

**THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT**

**DECISION OF THE FREE TRADE COMMISSION  
ESTABLISHING MODEL RULES OF PROCEDURE**

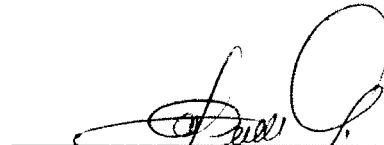
Pursuant to Article 20.10.1 (Dispute Settlement - Rules of Procedure) of the Dominican Republic – Central America – United States Free Trade Agreement (“Agreement”), the Free Trade Commission shall establish Model Rules of Procedure for dispute settlement proceedings. The Model Rules of Procedure shall ensure: (a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public; (b) an opportunity for each disputing Party to provide initial written and rebuttal submissions; (c) that each participating Party’s written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (e); (d) that the panel will consider requests from non-governmental entities in the disputing Parties’ territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties; and (e) the protection of confidential information.

In accordance with Article 20.10.1 of the Agreement, the Commission hereby establishes the Model Rules of Procedure set forth in Annex 1.

**DONE**, at San Salvador, El Salvador in English and Spanish, on this 23<sup>rd</sup> day of February, 2011.



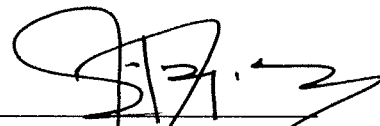
For the Republic of Costa Rica  
Anabel González  
Minister of Foreign Trade



For The Dominican Republic  
Marcelo Puello Vice Minister on behalf of  
the  
Minister for Industry and Trade

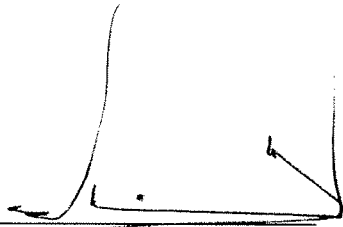


For the Republic of El Salvador  
Héctor Miguel Antonio Dada Hirezi  
Minister of Economy

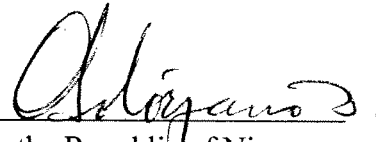


For the Republic of Guatemala  
Raúl Trejo Esquivel  
Vice Minister on behalf of the  
Minister of Economy

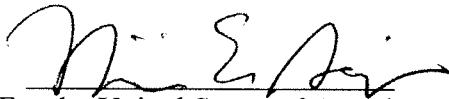




For the ~~Republic~~ of Honduras  
José Francisco Zelaya  
Secretary of State, Offices of Industry and  
Commerce



For the Republic of Nicaragua  
Orlando Solórzano Delgadillo  
Minister of Development, Industry and  
Commerce



For the United States of America  
Miriam E. Sapiro  
Deputy United States Trade Representative

## ANNEX 1

### Rules of Procedure for Chapter Twenty of the Dominican Republic – Central America – United States Free Trade Agreement

#### *Application*

1. These model rules, including the appendices thereto, are established pursuant to Article 20.10 (Rules of Procedure) of the Dominican Republic – Central America – United States Free Trade Agreement and shall apply to dispute settlement proceedings under Chapter Twenty unless the disputing Parties otherwise agree.

#### *Definitions*

2. In these rules:

**Agreement** means the Dominican Republic – Central America – United States Free Trade Agreement;

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

**approved person** means a person who is:

- (a) an authorized representative of a participating Party designated in accordance with Appendix 1;
- (b) an authorized employee of the responsible office;
- (c) a member of the panel; or
- (d) an assistant to a member of the panel;

**authorized employee of the responsible office** means a person employed or appointed by the panel who the responsible office has authorized to work on the dispute;

**authorized representative** means:

- (a) an official of a participating Party; or
- (b) a legal counsel or other advisor or consultant of a participating Party who the Party has authorized to act on its behalf in the course of the dispute and whose authorization the Party has notified to the panel and to the other participating Parties, but excludes in all circumstances a person or an employee, officer or agent of any entity that could reasonably be expected to benefit outside of proceedings under Chapter Twenty from the receipt of confidential information;

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**by the most expeditious means practicable** means:

- (a) for an electronic document containing no confidential information, by electronic transmission; and
- (b) for a paper copy of a document or an electronic document containing confidential information, by commercial express delivery service, overnight delivery;

**Code of Conduct** means the Code of Conduct established by the Commission in accordance with Article 20.7.2(d) (Roster);

**Commission** means the Free Trade Commission established under Article 19.1 (The Free Trade Commission);

**complaining Party** means a Party that requests the establishment of an arbitral panel under Article 20.6.1 (Request for an Arbitral Panel) or any Party that joins a panel proceeding under Article 20.6.3 (Request for an Arbitral Panel);

