

## ANNEX 29A Rules of Procedure

### Rule 29A.1 Definitions

For the purposes of this Annex:

**“ADR provider”** means a provider of alternative dispute resolution (“ADR”) services, namely a provider of good offices, a conciliator or a mediator who provides their services pursuant to Article 29.6 (Good Offices, Conciliation, or Mediation);

**“approved person”** means an individual who is:

- (a) an authorised representative of a Party designated in accordance with paragraph 3 of Rule 29A.8 (Hearings);<sup>1</sup>
- (b) an arbitrator;
- (c) an assistant; or
- (d) an expert;

**“assistant”** means a person who, under the terms of appointment and under the direction of a panellist or ADR provider, conducts research or provides assistance to that panellist or ADR provider;

**“confidential information”** means information designated as such by a Party, submitted in accordance with paragraph 1 of Rule 29A.13 (Treatment of Confidential Information) and Appendix 29A-b (Confidential Information);

**“document”** includes any written matter submitted, delivered or issued in the course of the panel proceeding, whether in paper or electronic form;

**“expert”** means an individual or body providing technical information or advice in accordance with Rule 29A.12 (Technical Advice);

**“information”** means information, however recorded or stored, including information contained in a paper document, electronic file or oral information;

**“non-business day”** means, with regard to a Party, Saturday, Sunday and any other day officially designated by that Party as a public holiday;

**“panellist”** means a member of a panel established under Article 29.9 (Composition of the Panel);

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

**“proceeding”** means the proceeding of the panel under Chapter 29 (Dispute Settlement) unless otherwise provided; and

**“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.<sup>2</sup>

## **Rule 29.2**

### **General Provisions**

1. Unless the Parties agree otherwise, these Rules of Procedure shall apply to dispute settlement proceedings under Chapter 29 (Dispute Settlement).
2. Unless otherwise provided, any reference made in these Rules of Procedure to an Article is a reference to the Article in Chapter 29 (Dispute Settlement).
3. In the event of an inconsistency between these Rules of Procedure and any provisions in Chapter 29 (Dispute Settlement), the provisions of Chapter 29 (Dispute Settlement) shall prevail to the extent of the inconsistency.

## **Rule 29.3**

### **Organisational Meeting**

1. Unless the Parties agree otherwise, the Parties shall meet with the panel no later than seven days after the date of establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including:
  - (a) the remuneration and expenses to be paid to the panellists and their assistants, in accordance with Rule 29A.18 (Remuneration and Expenses);
  - (b) the timetable for the proceeding, in accordance with Rule 29A.5 (Timetable);
  - (c) organisational measures to streamline the proceeding, without prejudice to the procedural rights and obligations of the Parties and due process. Such measures may include decisions on page limits for written submissions as well as on the length and number of hearings or meetings required;<sup>3</sup> and

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<sup>2</sup> For greater certainty, a non-governmental organisation shall not be a representative of a Party, unless the Parties agree otherwise.

<sup>3</sup> For a decision on the number of hearings or meetings required, the Parties consider that, as a guideline and without prejudice to any assessment of the dispute at hand, panel hearings and meetings should range from 10 days to 20 days, subject to the complexity of the dispute and other relevant factors, and exclusive of any hearings or meetings relating to the activities of any reconvened panel.

- (d) whether the panel may accept and consider *amicus curiae* submissions pursuant to Rule 29A.11 (*Amicus Curiae* Submissions) and any applicable terms and conditions regarding those submissions.
- 2 Further to subparagraphs 1(a) and 1(c), the panel shall in consultation with the Parties take steps to ensure proceedings are undertaken in a cost-effective manner and that the total fees of the proceedings are reasonable, taking into account amongst other things:
  - (a) the complexity of the subject-matter of the dispute;
  - (b) the anticipated time spent by the panellists, including by reference to any guidance or data on time spent by adjudicators in similar subject-matter disputes in other forums to the extent it is relevant; and
  - (c) any other relevant circumstances of the dispute.

