

## **ANNEX 31A**

### **RULES OF PROCEDURE**

#### **I. General Provision**

1. In the event of an inconsistency between these Rules of Procedure and any provisions in Chapter 31 (Dispute Settlement), the provisions of Chapter 31 (Dispute Settlement) shall prevail to the extent of the inconsistency.

#### **II. Notifications**

2. Any written submission, request, notice, 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.
3. The notification to a Party of any document under Chapter 31 (Dispute Settlement), these Rules of Procedure or the Code of Conduct shall be addressed to that Party's designated office.
4. Any notification referred to under Rules 2 and 3 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, an e-mail message shall be deemed to be 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.
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 written submission, request, notice, 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.

### **III. Organisational Meeting**

7. Unless the Parties agree otherwise, they shall meet with the panel within seven days of the establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including:
  - (a) the remuneration and expenses that shall be paid to the arbitrators and their assistants, in accordance with Part XV (Remuneration and Payment of Expenses) below; and
  - (b) the timetable for the proceeding, setting forth inter alia precise dates for the filing of submissions and the date of the oral hearing.
8. Unless the Parties agree otherwise, this meeting shall not be required to be in person and can be conducted by any means, including video-conference, tele-conference, or computer links.

### **IV. Timetable**

9. Unless otherwise agreed by the Parties, the panel may, in consultation with the Parties, modify any time period established pursuant to these Rules of Procedure and make such other procedural or administrative adjustments as may be required in the proceeding.

### **V. Written Submissions**

10. Subject to Rule 7(b), the complaining Party shall deliver its initial written submission to the panel no later than 20 days after the establishment of the panel. The responding Party shall deliver its written counter-submission no later than 28 days after the date of receipt of the initial written submission.
11. With the agreement of the panel, within 10 days of 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.

### **VI. Operation of the Panel**

12. The chair of the panel shall preside at all of its meetings. The panel may delegate to the chair authority to make administrative and procedural decisions.
13. Except as otherwise provided in these Rules of Procedure, the panel may conduct its activities by any means, including e-mail, telephone, video-conference, facsimile transmissions, or computer links.

14. The panel's deliberations shall be confidential. Only arbitrators 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.
15. The drafting of any report or decision shall remain the exclusive responsibility of the panel and must not be delegated.

## **VII. Hearings**

16. In accordance with Rule 7, the chair shall fix the time of the hearing in consultation with the Parties and other members of the Panel. The chair shall notify the Parties in writing of the details of the hearing including the date, time, and location.<sup>1</sup> Unless a Party disagrees, the Panel may decide not to convene a hearing.
17. 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.
18. 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, advisers, or other delegates who will be attending the hearing.
19. 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;

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

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<sup>1</sup> For greater certainty, hearings may be held in person or by virtual means.

- (b) Closing oral statement of the responding Party.
20. Each Party shall make available to the panel and to the other Party written versions of their oral statements within 10 days of the conclusion of the hearing.
  21. The panel may direct questions to a Party at any time during the hearing. The panel may request, on its own initiative or at the 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, and may draw adverse inferences from a failure to comply with such request.
  22. 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. A Party may comment on the transcript and the panel may consider those comments.
  23. The panel may convene additional hearings if the Parties so agree.
  24. All arbitrators shall be present at all hearings.<sup>2</sup> If a replacement arbitrator has been selected 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.
  25. Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,<sup>3</sup> except that the panel shall close the hearing for the duration of any discussion of confidential information. Attendance in the hearing room shall be limited to approved persons.

### **VIII. Questions of the Panel**

26. The panel may at any time during the proceeding address questions in writing to a Party or both 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.
27. A Party to whom the panel addresses questions shall deliver a copy of any reply to the other Party and to the panel in accordance with the timetable established by the panel. The other Party shall be given the opportunity to provide comments on the reply.

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<sup>2</sup> Except where, in accordance with paragraph 7 of Article 31.7 (Composition of a Panel), a panel comprises only of the chair of the original panel.

<sup>3</sup> The expression "open for the public to observe" does not mean 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 or at a later date.

### **IX. No *Ex Parte* Communications**

28. The panel shall not meet or contact a Party in the absence of the other Party.
29. Neither Party shall meet or contact any arbitrator in relation to the dispute in the absence of the other Party.
30. No arbitrator shall discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other Party or the other arbitrators.

### **X. Amicus Curiae Submissions**

31. The panel shall have the authority to accept and consider amicus curiae submissions from interested persons and non-governmental entities, unless the Parties agree otherwise.
32. Any such submissions shall:
  - (a) be made within 14 days of the provision of public notice pursuant to Rule 36;
  - (b) be concise and in no case longer than 15 typed pages, including any annexes; and
  - (c) be directly relevant to the factual or legal issues under consideration by the panel.
33. 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.
34. The panel shall promptly provide to the Parties for comment copies of any amicus curiae submissions it receives. Comments of a Party must be submitted to the panel within 10 days of receiving a copy of an amicus curiae submission from the panel.
35. 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. The panel shall take into account any comments made by a Party pursuant to Rule 34.
36. To facilitate the submission of amicus curiae submissions, each Party shall, within five days of the date of the organisational meeting, provide public notice of:
  - (a) the establishment of the panel;

- (b) the opportunity for interested persons and non-governmental entities to submit amicus curiae submissions; and
- (c) the procedures and requirements for making such submissions, consistent with Rule 32.

### **XI. Technical Advice**

- 37. On the request of a Party, or on its own initiative, the panel may seek information or technical advice from any expert that it deems appropriate. 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.
- 38. The panel shall consult the Parties to determine whether the information or technical advice should be sought, and from which expert it should be sought.
- 39. A Party may, after consulting with the other Party, designate a report obtained under Rule 37, or any part of it, as confidential information.
- 40. Any expert selected under Rule 37 shall be subject to the provisions of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers) of the Code of Conduct.

