, three paper copies of the document concerned to the panel and one copy to the other Party.

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3. Documents delivered by electronic means should be in a searchable format, unless this is not practicable.

RULE 7

Operation of the panel

1. The chairperson of the panel shall preside at all its meetings. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.
2. Unless otherwise provided for in Chapter 17 (Dispute settlement) or in these Rules of Procedure, the panel may conduct its activities through any means, including telephone, video-conference, or any other electronic means of communication.
3. The panel's deliberations shall be confidential. Only panellists may take part in the deliberations of the panel, but the panel may permit their assistants to be present during such deliberations.
4. The drafting of any decision or report shall remain the exclusive responsibility of the panel and shall not be delegated.

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5. If a procedural question arises that is not covered by Chapter 17 (Dispute settlement) or its Annexes, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

6. The panel shall ensure a prompt settlement of the dispute. If the panel considers that there is a need to modify any of the time periods for the panel procedure other than the time periods set out in Chapter 17 (Dispute settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the time period or adjustment needed. The panel may adopt the modification or adjustment after consultation of the Parties.

RULE 8

Replacement of panellists

1. If a panellist resigns or is unable to act, they shall notify the Parties and a successor panellist shall be appointed in accordance with Article 17.20 (Replacement of panellists) and 17.7 (Establishment and composition of a panel). The notification shall be sent to the Parties and to the other panellists.

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2. If a Party considers that a panellist does not comply with the requirements of Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers), and for this reason should be replaced, that Party shall notify the other Party within 15 days after the date on which it obtained sufficient evidence of the panellist's alleged non-compliance.
3. The Parties shall consult within 15 days after the date of the notification referred to in paragraph 2. Unless the Parties agree that there is no compliance issue, 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, they may remove the panellist and select a new panellist in accordance with Article 17.7 (Establishment and composition of a panel) and Article 17.20 (Replacement of panellists).
4. If the Parties fail to agree on the need to replace a panellist other than the chairperson of the panel, either Party may refer this matter to the chairperson of the panel, whose decision shall be final.
5. If the chairperson finds that the panellist does not comply with the requirements of Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers), the panellist shall be removed and a new panellist shall be selected in accordance with Article 17.7 (Establishment and composition of a panel) and Article 17.20 (Replacement of panellists).

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6. If the Parties fail to agree on the need to replace the chairperson of the panel, either Party may refer the matter to one of the other individuals on the sub-list of chairpersons established pursuant to Article 17.8 (Lists of panellists). The name shall be drawn by lot by the referring Party.¹ The decision by the selected individual on the need to replace the chairperson shall be final.

7. If the individual selected pursuant to paragraph 6 finds that the chairperson does not comply with the requirements of Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers), the chairperson shall be removed and a new chairperson shall be selected in accordance with Article 17.7 (Establishment and composition of a panel) and Article 17.20 (Replacement of panellists).

RULE 9

Hearings

1. Based on the timetable determined pursuant to Rule 5 (Organisational meeting and timetable), after consulting with the Parties and the other panellists, the chairperson of the panel shall notify to the Parties the date, time and venue of the hearing. That information shall be made publicly available by the Party in which the hearing takes place.

2. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is India and in New Delhi if the complaining Party is the European Union. The hosting Party shall be in charge of the logistical administration of the hearing and, unless the Parties agree otherwise, bear the expenses derived therefrom.

¹ The referring Party shall give reasonable opportunity for representatives of the other Party to be present when the lot is drawn.

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3. Notwithstanding paragraph 2, the panel may decide, on request of a Party, to hold a virtual or hybrid hearing and make appropriate arrangements, taking into account the rights of due process.
4. The panel, on request of a Party or on its own initiative, may convene additional hearings if the Parties so agree.
5. All panellists shall be present during the entirety of the hearing.
6. Unless the Parties agree otherwise, the following persons may attend the hearing:
 - (a) representatives and advisers of a Party; and
 - (b) assistants, interpreters and other persons whose presence is required by the panel to assist the panel in its work, such as technicians or experts.
7. If the hearing is open to the public, it may be transmitted electronically to the public at the time of the hearing or at a later time, or through any other means that the Parties consider appropriate. Unless the Parties agree otherwise, registration for public viewing of the hearing shall be required. The panel may decide on further logistical arrangements.
8. Each Party shall deliver a written version of its oral statements before the panel within one day after the hearing.

