

Brussels, 7 December 1999

Related documents: CC 154, CC 162

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Rules of Procedure for Panel Proceedings under Article 29 and Annex D

The Conference noted that the trade-related dispute settlement regime of the Treaty has attracted increased interest by industry circles and with representatives of some governments. It furthermore noted that Rules of Procedure for Panel Proceedings under Article 29 and Annex D were required to complement the dispute settlement mechanism contained in Annex D. The Conference considered that the text of the Rules of Procedure (Attachment to Document CC 154) had been discussed in the Group on Trade and only the ongoing review of the WTO Dispute Settlement Understanding (DSU) had prevented a recommendation for adoption of the text.

As requested by the Group on Trade, its Chairman had consulted with delegations on the procedure to be proposed to the Conference and as a result the proposal contained in document CC 154, page 2, was submitted to the Conference for adoption. The procedure envisaged concerning use of the draft Rules of Procedure for Panel Proceedings was considered by the Conference as a sound basis in the event of any such disputes. The Conference endorsed the aim to adopt the Rules of Procedure for Panel Proceedings at the next Conference meeting in June 2000.

The Conference adopted the procedure at [Annex] (as contained in document CC 154, page 2).

CONCLUSION

[adopted by the Energy Charter Conference at its 4th Meeting held on 7 December 1999,
as recommended by the October 1999 meeting of the Group on Trade]

The Conference notes that the Group on Trade discussed the attached draft Rules of Procedure for Panel Proceedings related to Article 5 and 29 of the Energy Charter Treaty (pursuant to paragraph 3(a) of Annex D to the Energy Charter Treaty) at its meeting on October 28-29 1999. It notes further that the Group had at that stage not been ready to recommend the formal adoption of the text of the draft Rules of Procedure for Panel Proceedings.

The Conference recognises the need for the rules of procedure for panel proceedings to be adopted by the Charter Conference, as provided for in paragraph 3 of Annex D to the Energy Charter Treaty, as Annex D provides dispute settlement rules which parties to the ECT could invoke at any time.

The Conference decides that, in the event of a dispute related to Article 5 or 29 of the Energy Charter Treaty, the attached draft set of rules shall serve as a basis for the operation of panel proceedings. Any ad hoc use of the attached set of draft rules, in the event of such a dispute, shall not be construed to set any precedent.

The Conference will continue to consider the draft Rules of Procedure for Panel Proceedings in the light of the relevant developments of the ongoing WTO dispute settlement review with a view to their adoption at the next Conference meeting.

DRAFT RULES OF PROCEDURE FOR PANEL PROCEEDINGS

***Rules of Procedure for Panel Proceedings
related to Article 5 or Article 29 of the Energy Charter Treaty
(pursuant to paragraph 3(a) of Annex D to the Energy Charter Treaty)***

Rule 1

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

"To examine, in the light of the relevant provisions cited by the parties to the dispute, the matter referred to it by (name of the Contracting Party) in document ... (the written request for the establishment of a panel delivered to the Secretariat pursuant to paragraph 2(a) of Annex D) and to make the rulings and recommendations provided for in the relevant provisions and referred to in Annex D".
2. The parties to the dispute may authorize the Secretary-General to draw up the terms of reference of the panel. The terms of reference thus drawn up shall be subject to agreement of the parties to the dispute and circulated to all Contracting Parties. If other than standard terms of reference are agreed upon, any Contracting Party may raise any point relating thereto in the Charter Conference.
3. The dispute settlement system in Annex D is a central element in providing security and predictability in respect of Articles 5 and 29 of the Treaty. Contracting Parties recognize that it serves to preserve the rights and obligations of Contracting Parties under these provisions, and to clarify those provisions in accordance with customary rules of interpretation of public international law. Recommendations and rulings of panels cannot add to or diminish the rights and obligations provided in Articles 5 and 29.

Rule 2

Composition of Panels

1. Any nominations of panel members proposed by the Secretary-General after the expiration of 30 days subsequent to the establishment of the panel shall be accepted as final, subject to the rules of conduct in Appendix 3 to these Rules.
2. Panelists' expenses, including travel and subsistence allowance, shall be met from the Energy Charter Secretariat budget in accordance with criteria to be adopted by the Charter Conference, based on recommendations of the Budget Committee.