**confidential information** means information designated as such by a Party in accordance with rule 15;

**date of delivery** means:

- (a) for a document submitted by a participating Party, the date on which the responsible office receives the document, as indicated in the confirmation of receipt sent by the responsible office to the submitting Party;
- (b) for a document delivered by the panel or the responsible office, the earlier of the date on which the responsible office transmits an electronic document to the relevant Parties, or the date indicated in the records of the commercial express delivery service that delivers a paper copy of the document;

**day** means calendar day;

**deliver** means, for an electronic copy, to deliver on a carrier medium or by electronic transmission;

**disputing Party** means a complaining Party or a Party complained against;

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

**electronic copy** means a version of a document in a commercial word processing format that is identical to the paper copy of the document;

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**fund** means any fund established by the Commission under Article 20.17.4 (Non-Implementation in Certain Disputes);

**information** means information, however recorded or stored, including in a paper document, electronic file or spoken information;

**office** means the office that a Party designates under Article 19.3 (Administration of Dispute Settlement Proceedings) for providing administrative assistance to panels established under Article 20.6 (Request for an Arbitral Panel);

**panel** means a panel established under Article 20.6 (Request for an Arbitral Panel);

**participating Party** means a disputing Party or a third Party, if any;

**Party** means a Party to the Agreement;

**public holiday** means for any year, with regard to a Party, Saturday, Sunday and any other day officially established by that Party as a public holiday and notified to each of the other Parties;

**record** means any medium on which information is recorded or stored;

**responsible office** means the office of the Party complained against; and

**third Party** means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 20.11 (Third Party Participation).

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

### *Terms of Reference*

4. The disputing Parties shall promptly deliver any agreed terms of reference to the responsible office which, in turn, shall provide for their delivery by the most expeditious means practicable to the office of any other participating Parties and to the panel once it has been constituted.

5. If the disputing Parties have not agreed on terms of reference within 20 days from the date of the delivery to the Parties of the request for the establishment of the panel, any complaining Party may so notify the responsible office. On receipt of such notification, that office shall deliver by the most expeditious means practicable the terms of reference set out in Article 20.10.4 (Rules of Procedure) to the office of each participating Party, and to the panel once it has been constituted.

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### *Written Submissions and Other Documents*

6. A participating Party submitting a document to the panel shall deliver the original and four paper copies and, on the same day, one electronic copy to the responsible office and one electronic copy to each other participating Party. The responsible office shall deliver an electronic copy to the office of each of the other participating Parties. If it is not possible to deliver any part of a document by electronic means, the participating Party submitting that document must so indicate in the electronic copy and deliver a copy of that part of the document to the other Party by the most expeditious means practicable.

7. Each complaining Party shall submit its initial written submission to the panel no later than seven days after the date of the constitution of the panel.

8. Within 14 days of the delivery to the Parties of the request for establishment of a panel, each participating Party shall deliver to the responsible office a list of public holidays on which the Party's office is closed. No later than seven days after the date of the constitution of the panel, the panel shall issue a timetable for the proceedings that provides for:

- (a) submission of the initial written submission of the Party complained against no later than 35 days after the date of the constitution of the panel;
- (b) submission of the written submission of any third Party no later than seven days after the date of delivery of the initial written submission of the Party complained against;
- (c) submission of any rebuttal submission of any complaining Party no later than 21 days after submission of the initial written submission of the Party complained against;
- (d) submission of any rebuttal submission of the Party complained against no later than 21 days after submission of the rebuttal submission of the complaining Party or Parties;
- (e) a hearing within 14 days of the date for submission of the rebuttal submission of the Party complained against;
- (f) delivery to the participating Parties of any written questions from the panel within three days of the date of the hearing;
- (g) submission of a Party's supplementary written submission responding to any matter that arose during the hearing, along with responses to any written questions from the panel within 14 days of the date of the hearing;
- (h) submission of a Party's comments on the supplementary written submissions of other participating Parties and any responses to written questions from the panel within 14 days of the submission of those responses.

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In establishing the dates for submissions or for the hearing, the panel shall comply with rule 12 and consult with the responsible office to provide additional time if translation of documents will be necessary under rule 81.

9. When a Party delivers a document to the responsible office, the responsible office shall provide the Party with a confirmation of receipt, indicating the title of the document and the date of delivery.

10. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the panel proceeding may be corrected by submitting a new document clearly indicating the changes. A Party must correct such errors within seven days of the date of delivery of the notice, written submission, or other document, or at such other time as the panel provides. The correction of minor errors of a clerical nature shall not affect the panel's schedule.

11. Any delivery to an office under these rules shall be made during the office's normal business hours.

12. If the date for submission of a document by a Party falls on a public holiday of that Party, or on a date on which the Party's office is closed by force majeure, the date for submission of the document will be the next business day of that Party.