To this end, the panel and the Parties shall consider ways to reduce the costs of the dispute, including ways to reduce or limit the total fees for work performed in connection with the proceedings.<sup>4</sup>
- 3. Unless the Parties agree otherwise, this meeting shall not be required to be in person and may be conducted by any other means.

#### **Rule 29A.4 Notifications**

- 1. Any written submission, request, notice or other document in a proceeding transmitted by:
  - (a) the panel shall be sent to both Parties through their contact points at the same time;
  - (b) a Party to the panel shall be copied to the other Party through its contact point at the same time; and
  - (c) a Party to the other Party shall be copied to the panel at the same time.
- 2. The notification to a Party of any document under Chapter 29 (Dispute Settlement), these Rules of Procedure, or the Code of Conduct shall be addressed to that Party's contact point.
- 3. Any notification referred to under paragraph 1 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

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<sup>4</sup> The Parties recognise that, as reported by the Office of Internal Oversight (WT/BFA/W/515), in the reported period, on average, panellists spent almost the same time preparing for the panels (Preparation fees, 49% of the cumulated fees) and attending panel meetings (Daily fees, 51% of the cumulated fees), and that the preparation time was calculated as the cumulative time taken by all panellists. The principles in the first sentence may be used as a guideline when considering ways to reduce the costs of the dispute.

received on the same 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. Notwithstanding paragraph 3, if it is necessary for any written submission or other document (or any part thereof, including an exhibit or exhibits) to be made by means other than telecommunication, the panel shall adopt, after consulting with the Parties, an appropriate procedure that is consistent with Chapter 29 (Dispute Settlement).
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 officially or by *force majeure* 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 29A.5 Timetable**

At the organisational meeting, the panel shall establish a timetable for the proceeding, including precise dates for the filing of submissions and the date of the oral hearing, appropriate for the Parties to prepare their respective submissions.

#### **Rule 29A.6 Written Submissions**

1. Subject to subparagraph 1(b) of Rule 29A.3 (Organisational Meeting), the complaining Party shall deliver its initial written submission to the panel no later than 14 days after the date of establishment of the panel. The responding Party shall deliver its written counter-submission no later than 30 days after the date of receipt of the initial written submission.
2. With the agreement of the panel, no later than 12 days after the conclusion of a hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.

#### **Rule 29A.7 Operation of the Panel**

1. The chair of the panel shall preside at all of its meetings. The panel may delegate authority to the chair to make administrative and procedural decisions.

2. Except as otherwise provided in these Rules of Procedure, the panel may conduct its business by any means, including e-mail, telephone, video-conference, facsimile transmission, computer link, or any other means of electronic 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 assistants or designated note-takers to be present during those deliberations.
4. The drafting of any report or decision shall remain the exclusive responsibility of the panel and must not be delegated.
5. Where a procedural question arises that is not covered by Chapter 29 (Dispute Settlement) or its Annexes, the panel may adopt, after consulting the Parties, an appropriate procedure that is consistent with Chapter 29 (Dispute Settlement).

### **Rule 29A.8** **Hearings**

1. Based on the timetable determined pursuant to Rule 29A.5 (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<sup>5</sup> of the hearing. The panel shall seek to hold the hearing 14 days after the date of delivery of the written counter-submission of the responding Party.
2. Unless the Parties agree otherwise, the hearing shall be hosted by the responding Party. The responding Party shall be responsible for the logistical administration of the hearing, in particular the organisation of the venue, unless otherwise agreed.
3. No later than five days before the date of a hearing, each Party shall deliver to the panel and the other Party a list of the names of their representatives or other delegates who will be attending the hearing.
4. The panel shall conduct the hearing in the following manner, setting time limits to ensure that it affords comparable time to the complaining Party and responding Party:

#### *Argument:*

- (a) Opening oral statement and argument of the complaining Party; and
- (b) Opening oral statement and argument of the responding Party;

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<sup>5</sup> For greater certainty, hearings may be held in person, virtually, or in hybrid mode. The panel should ensure appropriate arrangements are made, without prejudice to the procedural rights and obligations of the Parties and due process.

