

ANNEX 20-A RULES OF PROCEDURE

Application

1. The following rules of procedures are established pursuant to Article 20.9 (Rules of Procedure) and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For the purposes of this Chapter and this Annex:

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

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

complaining Party means a Party that requests the establishment of a panel under Article 20.6 (Establishment of Panel);

day means a calendar day

deliver means to deliver on a carrier medium, by electronic transmission or in paper;

document includes any written matter submitted in the course of the panel proceeding, whether in paper or electronic form;

panel means a panel established under Article 20.6 (Establishment of Panel);

panelist means a member of the panel established under Article 20.6 (Establishment of Panel);

Party complained against means the Party that receives a written notification indicating that

the complaining Party has referred the matter to a dispute settlement panel in accordance with Article 20.6 (Establishment of Panel);

3. Any reference made in the Rules of Procedure to an Article is a reference to the appropriate Article in this Chapter.

Logistical Administration

4. The Party complained against shall be in charge of the logistical administration of dispute settlement procedures, in particular the organization of hearings, unless the Parties otherwise agree.

Notifications

5. The Parties and the panel shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

6. A Party shall provide a copy of each of its all written submissions to the other Party and to each of the panelists during the course of the dispute settlement proceedings. A copy of the document shall be also provided in electronic format.

7. All notifications shall be made and delivered to the Ministry of Commerce of China, or its successor and to the Ministry of Trade, Industry and Energy of Korea, or its successor respectively.

8. The deadlines are counted from the following date of receipt of such submission or documents.

9. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

10. If the last day for delivery of a document falls on a legal holiday of China or Korea,

the document may be delivered on the next business day.

Commencing the Panel Procedure

11. Unless the Parties otherwise agree, they shall meet with the panel within 15 days of the date of the establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including the remuneration and expenses that shall be paid to the panelists.

First Written Submissions

12. The complaining Party shall deliver its first written submission no later than 20 days after the last panelist is appointed. The Party complained against shall deliver its first written submission no later than 20 days after the date of delivery of the complaining Party's first written submission, unless the panel otherwise decides.

Operation of Panels

13. 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.

14. Unless the Parties otherwise agree, the panel may conduct its activities by any means, including telephone, facsimile transmission or computer links.

15. Only panelists may take part in the deliberations of the panel, but the panel may, after consultation with the Parties, permit its assistants, interpreters, or translators to be present at its deliberations. Any person present for such deliberations shall not disclose any information discussed during the deliberation to the Parties.

16. The drafting of the report shall remain the exclusive responsibility of the panel and must not be delegated.

17. Where a procedural question arises that is not covered by the provisions of this Agreement, a panel may adopt an appropriate procedure that is compatible with the

Agreement.

Hearings

18. The chair of the panel shall fix the date, time, and venue of the hearing after consultation with the Parties and the other panelists. The chair shall notify the Parties in writing of those determined date, time, and venue of the hearing. Unless one of the Parties disagrees, the panel may decide not to convene a hearing.

19. Unless the Parties otherwise agree, the hearings shall be held in the territory of the Party complained against.

20. The panel may convene additional hearings if the Parties so agree.

21. All panelists shall be present during the entirety of any hearing.

22. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters and translators; and
- (d) panelists' assistants

Only the representatives and advisers of the Parties may address to the panel.

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

24. The panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

Supplementary Written Submissions

25. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 20 days after the date of the hearing.

Confidentiality

26. The panel's hearings and the documents submitted to it shall be kept confidential. The information submitted by the other Party to the panel which that Party has designated as confidential shall be treated as confidential. Nothing in this paragraph shall preclude a Party to a dispute from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

Ex Parte Contacts

27. The panel shall not meet or contact a Party in the absence of the other Party. No Party may contact any panelist in relation to the dispute in the absence of the other Party or the other panelists.

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

Computation of Time

29. Where anything under this Agreement or this Annex 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.

30. Where, by reason of the application of paragraph 10 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Working Languages

31. Unless the Parties otherwise agree, the working language for the dispute settlement proceedings shall be English.

ANNEX 20-B
CODE OF CONDUCT FOR PANELISTS AND MEDIATORS

Definitions

1. For the purposes of this Annex:

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

mediator means a person who conducts a mediation procedure in accordance with Article 20.5 (Good Offices, Conciliation or Mediation);

panelist means a member of a panel established under Article 20.6 (Establishment of Panel);

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

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

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved.

Disclosure Obligations

3. A panelist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding by informing the Joint Commission, in writing, for consideration by the Parties.

4. A panelist shall only communicate matters concerning actual or potential violations of this Annex to the Joint Commission for consideration by the Parties.

Duties of Panelists

5. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. A panelist shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

7. A panelist shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with this Annex.

8. A panelist shall not engage in *ex parte* contacts concerning the proceeding.

Independence and Impartiality of Panelists

9. A panelist must be independent and impartial and avoid creating an appearance of impropriety or bias.

10. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

11. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid actions that may create the impression that others are in a special position to influence him or her.

Confidentiality

12. A panelist shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal

advantage or advantage for others or to adversely affect the interest of others.

13. A panelist shall not disclose a panel ruling or parts thereof prior to its publication in accordance with this Agreement.

14. A panelist shall not at any time disclose the deliberations of a panel or any panelist's view.

Mediators

15. The provisions described in the Annex 20-B shall apply, *mutatis mutandis*, to mediators.