### ***Public Release of Written Submissions and Other Documents***

13. Subject to rules 14 and 15, each document submitted to, or issued by, a panel, including a participating Party's written submissions, written versions of its oral statements, and written responses to a request or questions from the panel or another disputing Party ("Party submission"), requests for consultations made pursuant to Article 16.6.1 (Cooperative Labor Consultations), Article 17.10.1 (Collaborative Environmental Consultations), and Article 20.4 (Consultations), and all notifications made pursuant to Chapter Twenty are public.<sup>1</sup> The responsible office shall make such documents and notifications available to the public no later than ten days after it receives a complete copy. Each disputing Party shall also make the final report of the panel available to the public no later than 15 days after the day on which the panel issues its final report.




14. No disputing Party may disclose publicly the contents of an initial report presented to the disputing Parties pursuant to Article 20.13 (Initial Report) or the contents of any comments made on an initial report.

15. To the extent it considers strictly necessary to protect confidential information or information described in Article 21.2 (Essential Security)<sup>2</sup>, a participating Party may

<sup>1</sup> The term "document" in this provision is not intended to include a document that is purely administrative in nature.

<sup>2</sup> Nothing in these rules shall be construed to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or to preclude a Party from

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designate, consistent with the procedures set out in Appendix 2, for confidential treatment specific factual information it includes in a Party submission.<sup>3</sup> Information that may be designated as confidential information is limited to any sensitive factual information that is not available in the public domain. Each participating Party shall exercise the utmost restraint in designating information as confidential.

16. Where a participating Party designates information contained in a document as confidential, it shall also prepare and deliver in accordance with rule 6 a non-confidential version of the document in which the confidential information is redacted and, to the maximum extent possible, its own confidential information is summarized.

17. If a participating Party fails to prepare and submit a non-confidential version of a document containing confidential information within ten days after submission of the document, another participating Party may make the document available to the public after redacting the confidential information. Such Party shall also submit the non-confidential version to the panel.

18. Where confidential information has been redacted from a Party submission pursuant to rule 16 or 17, the non-confidential version of the document shall indicate clearly each place where such information has been redacted.

19. A participating Party shall not designate any portions of its written legal arguments as confidential other than to the extent they would reveal specific factual information described in rule 15.

### ***Procedures for Identification and Treatment of Confidential Information***

20. Rules 20 through 23 and Appendix 2 apply to information that a participating Party submits during the panel proceedings and designates as confidential; however, except as provided in Appendix 2, paragraph 1, these procedures do not apply to a participating Party with respect to confidential information first submitted by that Party, including in derivative form.

21. Each participating Party shall treat as confidential the information submitted by any other participating Party to the panel that the submitting Party has designated as confidential information in accordance with Appendix 2. Nothing in these procedures shall preclude a participating Party from disclosing statements of its own position to the public.

22. A participating Party shall identify, use, store, and dispose of confidential information as specified in Appendix 2.

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applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

<sup>3</sup> To the extent possible, confidential information should be contained in an exhibit or annex to the submission.

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23. Each participating Party shall ensure that each of its authorized representatives, designated as approved persons pursuant to Appendix 1, complies with these procedures. Each office shall ensure that each of its authorized employees, designated as approved persons pursuant to Appendix 1, complies with these procedures. The panel and responsible office shall ensure that any other person designated as an approved person pursuant to Appendix 1 complies with these procedures.

### *Operation of Panels*

24. The chair of the panel shall preside at each of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

25. Except as otherwise provided in these rules, the panel may conduct its business by any means, including by telephone, facsimile transmission, videoconference or computer links.

26. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants, office personnel, interpreters, or translators to be present during such deliberations.

27. Where a procedural question arises that is not covered by these rules, a panel may adopt an appropriate procedure that is not inconsistent with the Agreement or these rules.

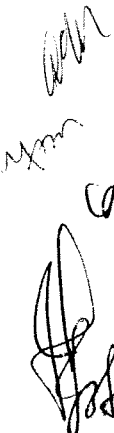
28. On selection of the last proposed panelist, the responsible office shall inform each proposed panelist of that proposed panelist's selection and promptly inform the disputing Parties of each proposed panelist's response. If the responsible office receives information indicating that a reply may be delayed beyond five days of the responsible office's communication, it shall inform the disputing Parties. If the responsible office cannot confirm a proposed panelist's willingness and availability to serve as a panelist within twenty days of the initial communication from the responsible office, the responsible office shall so inform the disputing Parties, and it shall be understood that the proposed panelist is unavailable. When communicating the selection to a proposed panelist, the responsible office shall provide each proposed panelist with a copy of the Initial Disclosure Statement and request that, if the proposed panelist agrees to serve on the panel, the panelist complete the statement as soon as possible and make best efforts to do so within ten days of the communication.

29. The responsible office shall notify the constitution of the panel to the participating Parties.<sup>4</sup>

30. If a proposed panelist does not accept an appointment, or if a panelist dies, withdraws, is removed pursuant to rule 31, or otherwise becomes unavailable to serve, a

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<sup>4</sup> The time period of 120 days provided under Article 20.13.3 (Initial Report) shall run from the date of notification by the responsible office.



replacement shall be selected as expeditiously as possible in accordance with the selection procedure followed to select the panelist.

31. If the disputing Parties agree that a panelist has violated the Code of Conduct or failed to comply with Article 20.7.2(c) (Roster), they may remove the panelist, waive the violation, or request the panelist to take steps within a specified time period to ameliorate the violation. If the disputing Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panelist may continue to serve. The disputing Parties shall seek to address a potential violation of the Code or non-compliance with Article 20.7.2(c) (Rosters) within ten days of the date that all the disputing Parties have learned of the potential violation.

32. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist dies, withdraws, is removed, is authorized to seek to ameliorate a violation, or otherwise becomes unavailable, and ending on the date specified for ameliorating the violation, the replacement is selected, or the violation has ceased.

33. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties so request. In the event of such a suspension, all relevant time-frames set out in these Rules of Procedure 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 consecutive months, the authority for the establishment of the panel under Article 20.6 (Request for an Arbitral Panel) shall lapse, unless the disputing Parties otherwise agree.

34. A panel may, after consulting the participating Parties, modify any time period applicable in the panel proceeding and make such other procedural or administrative adjustments as may be required in the proceeding, such as where a panelist is replaced.

35. The panel shall consider exclusively the issues raised in the proceeding, and shall not delegate their responsibility to decide the matter to any other person.

### *Hearings*

36. The chair shall fix the date and time of the hearing after consulting the disputing Parties, the other members of the panel, and the responsible office. The responsible office shall notify the participating Parties and the office of any other participating Party in writing of the date, time, and location of the hearing. The panel shall seek to hold the hearing within 14 days after the date of delivery of the written rebuttal submission of the Party complained against.

37. The hearing shall be held in the capital of the Party complained against unless the disputing Parties otherwise agree.

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

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39. All panelists shall be present at each hearing. Where a replacement panelist has been selected after a hearing has occurred, the panel shall hold a new hearing if one of the disputing Parties requests, or if the panel considers a new hearing to be appropriate.

40. All hearings of the panel shall be open for the public to observe,<sup>5</sup> except that the panel shall close the hearing for the duration of any discussion of confidential information.

41. A participating Party that wishes to submit or discuss confidential information during a hearing shall provide prior notice to the panel and the responsible office. To the extent possible, the participating Party shall provide such notice at least ten days before the hearing.

42. During a closed portion of a hearing, only approved persons may be present.

43. No later than two business days before the date of the hearing, each participating Party shall deliver to each other participating Party and the responsible office a list of the names of those persons who will be on that participating Party's delegation attending the hearing.

44. The panel shall conduct the hearing in the following manner, ensuring that it affords time to the Party complained against equal to the amount of time afforded to the complaining Party or to the complaining Parties collectively:

Argument -

- (a) Argument of the complaining Party or Parties;
- (b) Argument of the Party complained against;
- (c) Presentation of any third Parties;

Rebuttal Argument -

- (d) Reply of the complaining Party or Parties; and
- (e) Counter-reply of the Party complained against.

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

46. The responsible office 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 participating Parties, the office of any other participating Party, and the panel.

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<sup>5</sup> The expression "observe" does not require physical presence at the hearing. To facilitate public observation of panel hearings, such hearings may be transmitted electronically to the public.

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### *Notifications*

47. The arbitral panel may notify the participating Parties as required, personally, by certified mail, courier, fax, electronic mail or any other means of communications through which receipt may be reasonably determined.

48. The arbitral panel shall address its notifications to the offices of the participating Parties as appropriate in accordance with rule 47. These notifications may be conveyed through the responsible office.

### *Supplementary Written Submissions*

49. The panel may at any time during a proceeding address questions in writing to one or more of the participating Parties. The panel shall deliver the written questions in electronic and paper copy to the participating Parties through the responsible office, which shall deliver the electronic copy immediately and deliver a paper copy of the questions to the participating Parties and the office of each other participating Party by the most expeditious means practicable.

50. Each disputing Party shall be given the opportunity to provide written comments on a reply that any other participating Party submits.

51. Each participating Party may deliver to its office a supplementary written submission responding to any matter that arose during the hearing.