*Rule 3**Procedures for Multiple Complainants*

1. In the circumstances referred to in paragraph 3(c) of Annex D, a single panel should be established to examine the complaints whenever feasible.
2. The single panel shall organize its examination and present its findings to the Charter Conference in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.
3. If more than one panel is established to examine the complaints related to disputes that are substantively similar, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

*Rule 4**Third Parties*

1. The submissions filed to the panel by a party that has notified its interest in accordance with paragraph 2(b) of Annex D (hereafter referred to as a "third party") shall also be given to the parties to the dispute and shall be reflected in the panel report.
2. With reference to paragraph 3(a) of Annex D, parties to the dispute shall only refuse access by third parties to its submissions to the first meeting of the panel for compelling reasons to be evaluated by the panel.
3. If a third party considers that a measure already the subject of a panel proceeding materially affects compliance with the provisions applicable to trade under Article 5 or 29 or nullifies or impairs any benefit accruing to it directly or indirectly under the provisions applicable to trade under Article 29, that Contracting Party may have recourse to normal dispute settlement procedures under Annex D. Such a dispute shall be referred to the original panel wherever possible.

*Rule 5**Fixing of timetable and working procedures*

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.
2. After consulting the parties to the dispute, the panel shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of

the panel have been agreed upon, fix the timetable for the panel process and adopt, after consultation with the parties to the dispute, its working procedures and any additional rules of procedure referred to in paragraph 3(a) of Annex D. Panels shall follow the working procedures in Appendix 1 unless the panel decides otherwise after consulting the parties to the dispute.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.
4. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.
5. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute.
6. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 2 of this Rule and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

Rule 6

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Contracting Party it shall inform the authorities of that Contracting Party. A Contracting Party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Contracting Party providing the information.
2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 2.

Rule 7

Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.
3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Rule 8

Communications with the panel

1. There shall be no *ex parte* communications with the panel concerning matters under consideration by the panel.
2. Written submissions to the panel shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in these Rules shall preclude a party to a dispute from disclosing statements of its own positions to the public. Contracting Parties shall treat as confidential information submitted by another Contracting Party to the panel which that Contracting Party has designated as confidential. A party to a dispute shall also, upon request of a Contracting Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Rule 9

Timeframe for panel proceedings

1. In cases of urgency the parties to the dispute, panels and the Charter Conference shall make every effort to accelerate the proceedings to the greatest extent possible. In such cases, the panel shall aim to issue its report to the parties to the dispute within 90 days instead of the 180 days referred to in paragraph 3(a) of Annex D.
2. When the panel considers that it cannot issue its report within the 180 days referred to in paragraph 3(a) of Annex D, or within the 90 days in cases of urgency referred to in paragraph 1 of this Rule, it shall inform the Charter Conference in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to all Contracting Parties by the Secretariat exceed 270 days.
3. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the timeframes set out in paragraph 3(a) of Annex D and paragraph 1 and 2 of this Rule shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.
4. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of Annex D shall be notified to the Secretariat which shall circulate them to all Contracting Parties. Any Contracting Party may raise any point relating thereto at the Charter Conference.

*Rule 10**The final report of the panel*

Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the Secretariat and the disputing Contracting Parties pursuant to paragraph 4 (a) of Annex D. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

*Rule 11**Responsibilities of the Secretariat*

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support. In respect of legal and procedural aspects, the Secretariat may decide to seek the advice of the Secretariat of the WTO.
2. The Secretariat shall assist Contracting Parties in respect of dispute settlement at their request and may be asked to conduct special training courses for interested Contracting Parties concerning these dispute settlement procedures and practices so as to enable Contracting Parties' experts to be better informed in this regard. This assistance shall be provided in a manner ensuring the continued impartiality of the Secretariat.