*Rebuttal Argument:*

- (a) Reply of the complaining Party; and
- (b) Counter-reply of the responding Party;

*Closing statement:*

- (a) Closing oral statement of the complaining Party; and
  - (b) Closing oral statement of the responding Party.
5. The panel may direct questions to a Party at any time during the hearing. The panel may request, on its own initiative or on request of a Party, that a Party make available documents or other information relevant to the dispute that are within its control or it is able to obtain by reasonable means.
  6. 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.
  7. Each Party shall make available to the panel and to the other Party written versions of their oral statements no later than eight days after the hearing.
  8. The timetable determined pursuant to Rule 29A.5 (Timetable) shall provide for at least one hearing for the Parties to present their cases to the panel. The panel may on its own initiative or on request of a Party convene additional hearings and additional written submissions.
  9. 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.
  10. Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,<sup>6</sup> except that the panel shall close the hearing for any discussion of confidential information.<sup>7</sup> Attendance in the hearing room shall be limited to approved persons.

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<sup>6</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 a Party considers appropriate.

<sup>7</sup> For greater certainty, hearings held in closed session shall be confidential.

**Rule 29A.9**  
**Written Questions of the Panel**

1. The panel may at any time during the proceeding address questions in writing to the Parties. In the event that the panel addresses questions to one Party only, the panel shall provide a copy of the written questions to the other Party.
2. The panel shall ensure each Party has a reasonable opportunity to provide written comments on the other Party's reply.

**Rule 29A.10**  
**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 29A.11**  
**Amicus Curiae Submissions**

1. If the Parties agree, the panel may accept and consider *amicus curiae* submissions. Paragraphs 2 through 6 shall apply to such submissions, subject to any other terms and conditions agreed by the Parties.
2. Any such submissions shall:
  - (a) be made within 10 days of the provision of public notice pursuant to paragraph 6;
  - (b) be no longer than 10 typed pages, including any annexes; and
  - (c) be directly relevant to the factual or legal issues under consideration by the panel.
3. The submission shall contain a description of the person, whether natural or legal, making the submission, including their nationality or place of establishment, the nature of their activities and the source of their financing, and specify the nature of their interest in the panel proceeding.
4. The panel shall promptly provide to the Parties for comment copies of any *amicus curiae* submissions it receives. The Parties may provide comment on the

submissions within a reasonable period of time. The Panel shall take into consideration comments received from the Parties.

5. The panel shall list in its report all the *amicus curiae* submissions that it has received but shall not be obliged to address the factual or legal arguments made in such submissions.
6. To facilitate the submission of *amicus curiae* submissions, each Party shall, as may be agreed, provide public notice of:
  - (a) the establishment of the panel;
  - (b) the opportunity for interested persons to submit *amicus curiae* submissions; and
  - (c) the procedures and requirements for making such submissions, consistent with paragraph 2.

#### **Rule 29A.12 Technical Advice**

1. On request of a Party, or on its own initiative, the panel may seek information or technical advice from any expert that it deems appropriate in consultations with the Parties. Any information or technical advice so obtained shall be submitted 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.
2. The panel shall consult the Parties to determine matters including whether the information or technical advice should be sought, from which expert it should be sought, and the date on which that expert shall deliver the information or technical advice.
3. Any expert selected under paragraph 1 shall be subject to the provisions set out in paragraph 1 of Article 29B.9 (Responsibilities of Experts, Assistants, Staff and ADR Providers) of the Code of Conduct.

#### **Rule 29A.13 Treatment of Confidential Information**

1. Paragraphs 2 through 5 and Appendix 29A-b (Confidential Information) shall apply to information that a Party submits during consultations, proceedings, or procedures that involve good offices, conciliation or mediation and designates as confidential.
2. Each Party and its approved persons shall treat as confidential the information submitted by the other Party that the submitting Party has designated as



confidential information in accordance with Appendix 29A-b (Confidential Information). Nothing in these Rules of Procedure shall preclude a Party from disclosing its own information to the public.

3. A Party shall identify, use, store, and dispose of, confidential information as specified in Appendix 29A-b (Confidential Information).
4. After consulting the Parties, the panel may modify or waive any part of the procedures set out in Appendix 29A-b (Confidential Information) or establish additional procedures that it considers necessary to protect confidential information.
5. Where a Party submits a confidential version of its written submissions to the panel, it shall, on request of the other Party, provide a non-confidential summary of the information contained in its written submissions no later than 10 days after the date of request.

