

Annex 19.10
Model Rules of Procedure

Application

1. These Rules are established under Article 19.10 and shall apply to dispute settlement proceedings under Chapter 19 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 19.6;

legal holiday, with respect to a Party's Secretariat, means every Saturday and Sunday and any other day designated by that Party as a holiday for purposes of these Rules and notified by that Party to its Secretariat and by that Secretariat to the other Secretariat and the other Party;

panel means a panel established under Article 19.6;

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

responsible Secretariat means the Secretariat of the Party complained against; and

Secretariat means the Secretariat established under Article 18.2.1.

3. Any reference made in these Rules to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of this Agreement.

Terms of Reference for Panels

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to the panel and deliver the written reports referred to in Articles 19.13 and 19.14."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last panelist.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

7. If a Party requests the panel to make findings as to the degree of adverse trade effects on a Party of the measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 19.2, the terms of reference shall so indicate.

Written Submissions and Other Documents

8. The Parties shall deliver the original and as many copies as the Secretariat requires and in any event no less than five copies of their respective written submissions to their respective Secretariats which, in turn, shall retain a copy and forward the original and the remaining copies by the most expeditious means practicable to the responsible Secretariat. The responsible Secretariat shall deliver the submissions by the most expeditious means practicable to the other Party and the panel.

9. A complaining Party shall deliver its initial written submission to its Secretariat no later than 10 days after the date on which the last panelist is designated. The responding Party shall deliver its written counter-submission to the responsible Secretariat no later than 20 days upon receipt of the initial written submission of the complaining Party.

10. A request, notice or other document related to the panel proceeding that is not covered by Rule 8 or 9, the Party shall deliver copies of the document to both Secretariats and to the other Party by facsimile or other means of electronic transmission.

11. A Party may correct minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

12. A Party that delivers any request, notice, written submission or other document to its Secretariat shall, to the extent practicable, also deliver a copy of the document in electronic form to that Secretariat.

13. Any delivery to a Secretariat under these Rules shall be made during the normal business hours of that Secretariat.

14. If the last day for delivery of a document to a Secretariat falls on a legal holiday observed by that Secretariat or on any other day on which the offices of that Secretariat are closed by order of the government or by force majeure, the document may be delivered to that Secretariat on the next business day.

Operation of Panels

15. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.
16. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.
17. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants, interpreters or translators to be present during such deliberations.
18. Where a procedural question arises that is not addressed by these Rules, a panel may adopt an appropriate procedure that is consistent with this Agreement.
19. If a panelist dies, withdraws or is removed from the panel, a replacement shall be selected as expeditiously as possible in accordance with the procedures to designate panelists.
20. The time-period applicable to the panel proceeding shall be suspended for a period that begins on the date on which the panelist dies, withdraws or is removed from the panel and ends on the date on which the replacement is selected.
21. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceeding and make other procedural or administrative adjustments as may be required in the proceeding, such as in cases where a panelist is replaced or where the Parties are required to reply in writing to the questions of a panel.

Hearings

22. The chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the panel and the responsible Secretariat. The responsible Secretariat shall notify the Parties in writing of the date, time and location of the hearing.
23. The hearing shall be held in the capital of the Party complained against.
24. The panel may convene additional hearings if the Parties so agree.
25. All panelists shall be present at hearings.
26. The following persons may attend a hearing:
 - (a) representatives of the Parties;
 - (b) advisers of the Parties, provided that they do not address the panel and they or their employers, partners, business associates or family members do not have a financial or personal interest in the proceeding;
 - (c) Secretariat personnel, interpreters, translators and court reporters (designated note takers); and
 - (d) panelists' assistants.
27. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the responsible Secretariat a list of the names of those persons who will make oral

arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will attend the hearing.

28. The hearing shall be conducted by the panel in the following manner, ensuring that the complaining Party and the Party complained against are afforded with equal time:

- (a) Argument:
 - (i) argument of the complaining Party.
 - (ii) argument of the Party complained against.
- (b) Reply and Counter-Reply:
 - (i) reply of the complaining Party.
 - (ii) counter-reply of the Party complained against.

29. The panel may direct questions to any Party at any time during a hearing.

30. The responsible Secretariat shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties, the other Secretariat and the panel.