APPENDIX 1

TO THE RULES OF PROCEDURE FOR PANEL PROCEEDINGS

STANDARD WORKING PROCEDURES

1. In its proceedings the panel shall follow the relevant provisions of Annex D and the Rules of Procedure for Panel Proceedings. In addition, pursuant to paragraph 2 of Rule 5, the following working procedures shall apply unless the panel decides otherwise after consulting the parties to the dispute. These working procedures may be adapted from time to time to reflect changes in the corresponding working procedures appended to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).
2. The panel shall meet in closed session. The parties to the dispute, and third parties, shall be present at the meetings only when invited by the panel to appear before it.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in Annex D and the Rules of Procedure for Panel Proceedings shall preclude a party to a dispute from disclosing statements of its own positions to the public. Contracting Parties shall treat as confidential information submitted by another Contracting Party to the panel which that Contracting Party has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Contracting Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments. Thereafter, but still before the first substantive meeting, the third parties shall file any written submissions they want to make pursuant to paragraph 2 (b) of Annex D.
5. Any request for a preliminary ruling to be made by the panel shall be submitted no later than in a party's first written submission. If the complaining party requests any such ruling, the respondent shall submit the response it may have in its first written submission. If the respondent requests any such ruling, the complaining party shall submit the response it may have prior to the first substantive meeting of the panel. The complaining party shall submit this response at a time to be determined by the panel after receipt and in light of the respondent's request. Exceptions to this procedure will be granted upon a showing of good cause.
6. Parties shall submit all factual evidence to the panel no later than during the first substantive meeting, except with respect to evidence necessary for purposes of rebuttal submissions, answers to questions or comments on answers provided by others. Exceptions to this procedure will be granted upon a showing of good cause. In such cases, the other party shall be accorded a period of time for comment, as appropriate.
7. The parties to the dispute have the right to determine the composition of their own delegation. In this regard, they may nominate private counsel and advisors. The parties shall have the responsibility for all members of their delegation and shall ensure that all members of their delegation act in accordance with the rules of Annex D, the Rules of

Procedure for Panel Proceedings and the Standard Working Procedures, particularly in regard to confidentiality of the proceedings.

8. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.
9. All third parties, i.e., Contracting Parties that have notified their interest in accordance with paragraph 2(b) of Annex D, shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.
10. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.
11. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.
12. The parties to the dispute and any third party invited to present its views in accordance with paragraph 2(b) of Annex D shall make available to the panel a written version of their oral statements.
13. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.
14. Any additional procedures specific to the panel adopted pursuant to paragraph (3)(a) of Annex D.
15. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:

- | | | |
|-------------------------------|-------|-----------|
| (1) complaining Party: | _____ | 3-6 weeks |
| (2) Party complained against: | _____ | 3 weeks |

(b) Date, time and place of first substantive meeting with the parties; third party session: _____ 1-2 weeks

(c) Receipt of written rebuttals of the parties: _____ 2-3 weeks

(d) Date, time and place of second substantive meeting with the parties: _____ 1-2 weeks

(e) Issuance of descriptive part of the report to the parties: _____ 2-4 weeks

- (f) Receipt of comments by the parties on the descriptive part of the report: _____ 2 weeks
- (g) Issuance of the interim report, including the findings and conclusions, to the parties: _____ 2-4 weeks
- (h) Deadline for party to request review of part(s) of report: _____ 1 week
- (i) Period of review by panel, including possible additional meeting with parties: _____ 2 weeks
- (j) Issuance of final report to the Secretariat and parties to dispute: _____ 2 weeks
- (k) Circulation of the final report to the Contracting Parties: _____ 3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 2

TO THE RULES OF PROCEDURE FOR PANEL PROCEEDINGS

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Rule 6.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.
2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.
3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.
4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Contracting Party, it shall inform the government of that Contracting Party. Any Contracting Party shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.
5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.
6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

APPENDIX 3

TO THE RULES OF PROCEDURE FOR PANEL PROCEEDINGS

RULES OF CONDUCT***I. Governing Principle***

Each person covered by these Rules (as defined in paragraph 1 of Section III below and hereinafter called “covered person”) shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of panel and arbitration proceedings, so that through the observance of such standards of conduct the integrity and impartiality of the dispute settlement mechanism are preserved. These Rules shall in no way modify the rights and obligations of Contracting Parties under Annex D or the Rules of Procedure for Panel Proceedings.

II. Observance of the Governing Principle

1. To ensure the observance of the Governing Principle of these Rules, each covered person is expected (1) to adhere strictly to the provisions of Annex D and the Rules of Procedure for Panel Proceedings; (2) to disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and (3) to take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.
2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in anyway interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

III. Scope

1. These Rules shall apply, as specified in the text, to each person serving: (a) on a panel; (b) as an arbitrator pursuant to paragraph 6 of Annex D; or (c) as an expert participating in the dispute settlement mechanism pursuant to Rule 6 of the Rules of Procedure for Panel Proceedings. These Rules shall also apply to those members of the Secretariat called upon to assist the panel in accordance with Rule 11 of the Rules of Procedure for Panel Proceedings or to assist in formal arbitration proceedings pursuant to paragraph 6 of Annex D (hereinafter “Member of the Secretariat support staff”), reflecting their acceptance of established norms regulating the conduct of such persons as international civil servants and the Governing Principle of these Rules.
2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Contracting Parties' requests for assistance and information.