#### **Rule 29A.14 Urgent Cases**

In cases of urgency referred to in Article 29.19 (Decision on Cases of Urgency), the panel shall, after consulting the Parties, adjust the time periods referred to in these Rules of Procedure, as appropriate. The panel shall notify the Parties of those adjustments.

#### **Rule 29A.15 Public Release of Documents**

1. Subject to the protection of confidential information, a Party making a request pursuant to Article 29.7 (Consultations) or Article 29.8 (Request for Establishment of a Panel) shall release a copy of the request to the public within five days of making that request.
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>8</sup>

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<sup>8</sup> A Party releasing such written submissions, written versions of oral statements, and written responses to requests or questions from the panel, shall to the extent possible have regard to information contained in them that pertains specifically to the other Party's position, the disclosure of which might be considered sensitive.

**Rule 29A.16**  
**Appointment of Panellists**

1. The nominating Party or Parties shall notify each individual who is being considered for appointment as a panellist. Each individual being considered shall confirm their availability to the nominating Party, or both Parties in regards of the Chair or where a panellist is selected by draw of lot.
2. 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.

**Rule 29A.17**  
**Replacement of Panellists**

1. If a panellist withdraws or becomes unable to act, they shall notify the Parties and a replacement shall be appointed in accordance with Article 29.9 (Composition of the Panel). The replacement panellist shall have all the powers and duties of the original panellist.
2. The notification in paragraph 1 shall be sent to the Parties' contact points.
3. If a Party considers that a panellist should be replaced because they do not comply with the requirements of the Code of Conduct, that Party shall notify the other Party no later than five days after the date on which it obtained sufficient evidence of the panellist's alleged non-compliance and consult on the matter.
4. The Parties 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 appoint a new panellist in accordance with Article 29.9 (Composition of the Panel).
5. If the Parties fail to agree on the need to replace a panellist other than the chair of the panel, a Party may refer this matter to the chair of the panel, whose decision shall be final. If the chair finds that the panellist does not comply with the requirements of the Code of Conduct, the panellist shall be removed and the new panellist shall be appointed in accordance with Article 29.9 (Composition of the Panel).
6. If the Parties fail to agree on the need to replace the chair of the panel, a Party may refer the matter to one of the other individuals on the list of nominees exchanged by the Parties pursuant to paragraph 4 of Article 29.9 (Composition of the Panel). The name shall be drawn by lot by the referring Party.<sup>9</sup> The

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<sup>9</sup> The referring Party shall give reasonable opportunity for representatives of the other Party to be present when the lot is drawn.

decision by the selected individual on the need to replace the chair shall be final. If the individual finds that the chair does not comply with the requirements of the Code of Conduct, the chair shall be removed and the new chair shall be appointed in accordance with Article 29.9 (Composition of the Panel).

### **Rule 29A.18**

#### **Remuneration and Expenses**

1. Unless the Parties agree otherwise, remuneration for panellists shall be paid at the rate for non-governmental panellists used by the WTO on the date a complaining Party makes a written request for the establishment of a panel pursuant to Article 29.8 (Request for Establishment of a Panel).
2. Unless the Parties agree otherwise, the total remuneration for each panellist's assistant or assistants shall not exceed 50% of the remuneration of that panellist.
3. 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 29.8 (Request for Establishment of a Panel).
4. If the panel seeks information or technical advice pursuant to Rule 29A.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.
5. 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.
6. If the Parties agree to undertake procedures listed under Article 29.6 (Good Offices, Conciliation, or Mediation), the amount and details of the remuneration and expenses an ADR provider is to receive shall be determined by the Parties and shall be borne by the Parties in equal share. ADR providers shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the procedures.
7. In case of resignation or removal of a panellist, assistant, expert, or ADR provider, 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 4 through 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. If the Parties agree, they may request the panel to consider ways to streamline the proceeding, without prejudice to the procedural rights and obligations of the Parties and due process.