52. Each participating Party shall submit its reply, comment, or submission under rule 49, 50, or 51 no later than the date specified in the timetable issued by the panel under rule 8.

### *Submission of Written Views from Non-Governmental Entities*

53. A panel may grant a request by a non-governmental entity in a Party's territory to submit written views under Article 20.10.1(d) (Rules of Procedure) if the entity complies with rule 54 and 55.

54. An entity must deliver its request to submit written views to the responsible office within seven days after the date of delivery of the initial written submission of the Party complained against, or, if that submission contains confidential information, within seven days after delivery of the non-confidential version. The request shall:

- (a) contain a description of the entity, including, if applicable, the nature of its activities, membership, legal status, and location in a Party;
- (b) identify the specific issues of fact and law directly relevant to any legal or factual issue under consideration by the panel that the entity will address in its written views;

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- (c) explain how the entity's written views will contribute to resolving the dispute and why its views would be unlikely to repeat legal and factual arguments that a participating Party has made or can be expected to make, or why it brings a perspective that is different from that of the participating Parties;
- (d) contain a statement disclosing whether the entity has any relationship, direct or indirect, with a Party, as well as whether it has received, or will receive, any assistance, financial or otherwise, from a Party, other government, person, or organization, other than the entity, its members, or its counsel, in the preparation of the entity's request for leave or its written views; and
- (e) be no more than four pages long.

55. Any request by an entity under rule 54 or submission under rule 58 must be made in writing, with versions in both the English and Spanish languages. Any page limit applies to both the English and Spanish versions of the document, and is based on single-spaced, typewritten pages, 12 point Times New Roman type, on paper 8 ½ by 11 inches or A4, with margins of one inch or 2.5 centimeters. The request or submission must be signed and dated by a representative of the entity, must include the entity's address and other contact information, and must be submitted in accordance with rule 6.

56. The responsible office shall promptly provide each timely request to the panel and each participating Party, and shall make each such request available to the public. The panel shall consider each request and, after consulting the participating Parties, shall decide within seven days of receipt of the request whether it will grant the entity leave to submit written views in whole or in part. The responsible office shall promptly (a) notify the entity of the panel's decision, and (b) make the decision available to the participating Parties and the public.

57. In deciding whether to grant leave, the panel shall take into account the factors listed in rule 54 and compliance with rule 55.

58. If the panel grants the request, the entity shall submit its views to the responsible office by the date the panel determines, which shall not be later than 21 days before the hearing.

59. An entity's written views must comply with rule 55 and must:

- (a) be no longer than ten pages in length, including any appendices; and
- (b) address only the issues of fact and law that the entity described in its request and the panel agreed to receive.

60. The responsible office shall promptly provide any written views that the panel receives in accordance with rule 58 to the participating Parties and shall make such written views available to the public.

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69. In the absence of representatives of the disputing Parties, a panel may not meet, or have discussions concerning matters under consideration by the panel, with a person or body providing information or technical advice.

***Information and Technical Advice***

70. No panel may decide to seek information or technical advice under Article 20.12 (Role of Experts) any later than 15 days after the date of the hearing, whether on its own initiative or at the request of a disputing Party.

71. Within 25 days after its decision to seek information or technical advice, and after consulting the disputing Parties, the panel shall select one or more persons or bodies that shall provide the information or technical advice.

72. The panel shall not select a person under rule 71 who has, or whose employers, partners, business associates, or family members have, a financial or other interest that is likely to affect the person's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias under the Code of Conduct. The panel shall not select a body under rule 71 that has, or whose owners or controlling principals have, or whose employees working on the panel's request for information or technical advice have, a financial or other interest that is likely to affect the independence or impartiality of the body or that might reasonably create an appearance of impropriety or an apprehension of bias under the Code of Conduct.

73. The disputing Parties may submit comments on the proposed request for information or technical advice up to five days after selection of a person or body under rule 71. The panel shall take the disputing Parties' comments into account in finalizing the request.

74. The panel shall deliver a copy of its request to the responsible office which, in turn, shall provide for the delivery of electronic copies of the request by the most expeditious means practicable to the office of any other participating Party, the participating Parties, and any person or body selected under rule 71 and make it available to the public.

75. Each person or body shall deliver the information or technical advice to the responsible office within 30 days after receipt of the panel's request.

76. The responsible office shall deliver the information or technical advice to the participating Parties and the office of any other disputing Party, and make it available to the public in accordance with rule 13. The panel shall establish a date for participating Parties to submit comments on the information or technical advice to the panel within 14 days after the date of delivery, complying with rule 12 and consulting with the responsible office to provide additional time if translation of documents will be necessary under rule 81.

77. Where a request is made for information or technical advice, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date of

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the request and ending on the earlier of the date of delivery of the information or technical advice or 45 days after the date of the request.

### *Translation and Interpretation*

78. Participating Parties shall file all their submissions and make all of their oral arguments in either English or Spanish.

79. Each participating Party shall, within a reasonable period of time before it delivers its initial written submission in a panel proceeding, advise its office and the other participating Parties in writing of whether it will make its written submissions and oral arguments in English or in Spanish. The responsible office shall promptly notify the panel.

80. Where, in accordance with the advice provided by each participating Party under rule 79, the participating Parties will make their oral arguments in a panel proceeding in more than one language, or if a panelist requests interpretation at a hearing, the responsible office shall arrange for interpretation at the hearing. Where a panelist requests translation of a written submission into English or Spanish, as the case may be, the responsible office shall arrange for the prompt translation and delivery to the participating Parties of the translated written submissions. Where a participating Party determines that it requires a translation of a submission for which a panelist has not requested a translation, it shall so inform the responsible office, which shall arrange for the prompt translation and delivery to the participating Parties of that translated submission. The responsible office shall provide a prompt estimate of the amount of time necessary for translating a written submission, whether at the request of a panelist or a participating Party.

81. Where the responsible office is required to arrange for the translation of a document, any period of time the calculation of which is dependent on submission of that document shall be adjusted to allow a reasonable time for preparation of the translation. If the preparation of a translation takes longer than the estimate provided to the panel under rule 80, the panel shall make a corresponding adjustment in the timetable issued under rule 8.

82. The costs incurred to prepare a translation of a document whose translation has not been requested by a panelist shall be borne by the participating Party requesting the translation. The costs of all other translation and interpretation requirements in a panel proceeding shall be borne equally by the participating Parties.

83. Any participating Party may provide comments on the accuracy of a translation that is prepared in accordance with these rules. In the case of inconsistency between an original document and a translation prepared in accordance with these rules, the original document prevails.

### *Computation of Time*

84. Terms shall be computed in calendar days.

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85. Where the Agreement, these rules or the panel requires anything to be done before or after a date or event, that time period shall not include the day of that date or event.

### ***Suspension of Benefits and Compliance Panels***

86. The panel shall reconvene when a disputing Party requests a panel under Article 20.16 (Non-Implementation – Suspension of Benefits), 20.17 (Non-Implementation in Certain Disputes), or 20.18 (Compliance Review). If a panelist is unavailable at that time, a new panelist shall be selected as expeditiously as possible in accordance with the selection procedure followed to select the panelist being replaced.

87. These procedures shall apply to a panel established under Article 20.16 (Non-Implementation – Suspension of Benefits), 20.17 (Non-Implementation in Certain Disputes), or 20.18 (Compliance Review) except that:

- (a) the Party that requests the establishment of the panel shall submit its initial written submission within seven days after the later of the date on which the panel is reconvened or the date of the constitution of the panel;
- (b) the timetable issued by the panel shall establish a date for the initial written submission of the Party complained against within 15 days after the date of delivery of the initial written submission of the Party that requested establishment of the panel;
- (c) the panel shall establish dates for any further written submissions, including rebuttal written submissions, so as to provide each disputing Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in the Agreement and these rules; and
- (d) unless any disputing Party requests a hearing, the panel may decide not to convene a hearing.

### ***Panels Regarding Investment Disputes in Financial Services***

88. These rules shall apply to a panel convened under Article 12.19.3 (Investment Disputes in Financial Services) except that the terms of reference shall be as set out in Article 12.19.2 (Investment Disputes in Financial Services).

### ***Non-Implementation in Certain Disputes***

89. Within 14 days of a complaining Party's provision of notice demanding payment of a monetary assessment pursuant to Article 20.17.3 (Non-Implementation in Certain Disputes), the Commission shall seek the views of interested persons in the territories of

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each disputing Party on how funds should be expended for that particular case.<sup>6</sup> The Commission shall prepare a notice that includes:

- (a) a procedural and substantive summary of the dispute;
- (b) a summary of any agreement between the disputing Parties pursuant to Article 20.17.1(b) (Non-Implementation in Certain Disputes), if any;
- (c) proposals for how monies in the fund might be expended, with a view to furthering the objectives of the Agreement;
- (d) instructions as to how interested persons might obtain pertinent public records; and
- (e) the date by which the disputing Parties must complete the gathering of comments of interested persons under rule 90.

90. Each disputing Party shall develop procedures for publishing the notice of the Commission and receiving comments from interested persons. Such procedures shall provide that:

- (a) the notice is broadly disseminated, including through the Internet and (either in its entirety or in a form that summarizes the notice in a manner that is sufficient to provide the content of the notice), the disputing Party's official gazette or a national newspaper;
- (b) the notice specifies how interested persons may submit comments; and
- (c) interested persons have sufficient time to provide comments, not to exceed 60 days from the date of publication of the notice.