IV. Self-Disclosure Requirements by Covered Persons

1.
 - (a) Each person requested to serve on a panel, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List (Annex 1) of examples of the matters subject to disclosure.
 - (b) Any member of the Secretariat described in paragraph III:1, who may expect to be called upon to assist in a dispute, shall be familiar with these Rules.
2. As set out in paragraph 4 below, all covered persons described in paragraph 1 shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List, if relevant.
3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels or in other dispute settlement roles.
4.
 - (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 2 of these Rules. Such information would be disclosed to the Chair of the Charter Conference or to his/her duly authorised representative (hereinafter “Chair of the Charter Conference”) for consideration by the parties to the dispute.
 - (c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Secretary-General the information required under paragraph 2.
5. During a dispute, each covered person shall also disclose any new information relevant to paragraph 2 above at the earliest time they become aware of it.
6. The Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel process and its enforcement procedures, if any, are completed.

V. Confidentiality

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.

2. During the proceedings, no covered person shall engage in *ex parte* contacts concerning matters under consideration. Subject to paragraph 1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Standing Appellate Body has been derestricted.

VI. *Procedures Concerning Subsequent Disclosure and Possible Material Violations*

1. Any party to a dispute, conducted pursuant to Annex D, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the Chair of the Charter Conference or the Secretary-General, as appropriate according to the respective procedures detailed in paragraphs 5 to 13 below, in a written statement specifying the relevant facts and circumstances. Other Contracting Parties who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.
2. When evidence as described in paragraph 1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.
3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph 1.
4. Following the submission of such evidence to the Chair of the Charter Conference or the Secretary-General, as specified below, the procedures outlined in paragraphs 5 to 13 below shall be completed within fifteen working days.

Panelists, Arbitrators, Experts

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the Chair of the Charter Conference.
6. Upon receipt of the evidence referred to in paragraphs 1 and 2, the Chair of the Charter Conference shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.
7. If, after having consulted with the person concerned, the matter is not resolved, the Chair of the Charter Conference shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the dispute. If the person concerned resigns, the Chair of the Charter Conference shall inform the

parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.

8. In all cases, the Chair of the Charter Conference, in consultation with the Secretary-General, and after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs 1 and 2 above has occurred. Where the parties agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.
9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.
10. The Chair of the Charter Conference shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

Secretariat

11. If the covered person who is the subject of the evidence is a member of the Secretariat, the party shall only provide the evidence to the Secretary-General, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute and the panel.
12. It shall be for the Secretary-General to take any appropriate action in accordance with the Staff Regulations. The Secretary-General shall consult with the person who is the subject of the evidence and the panel and shall, if necessary, take appropriate disciplinary action.
13. The Secretary-General shall inform the parties to the dispute, the panel and the Chair of the Charter Conference of his decision, together with relevant supporting information.
14. Following completion of the procedures in paragraphs 5 to 13, if the appointment of a covered person is revoked or that person is excused or resigns, the procedures specified in Annex D and the Rules of Procedure for Panel Proceedings for initial appointment shall be followed for appointment of a replacement, but the time periods shall be half those specified in Annex D and the Rules of Procedure for Panel Proceedings. The panel or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.
15. All covered persons and Contracting Parties concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in Annex D and the Rules of Procedure for Panel Proceedings.

16. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

VII. Review

These Rules of Conduct shall be reviewed within two years of their adoption and a decision shall be taken by the Charter Conference as to whether to continue, modify or terminate these Rules.

ANNEX 1
TO THE RULES OF CONDUCT

ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct.

Each covered person, as defined in Rule III:1 of these Rules of Conduct has a continuing duty to disclose the information described in Rule IV:2 of these Rules which may include the following:

- (a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
- (c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements);
- (e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 2

TO THE RULES OF CONDUCT

Dispute Number: _____

ENERGY CHARTER TREATY
DISCLOSURE FORM

I have read Annex D to the Energy Charter Treaty, the Rules of Procedures for Panel Proceedings and the Rules of Conduct. I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the Charter Conference makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Signed:

Dated: