

ANNEX 12

MODEL RULES OF PROCEDURE

Application

1. The following rules of procedure apply to dispute settlement proceedings under Chapter 15 (Dispute Settlement) unless the Parties otherwise agree.

Definitions

2. For purposes of this Annex:

adviser means a person retained by a Party to advise or assist the Party in connection with the Panel proceeding;

complaining Party means a Party that requests the establishment of a Panel under Article 177 (Request for a Panel);

court reporter means a designated note-taker;

legal holiday means every Saturday and Sunday and any other day designated by a Party as a holiday for purposes of these rules;

Panel means a panel established under Article 177 (Request for a Panel); and

representative means an employee of a government department or agency or of any other government entity of a Party.

3. Any reference made in these rules of procedure to an Article is a reference to the appropriate Article in Chapter 15 (Dispute Settlement).

Written Submissions and Other Documents

4. Each Party shall deliver the original and no less than 4 copies of any written submission to the Panel and one copy to the Embassy of the other Party at the same time. Delivery of submissions and any other document related to the Panel proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. Where a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall deliver at the same time an electronic version of such submissions or other documents.

5. The complaining Party shall deliver an initial written submission no later than 20 days after the date on which the last Panelist is appointed. The Party complained against shall, in turn, deliver a written counter-submission no later than 40 days after the date on which the initial written submission of the complaining Party is due.
6. The Panel shall establish, in consultation with the Parties, dates for the delivery of the subsequent written rebuttal submissions of the Parties and any other written submissions that the Panel and the Parties consider appropriate.
7. A Party may, at any time, correct minor errors of a clerical nature in any written submission or other document related to the Panel proceeding by delivering a new document clearly indicating the changes.
8. If the last day for delivery of a document falls on a legal holiday observed by a Party or on any other day on which the government offices of that Party are closed by order of the government or by force majeure, the document may be delivered on the next business day.

Burden of Proof

9. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.
10. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Operation of Panels

11. The chair of the Panel shall preside at all of its meetings.
12. The Panel may conduct its business by any appropriate means, including by telephone, facsimile transmission and video or computer links.
13. Only Panelists may take part in the deliberations of the Panel. The Panel may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations. The members of the Panel and the persons employed by the Panel shall maintain the confidentiality of the Panel's deliberations and any information that is protected pursuant to this Agreement.
14. A Panel may, in consultation with the Parties, modify any time-period applicable in the Panel proceedings and make other procedural or administrative adjustments as may be required in the proceeding.

Hearings

15. The chair of the Panel shall fix the date and time of the initial hearing and any subsequent hearings in consultation with the Parties and the Panelists, and then notify the Parties in writing of those dates and times.
16. The location of hearings shall alternate between the territories of the Parties with the first hearing to take place in the territory of the Party complained against.
17. No later than 5 days before the date of a hearing, each Party shall deliver to the other Party and the Panel a list of the names of those persons who will be present at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
18. Each hearing shall be conducted by the Panel in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.
19. The Panel shall arrange the preparation of hearing transcripts, if any, and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Ex Parte Contacts

20. No Party may communicate with the Panel without notifying the other Party. The Panel shall not communicate with a Party in the absence of, or without notifying the other Party.
21. No Panelist may discuss any aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other Panelists.

Remuneration and Payment of Expenses

22. Unless the Parties agree otherwise, the expenses of the Panel, the remuneration of the Panelists and their assistants, their travel and lodging expenses, and all general expenses shall be born in equal shares between the Parties.
23. Each Panelist shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and shall keep a record and render a final account of all general expenses.