### **XII. Treatment of Confidential Information**

- 41. Rules 42 to 45 and Appendix 31A-a (Confidential Information) shall apply to confidential information that a Party submits during consultations, proceedings, or procedures that involve good offices, conciliation, or mediation.
- 42. 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. Each Party shall maintain the confidentiality of the panel's hearings to the extent that the panel holds the hearing in closed session under Rule 25.
- 43. After consulting the Parties, the panel may modify or waive any part of the procedures set out in Appendix 31A-a (Confidential Information) or establish additional procedures that it considers necessary to protect confidential information.
- 44. Where a Party submits a confidential version of its written submissions to the panel, it shall also, on the request of the other Party, provide a non-

confidential summary of the information contained in its submissions that could be disclosed to the public within 15 days of the conclusion of the hearing.

45. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

### **XIII. Public Release of Documents**

46. Subject to the protection of confidential information:
  - (a) a Party making a request pursuant to Article 31.5 (Consultations) or Article 31.6 (Establishment of a Panel) shall release a copy of the request to the public within seven days of making that request;
  - (b) each Party shall make its best efforts to release to the public any written submissions, written versions of oral statements, and written responses to requests or questions from the panel, as soon as possible after such documents are submitted to the panel and, if not already released, shall do so by the time the final report is issued to the Parties; and
  - (c) each Party shall release a copy of the final report to the public within 15 days after it is issued to the Parties.
47. No Party shall publicly disclose the contents of an interim report presented to the Parties pursuant to Article 31.12 (Reports of a Panel) or the contents of any comments made on an interim report.

### **XIV. Replacement of Arbitrators**

48. If an arbitrator withdraws or becomes unable to act, they shall notify the Parties and a replacement shall be appointed in accordance with Article 31.7 (Composition of a Panel). The replacement arbitrator shall have all the powers and duties of the original arbitrator.
49. The notification in Rule 48 shall be sent to the Parties' designated offices.
50. If a Party considers that an arbitrator should be replaced because they do not comply with the requirements of the Code of Conduct, that Party shall notify the other Party within seven days of the day it obtained sufficient evidence of the arbitrator's alleged failure to comply with the requirements of the Code of Conduct.
51. The Parties shall inform the arbitrator of the alleged failure and may request the arbitrator to take steps to rectify the failure. If the Parties agree, they may

remove the arbitrator and select a new arbitrator in accordance with Article 31.7 (Composition of a Panel).

52. If the Parties fail to agree on the need to replace an arbitrator 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 arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be appointed in accordance with Article 31.7 (Composition of a Panel).
53. If the Parties fail to agree on the need to replace the chair of the panel, a Party may refer the matter to the Secretary-General of the Permanent Court of Arbitration, whose decision shall be final. If the Secretary-General of the Permanent Court of Arbitration finds that the chair does not comply with the requirements of the Code of Conduct, the new chair shall be appointed in accordance with Article 31.7 (Composition of a Panel).
54. The proceeding shall be suspended for the period of time taken to carry out the procedures in Rules 48 to 53.

#### **XV. Remuneration and Payment of Expenses**

55. The remuneration and expenses of the arbitrators and their assistants shall be borne by the Parties in equal share.
56. Unless the Parties agree otherwise, remuneration for arbitrators shall be paid at the rate for non-governmental panellists used by the WTO on the date a Party makes a written request for the establishment of a panel under Article 31.6 (Establishment of a Panel).
57. Unless the Parties agree otherwise, the total remuneration for each arbitrator's assistant or assistants shall not exceed 50 per cent of the remuneration of that arbitrator.
58. 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 31.6 (Establishment of a Panel).
59. Each arbitrator 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.
60. If the panel seeks information or technical advice pursuant to Part XI (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.

61. If the Parties agree to undertake procedures listed under Article 31.20 (Good Offices, Conciliation, and 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.
62. In case of resignation or removal of an arbitrator, 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 Rule 59, 60, or 61, as applicable.

#### **XVI. Time Periods**

63. Where, by reason of the operation of Rule 5, the Parties receive the same document on a different date, the calculation of any time period which is dependent on the date of receipt shall be from the date the last Party received the document.

## **APPENDIX 31A-a**

### **CONFIDENTIAL INFORMATION**

1. An approved person shall take all necessary precautions to safeguard confidential information when a document containing the confidential information is in use or being stored. Each approved person must sign and submit to the panel the Declaration of Non-Disclosure set out in Appendix 31A-b (Declaration of Non-Disclosure).
2. Only approved persons may view or hear confidential information. No approved person who views or hears confidential information may disclose it, or allow it to be disclosed, to any individual other than another approved person.
3. An approved person who views or hears confidential information shall only use that information for the purposes of the proceeding.
4. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information in a way that does not disclose the confidential information.

**APPENDIX 31A-b**

**DECLARATION OF NON-DISCLOSURE**

1. I acknowledge having received a copy of the Rules of Procedure, which include rules governing the treatment of confidential information.
2. I acknowledge having read and understood the Rules of Procedure.
3. I agree to be bound by, and to adhere to, the Rules of Procedure and, accordingly, without limitation, to treat as confidential all confidential information that I may view or hear in accordance with the Rules of Procedure and to use that information solely for the purposes of the panel proceeding.

Declared on this \_\_\_ day of \_\_\_\_, 20\_\_.

By:

Signature \_\_\_\_\_

Name \_\_\_\_\_