91. Each disputing Party shall provide copies of any comments received to any other disputing Party. The Commission shall convene within 14 days from the end of the comment period to determine how monies in the fund should be expended.

92. When meeting to determine how to expend monies in the fund, the Commission shall include representatives from government agencies whose area of responsibility covers the subject matter of the dispute.

93. In making its determination, the Commission shall strive to ensure that the fund is used in a way that promotes the attainment of the objectives of the Agreement. The fund shall be expended at the direction of the Commission for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental

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<sup>6</sup> For purposes of rules 89-93, the Commission shall, in accordance with Article 20.17.4 (Non-Implementation in Certain Disputes), consist of the cabinet-level representatives of the disputing Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

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law enforcement, as the case may be, in the territory of the Party complained against, consistent with its laws.

94. In determining the amount of an assessment under Article 20.17.2 (Non-Implementation in Certain Disputes), the “other relevant factors” that a panel shall take into account may include the nature and gravity of the harm arising from the failure to effectively enforce the relevant law.

### ***Responsible Office***

95. The responsible office shall:

- (a) provide administrative assistance to the panel and experts;
- (b) arrange for the payment of compensation to, and provide administrative assistance to, panelists and their assistants, experts, interpreters, translators, court reporters, or other individuals that it retains in a panel proceeding;
- (c) make available to the panelists, on confirmation of their appointment, copies of the Agreement and other documents relevant to the proceedings, such as these rules and the Code of Conduct;
- (d) organize and coordinate the logistics required for the hearings;
- (e) retain permanently a copy of the complete record of the panel proceeding; and
- (f) perform all other tasks as established under the Agreement, these rules or by the Commission.

### ***Maintenance of Rosters***

96. The Parties shall inform each office of the composition of the rosters established under Article 12.18.2 (Dispute Settlement), Article 16.7.1 (Labor Roster), Article 17.11.1 (Environmental Roster), and Article 20.7.1 (Roster). The Parties shall promptly inform each office of any changes made to a roster pursuant to the aforementioned articles.

### ***Remuneration and Payment of Expenses***

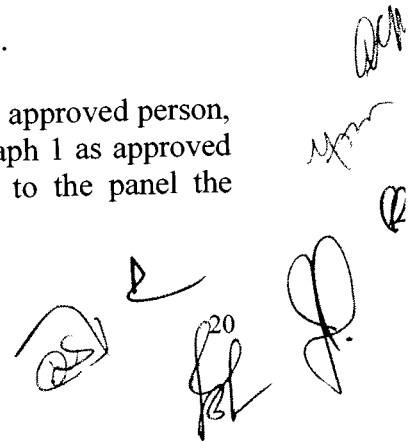
97. The remuneration of panelists and their assistants, experts designated under Article 20.12 (Role of Experts), their travel and lodging expenses, and all general expenses of panels shall be borne equally by the disputing Parties.

98. Each panelist shall keep a record and render a final account of the person’s time and expenses to the responsible office and the panel shall keep a record and render a final account of all general expenses.

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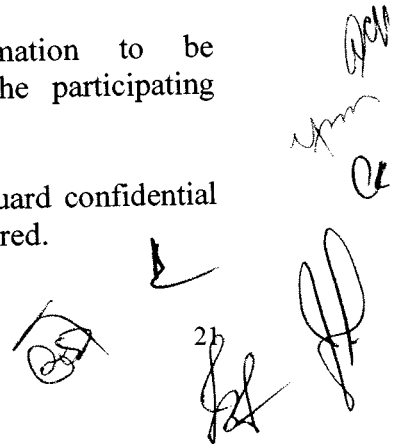
## APPENDIX 1 – APPROVED PERSONS

1. Each participating Party shall submit to the panel and the other participating Parties a list of its authorized representatives who need access to confidential information submitted by the other participating Parties and whom it wishes to have the panel designate as approved persons.
2. In no circumstances shall a participating Party nominate as an approved person any person, or any employee, officer or agent of any entity, that could reasonably be expected to benefit outside of proceedings under Chapter Twenty from the receipt of confidential information.
3. Each participating Party shall keep the number of persons on its list as limited as possible. The responsible office shall submit to the panel and the participating Parties a list of the authorized employees of the responsible office who need access to confidential information in the dispute and whom it wishes to have the panel designate as approved persons. A participating Party or the responsible office may submit amendments to its list at any time.
4. A participating Party may object to the designation by the panel of a person as an approved person within seven days after receipt of the list or amendments to the list, or within seven days of becoming aware of information that would establish a violation of the Code of Conduct. Within seven days after receipt of an objection, the panel shall decide on the objection, having regard to any potential harm arising from the designation to the interests of the owner or source of confidential information.
5. If the panel designates a person after an objection, confidential information may not be disclosed to the approved person until the participating Party submitting the information has had a reasonable opportunity to:
  - (a) withdraw the information, in which case the panel, and the offices of the participating Parties, and the participating Parties shall return any record containing the information to the Party submitting it and the other participating Parties shall, in accordance with the domestic law of such participating Party, either
    - (i) destroy any record containing the information, or
    - (ii) return any such record to the Party submitting the information; or
  - (b) withdraw the designation of the information as confidential.
6. Subject to any decision on an objection to designate a person as an approved person, the panel shall designate the persons on the lists submitted under paragraph 1 as approved persons for the dispute. Each approved person must sign and submit to the panel the Declaration of Non-Disclosure set out in Appendix 3.

