

ANNEX 16-B

PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

1. If a panel has been established pursuant to Chapter 27 (Dispute Settlement) to examine a complaint arising under Article 16.4 or Article 16.6, the Parties may exchange written questions and responses, as set forth in paragraphs 2, 3 and 4, to obtain information relevant to the complaint that is not otherwise readily available.
2. A Party (questioning Party) may provide written questions to the other Party (answering Party) within 15 days of the date the panel is established. The answering Party shall provide its responses to the questions to the questioning Party within 30 days of the date it receives the questions.
3. The questioning Party may provide any follow-up written questions to the answering Party within 15 days of the date it receives the responses to the initial questions. The answering Party shall provide its responses to the follow-up questions to the questioning Party within 30 days of the date it receives the follow-up questions.
4. If the questioning Party considers that the answering Party has failed to cooperate in the information-gathering process under this Annex, the questioning Party shall inform the panel and the answering Party in writing within 30 days of the date the responses to the questioning Party's final questions are due, and provide the basis for its view. The panel shall afford the answering Party an opportunity to reply in writing.
5. A Party that provides written questions or responses to the other Party pursuant to these procedures shall, on the same day, provide the questions or answers to the panel. In the event that a panel has not yet been composed, each Party shall, upon the composition of the panel, promptly provide the panel with any questions or responses it has provided to the other Party.
6. The answering Party may designate information in its responses as confidential information in accordance with the procedures set out in the Rules of Procedure established under Article 26.2.1(f) (Functions of the Joint Commission) or other rules of procedure agreed to by the disputing Parties.
7. The time periods in paragraphs 2, 3 and 4 may be modified upon agreement of the Parties or approval by the panel.
8. In determining whether a Party has failed to cooperate in the information-gathering process, the panel shall take into account the reasonableness of the questions

and the efforts the answering Party has made to respond to the questions in a cooperative and timely manner.

9. In making findings of fact and its initial report, the panel should draw adverse inferences from instances of non-cooperation by a disputing Party in the information-gathering process.

10. The panel may deviate from the time period set out in Chapter 27 (Dispute Settlement) for the issuance of the initial report if necessary to accommodate the information-gathering process.

11. The panel may seek additional information from a disputing Party that was not provided to the panel through the information-gathering process where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information-gathering process.