Supplementary Written Submissions

31. The panel may at any time during a proceeding address questions in writing to one or both of the Parties. The panel shall deliver the written questions to the Party or Parties to whom the questions are addressed through the responsible Secretariat, which, in turn, shall provide for the delivery of copies of the questions by the most expeditious means practicable to the other Secretariat and the other Party.

32. The Party to whom the panel addresses written questions shall deliver a copy of any written reply to its Secretariat which, in turn, shall provide for delivery of that submission by the most expeditious means practicable to the other Secretariat and the panel. The other Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the other Party. The other Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

33. Within 10 days after the date of the hearing, each Party may deliver to its Secretariat a supplementary written submission responding to any matter that arose during the hearing.

Burden of Proof Regarding Inconsistent Measures and Exceptions

34. The 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.

35. The Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Availability of Information

36. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to, and communications with, the panel, in accordance with the following procedures:

- (a) A Party or, subject to its instructions, the Party's Secretariat, may make available to the public at any time that Party's written submissions and those of the other Party. Before such documents are made available to the public any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;
- (b) A Party or, subject to its instructions, the Party's Secretariat, may make the hearing transcript available to the public 15 days after the final report of the panel is made public pursuant to Article 19.13.3. Before the transcript is made available to the public, any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;
- (c) Where information has been removed from a document pursuant to subparagraph (a) or (b), the document shall indicate clearly where such information has been removed;
- (d) To the extent it considers strictly necessary to protect personal privacy or to address essential confidentiality concerns, a Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment;
- (e) A Party may disclose to other persons such information in connection with the panel proceedings as it considers necessary for the preparation of its case, but it shall ensure that those persons maintain the confidentiality of any such information;
- (f) A Party shall treat as confidential the initial report and information submitted by the other Party to the panel that the Party has designated as confidential pursuant to subparagraph (d);
- (g) The responsible Secretariat shall take such reasonable steps as are necessary to ensure that experts, interpreters, translators, court reporters (designated note takers) and other individuals retained by the Secretariat maintain the confidentiality of the panel proceedings; and
- (h) Except as provided under paragraphs (a) and (b), the Secretariat personnel shall maintain the confidentiality of the panel proceedings.

Ex Parte Contacts

37. The panel shall not meet or contact a Party in the absence of the other Party.

38. No panelist may discuss any aspect of the subject matter of the proceeding with a Party or with the Parties in the absence of the other panelists.

Official Language

39. Written submissions, oral arguments or presentations at the hearing, initial and final panel reports, as well as all other written or oral communications between the Parties and the panel, related to panel proceedings, shall be conducted in English.

Computation of Time

40. Where anything under this Agreement or these Rules is to be done, or the panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

41. Where, by reason of the operation of Rule 14, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

Suspension of Benefits Panels

42. These Rules shall apply to a panel established under Article 19.15 except that:
- (a) the Party that requests the establishment of the panel shall deliver its initial written submission to its Secretariat within 10 days after the date on which the last panelist is designated;
 - (b) the responding Party shall deliver its written counter-submission to its Secretariat within 15 days upon receipt of the initial written submission of the complaining Party;
 - (c) the panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in this Agreement and these Rules; and
 - (d) unless the Parties disagree, the panel may decide not to convene a hearing.

Responsible Secretariat

43. The responsible Secretariat shall:
- (a) provide administrative assistance to the panel;
 - (b) provide administrative assistance to experts, panelists and their assistants, interpreters, translators, court reporters (designated note takers) or other individuals that it retains in a panel proceeding;
 - (c) make available to the panelists, upon confirmation of their appointment, copies of this Agreement and other documents relevant to the proceedings of the panel, such as the Uniform Regulations and these Rules;
 - (d) retain indefinitely a copy of the complete record of the panel proceeding; and
 - (e) compensate in accordance with Rules 44, 45 and 46.

Remuneration and Payment of Expenses

44. The responsible Secretariat shall establish the amounts of remuneration and expenses that will be paid to the panelists, their assistants, court reporters (designated note takers) or other individuals that it retains in a panel proceeding upon agreement by both Parties.

45. The remuneration of the amounts established under Rule 44 shall be borne equally by the Parties unless otherwise agreed by them.

46. Each panelist or other persons who participate in the panel proceeding shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Maintenance of Rosters

47. The Parties shall inform each Secretariat of the composition of the roster established under Article 19.7. The Parties shall promptly inform their counterpart Secretariat of any changes made to the roster.