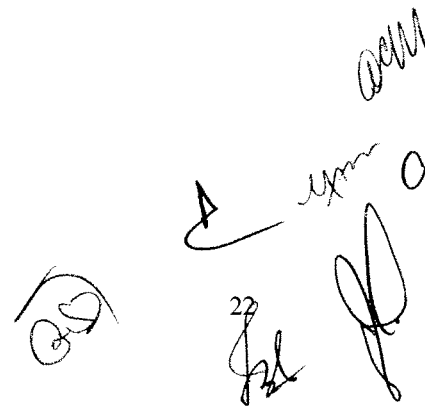
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## APPENDIX 2 – CONFIDENTIAL INFORMATION

1. A Party shall identify confidential information by:
  - (a) clearly marking information recorded in paper and electronic records with the notation “CONFIDENTIAL INFORMATION” on the cover page of the record and on each page where confidential information appears, and by enclosing the information in double square brackets;
  - (b) clearly marking information recorded in an electronic file which is used to store an electronic record, with the notation “CONFIDENTIAL INFORMATION” in the name of the electronic file and in any electronic transmission of the information and clearly annotating the information where it appears in the electronic record that is stored on the electronic file as described in subparagraph (a) – that is, with the notation “CONFIDENTIAL INFORMATION” on the cover page of the record and on each page where confidential information appears, and by enclosing the confidential information in the electronic transmission in double square brackets; and
  - (c) declaring spoken information to be “CONFIDENTIAL INFORMATION” prior to its disclosure.
  
2. Where a participating Party submits confidential information first submitted by another participating Party, it shall identify that information as confidential information by:
  - (a) clearly marking the information recorded in paper and electronic records with the notation “CONFIDENTIAL INFORMATION” on the cover page of the record and on each page where confidential information appears, and by enclosing the information in double square brackets; and with the name of the participating Party that first submitted the information;
  - (b) clearly marking information recorded in electronic files with the notation “CONFIDENTIAL INFORMATION” in the file name and in any electronic transmission of the information and clearly annotating the information where it appears in the files with the notation “CONFIDENTIAL INFORMATION”, and by enclosing the confidential information in the electronic transmission in double square brackets; and with the name of the participating Party that first submitted the information;
  - (c) prior to its disclosure, declaring spoken information to be “CONFIDENTIAL INFORMATION” and identifying the participating Party that first submitted the information.
  
3. An approved person shall take all necessary precautions to safeguard confidential information when a record containing the information is in use or being stored.

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4. Only approved persons may view or hear confidential information. No approved person who views or hears confidential information may disclose it, or allow it to be disclosed, to any person other than another approved person.
5. Approved persons who view or hear confidential information shall use that information only for the purposes of the panel proceedings.
6. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information.
7. After the conclusion of the panel proceeding, each participating Party shall, in accordance with its domestic law:
  - (a) destroy any record provided by another participating Party containing the information;
  - (b) return any such record to the Party submitting the information, unless the participating Party that first submitted the confidential information otherwise agrees; or
  - (c) maintain the confidentiality of any such record for ten years or any other timeframe established in accordance with its domestic law.
8. After consulting the participating Parties, the panel may establish additional procedures that it considers necessary to protect confidential information.
9. The panel may, at the request of or with the consent of the participating Parties, modify or waive any part of the procedures set out in this Appendix for treatment of confidential information. In that case, each approved person must sign and submit to the panel a modified Declaration of Non-Disclosure, as appropriate.

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**APPENDIX 3 – DECLARATION OF NON-DISCLOSURE**

1. I acknowledge having received a copy of the Rules of Procedure governing the treatment of confidential information (the “Procedures”).
2. I acknowledge having read and understood the Procedures.
3. I agree to be bound by, and to adhere to, the Procedures and, accordingly, without limitation, to treat confidentially all confidential information that I may view or hear from time to time in accordance with the Procedures and to use that information solely for purposes of the panel proceedings.

Executed on this \_\_\_ day of \_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name

**Signature** \_\_\_\_\_

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