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9. No later than three 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 who will make oral arguments or presentations in the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.

10. The panel shall conduct the hearing in a manner ensuring that the Parties are treated on an equal footing and are afforded equal time to present their arguments. All presentations and statements shall be made in the presence of the Parties, unless a Party chooses not to attend. The chairperson may set time limits for oral arguments.

11. The hearing should include the following:

- (a) argument of the complaining Party;
- (b) argument of the responding Party;
- (c) the reply of the complaining Party;
- (d) the counter-reply of the responding Party;
- (e) closing statement of the complaining Party; and

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(f) closing statement of the responding Party.

12. The panel may direct questions to either Party at any time during the hearing.

13. The panel shall arrange for a recording of the hearing to be delivered to the Parties as soon as possible after the hearing.

14. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days after the conclusion of the hearing.

RULE 10

Written questions of the panel

1. The panel may at any time during the panel procedure submit questions in writing to one or both Parties. Any question submitted to one Party shall be copied to the other Party.

2. A Party shall copy its response to the panel's questions to the other Party. The other Party may provide comments in writing on that response within seven days after the delivery of the copy.

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RULE 11

Confidentiality

1. Confidential information consists of:
 - (a) confidential business information;
 - (b) information that is protected against being made available to the public under this Agreement;
 - (c) information that is protected against being made available to the public, in the case of information of the complaining Party, under the law of the complaining Party, and in the case of information from the Party complained against, under the law of the Party complained against; or
 - (d) information the disclosure of which would impede law enforcement.
2. The panel shall meet in closed session if the submission and arguments of a Party contain confidential information. Each Party shall maintain the confidentiality of any hearing that is held in closed session.
3. Each Party and the panel shall treat as confidential any information designated by a Party as confidential pursuant to paragraph 1. If a Party submits to the panel a written submission which contains confidential information, it shall, on request of the other Party, also provide a submission without the confidential information, which may be made public.

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4. Nothing in these Rules of Procedure shall prevent a Party from disclosing statements of its own positions to the public.

5. If the Parties disagree on whether information qualifies as confidential, the panel shall decide, on request of a Party, after consultation with the Parties.

RULE 12

Ex parte contacts

1. The panel and each panellist shall not meet or contact a Party in the absence of the other Party.

2. A panellist shall not discuss any aspect of the subject matter of the panel procedure with the Parties in the absence of the other panellists.

3. Without prejudice to Rule 8 (Replacement of panellists), a Party shall not meet or contact a panellist in relation to the dispute. Any contact between a Party and an individual who is under consideration for selection as a panellist shall be limited to issues relating to that individual's availability and their appointment contract.

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RULE 13

Urgent cases

In cases of urgency as referred to in Article 17.12 (Decision on urgency), the panel, after consulting the Parties, may adjust, as appropriate, the timetable for that dispute. The adjustments shall be without prejudice to the time periods specifically prescribed in Chapter 17 (Dispute settlement) and in these Rules of Procedure for cases of urgency. The panel shall, as a general rule, for cases of urgency halve the time periods applicable to other disputes, unless specifically provided otherwise in Chapter 17 (Dispute settlement) or in these Rules of Procedure. The panel shall notify the Parties of those adjustments.

RULE 14

Working language and translation

1. Within five days after the date of receipt of the request for consultations, the Parties shall endeavour to agree on a common working language for consultations and the panel procedure.
2. If the Parties are unable to agree on a common working language, the language in which this Agreement was negotiated shall be the working language for all aspects of the procedure.
3. Panel reports and decisions shall be issued in the working language.

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4. If a Party submits a document in a language that is not the working language, it shall at the same time submit a translation thereof at its own costs.

RULE 15

Other procedures

The Panel shall, after consulting the Parties, adjust the time periods set out in these Rules of Procedure in line with the time periods provided for the delivery of a report or decision by the panel pursuant to Article 17.16 (Reasonable period of time), Article 17.17 (Compliance review), Article 17.18 (Compensation and suspension of concessions or other obligations) and Article 17.19 (Review of any compliance measure taken after the adoption of temporary remedies).
