Annex 25A

Rules of Procedure for the Panel

**Application**

These Rules of Procedure (Rules) shall apply to proceedings of a panel established under Chapter 25 (Dispute Settlement), unless the Parties otherwise agree.

**Definitions**

For the purposes of this Annex:

**assistant** means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

**panellist** means a member of a panel established under Article 25.8 (Request for Establishment of a Panel);

**proceeding**, unless otherwise specified, means the proceeding of a panel under this Chapter; and

**staff**, in respect of a panelist, means persons under the direction and control of the panelist, other than assistants.

**Timetable**

1. After consulting the Parties, the panel shall, as soon as practicable and if possible within 7 days after the establishment of the panel, fix the timetable for the panel process.

2. The panel process shall not exceed 180 days from the date of establishment of the panel until the date of the final report, unless the Parties otherwise agree.

3. If the panel considers there is a need to modify the timetable, it shall inform the Parties in writing of the proposed modification and the reason for it. In cases of urgency in accordance with Article 25.10 (Decision on Urgency) the panel, after consulting the Parties, shall adjust the timetable as appropriate and shall notify the Parties of such adjustment.

**Notifications**

4. Any written submission, request, notice or other document in a panel 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 where appropriate.

5. Any written submission, request, notice or other document in a panel proceeding shall be made by email, or if the Parties agree, by any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification 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.

6. Minor errors of a clerical nature in any written submission, request, notice or other document in a panel proceeding may be corrected by delivery of a new document clearly indicating the changes. Any such correction shall not affect the timetable for the panel proceeding.

**Written Submissions**

7. The complaining Party shall deliver its first written submission to the panel no later than 20 days after the date of establishment of the panel. The responding Party shall deliver its first written submission no later than 40 days after the date of delivery of the complaining Party’s first written submission.

8. 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.

**Operation of the Panel**

9. The chair of the panel shall preside at all of its meetings, and shall fix the date and time of the hearing in consultation with the Parties and other members of the panel. The panel may delegate to the chair the authority to make administrative and procedural decisions.

10. Except as otherwise provided in these Rules, the panel may conduct its activities by any means, including telephone, email, video-conference, or any other means of electronic communication.

11. Panel 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 such deliberations. The drafting of any report shall remain the exclusive responsibility of the panel. The panel shall draft its reports without the presence of the Parties in light of the information provided and the statements made.

12. Opinions expressed in the panel report by individual panellists shall be anonymous.

**Appointment of Chair**

13. If the chair is to be selected by draw of lot pursuant to Article 25.9 (Composition of a Panel), the complaining Party shall promptly notify in writing the responding Party of the date, time and venue of the selection by lot, unless the Parties agree otherwise. The selection by lot shall take place within 10 days of the date of delivery of the notification. The responding Party shall have a reasonable opportunity to be present when the lot is drawn.

**Replacement of Panellists**

14. If a panellist resigns or becomes unable to act, the panellist shall notify the Parties, and a successor panellist shall be appointed in accordance with Article 25.9 (Composition of a Panel).

15. If any Party considers that a panellist has violated the Code of Conduct, it shall notify the other Party as soon as practicable after the date on which it obtained sufficient evidence of the panellist’s alleged failure to comply with the requirements of the Code of Conduct. The Parties shall seek to reach agreement as to whether or not there has been a violation no later than 10 days after the notification.

16. If the Parties agree that a panellist has violated the Code of Conduct, they may remove the panellist, waive the violation or request the panellist to take steps within a specified time period to ameliorate the violation. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panellist may continue to serve on the panel.

17. 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 or has not complied with the requirements of the Code of Conduct, a new panellist shall be selected in accordance with Article 25.9 (Composition of a Panel).

18. 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 or has not complied with the requirements of the Code of Conduct, a new chair shall be selected in accordance with Article 25.9 (Composition of a Panel).

19. The work of the panel, including any applicable time periods, shall be suspended for the period of time taken to carry out the procedures in paragraphs 14 through 19.

**Hearings**

20. The Parties shall be given the opportunity to attend hearings and meetings of the panel.

21. The panel shall provide for at least one hearing for the Parties to present their cases to the panel.

22. The panel may convene additional hearings and may decide not to convene a hearing at all if the Parties so agree.

23. All panellists shall be present during the entirety of each hearing. Panel hearings shall be held in closed session with only the panellists and the Parties in attendance. However, in consultation with the Parties, assistants, translators or designated note takers may also be present at hearings to assist the panel in its work. Any such arrangements established by the panel may be modified with the agreement of the Parties.

24. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the responding Party are afforded equal time to present their case. The panel shall conduct the hearing in the following manner:

 *Argument*

(a) argument of the complaining Party;

(b) argument of the responding Party;

*Rebuttal Argument*

(c) the reply of the complaining Party;

(d) the counter-reply of the responding Party;

*Closing Statement*

(e) closing statement of the complaining Party;

(f) closing statement of the responding Party.

25. The chair may set time limits for oral arguments to ensure that each Party is afforded equal time.

**Written Questions**

26. The panel may direct written questions to either Party at any time during the proceedings. A Party to whom the panel addresses a written question shall deliver a written reply to the panel and the other Party in accordance with the timetable established by the panel.

27. Each Party shall be given the opportunity to provide written comments on the response of the other Party within the timetable established by the panel.

**Confidentiality**

28. The panel’s hearings and the documents submitted to it shall be confidential. Each Party shall treat as confidential, information submitted to the panel by the other Party which that Party has designated as confidential.

29. Where a Party designates as confidential its written submissions to the panel, it shall, on request of the other Party, provide the panel and the other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public no later than 10 days after the date of request. Nothing in these Rules shall prevent a Party from disclosing its own information submitted to the panel or from making statements of its own position available to the public.

**Working language**

30. The working language of the panel proceedings, including for written submissions, oral arguments or presentations, the report of the panel and all written and oral communications between the Parties and with the panel, shall be English.

**Venue**

31. The venue for the hearings of the panel shall be decided by agreement between the Parties. If there is no agreement, the first hearing shall be held in the territory of the responding Party, and any additional hearings shall alternate between the territories of the Parties.

**Expenses and Remuneration**

32. The panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, staff, designated note takers or other individuals that it retains.

33. Unless the Parties otherwise agree, each Party shall bear the cost of its appointed panellist and its own expenses.

34. Unless the Parties otherwise agree, the costs of the chair of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

***Ex Parte* Contacts**

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

36. A Party shall not meet or contact any panellist in relation to the dispute in the absence of the other Party or other panellists.

37. A panellist shall not discuss any aspect of the subject-matter of the proceedings with a Party in the absence of the other Party and other panellists.