

中華民國(台灣)與尼加拉瓜自由貿易協定

自由貿易委員會第二號決議

採認標準程序規則

中華民國(台灣)與尼加拉瓜自由貿易協定之自由貿易委員會依據該協定第 22.11.1 條(爭端解決章-標準程序規則)之規定，

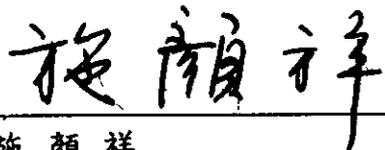
決議

採認本決議附件，亦即爭端解決之標準程序規則，除非雙方另有合意，本規則將規範中華民國(台灣)與尼加拉瓜自由貿易協定第 22 章爭端解決之程序。

本決議於 2011 年 6 月 24 日在中華民國(台灣)臺北市簽署，以英、西、中文本各繕二份，同一作準；遇有解釋歧異時，以英文本為準。

中華民國政府代表

尼加拉瓜共和國政府代表



施顏祥  
經濟部部長



Orlando Solórzano Delgadillo  
發展暨工商部部長

**TRATADO DE LIBRE COMERCIO ENTRE LA REPÚBLICA DE CHINA (TAIWAN)  
Y LA REPÚBLICA DE NICARAGUA**

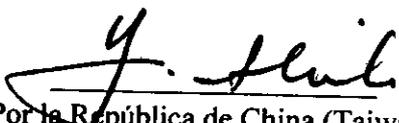
**DECISION DOS  
LA COMISIÓN DE LIBRE COMERCIO  
ESTABLECE LAS REGLAS MODELO DE PROCEDIMIENTO**

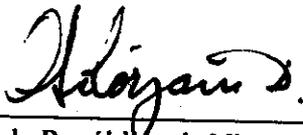
La Comisión de Libre Comercio entre la República de China (Taiwán) y la República de Nicaragua, en cumplimiento con lo establecido en el artículo 22.11.1 (Solución de Controversias – Reglas Modelo de Procedimiento), del mismo Tratado,

**HA DECIDIDO**

Establecer las Reglas Modelo de Procedimiento para los procedimientos de solución de controversias, anexadas, a la presente decisión, las cuales, salvo pacto en contrario entre las Partes, regirán el procedimiento de solución de controversias del Capítulo 22 del Tratado de Libre Comercio entre la República de China (Taiwán) y la República de Nicaragua.

Hecho, en Taipei, la República de China (Taiwán), el 24 de junio de 2011, en duplicado, en los idiomas Inglés, Español y Chino, las tres versiones son igualmente auténticas. En caso de divergencias en la interpretación de esta Decisión, prevalecerá la versión en inglés.

  
Por la República de China (Taiwán)  
Yen-Shiang Shih  
Ministro de Economía

  
Por la República de Nicaragua  
Orlando Solórzano Delgadillo  
Ministro de Fomento, Industria y Comercio

**FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF CHINA (TAIWAN) AND  
THE REPUBLIC OF NICARAGUA**

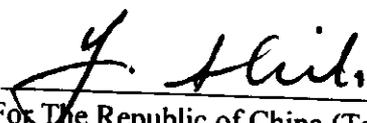
**DECISION TWO  
THE FREE TRADE COMMISSION  
ESTABLISHING MODEL RULES OF PROCEDURE**

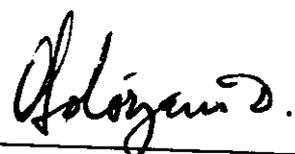
The Free Trade Agreement Commission of the Free Trade Agreement between the Republic of China (Taiwan) and the Republic of Nicaragua, in compliance with Article 22.11.1 (Dispute Settlement - Model Rules of Procedure), of the Agreement,

**HAS DECIDED TO:**

Establish the Model Rules of Procedure for dispute settlement proceedings set forth in Annex, to this decision, which, unless otherwise agreed between the Parties, shall govern the dispute settlement proceedings of Chapter 22 of the Free Trade Agreement between the Republic of China (Taiwan) and the Republic of Nicaragua.

DONE, at Taipei, Republic of China (Taiwan), on June 24, 2011, in duplicate, in the English, Spanish and Chinese languages, all versions being equally authentic, in the event of any discrepancy in the interpretation of this Decision, the English version shall prevail.

  
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For The Republic of China (Taiwan)  
Yen-Shiang Shih  
Minister of Economic Affairs

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

**Model Rules of Procedure for Chapter 22  
of the Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan)**

*Application*

1. These model rules, including the appendices thereto, are established pursuant to Article 22.11 (Model Rules of Procedure) of Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan) and shall apply to dispute settlement proceedings under Chapter 22 unless the Parties otherwise agree.

*Definitions*

2. In these rules:

**Agreement** means the Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan), signed on 16 June 2006;

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

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

**arbitral group** means an arbitral group established under Article 22.07 (Request for Establishment of an Arbitration Group);

**assistant** means as the investigator or person that provides support to a member of the arbitral group in accordance with the conditions of his/her appointment;

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

**authorized representative** means:

- (a) an official of a Party; or
- (b) a legal counsel or other advisor or consultant of a 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 arbitral group and to the other Party, 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 22 from the receipt of confidential information;

**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 22.09 (Qualifications of Panelist);

**Commission** means the Free Trade Commission established under Article 21.01 (The Free Trade Commission);

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

**date of delivery** means:

- (a) for a document submitted by a 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 arbitral group 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;

**document** includes any written matter submitted in the course of the arbitral group 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;

**office** means the office that a Party designates under Article 21.03 (Administration of Dispute Settlement Proceedings) for providing administrative assistance to arbitral groups established under Article 22.07 (Request for Establishment of an arbitral group);

**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 Parties;

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

**responsible office** means the office of the Party complained against.

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.

#### ***Mandate***

4. If the Parties have agreed, within 20 days from the date of the request for the establishment of the arbitral group, other mandate than the mandate established in Article 22.11 (Model Rules of Procedure) they shall notify the arbitral group once it has notified its constitution and transmit a copy to the responsible office.

5. If the Parties did not agree on a mandate in accordance with the Rule above, the mandate of the arbitral group will be that established in Article 22.11 (Model Rules of Procedure).

6. If the Party in its request for the establishment of the arbitral group has identified that a measure has caused nullification or impairment of benefits in accordance with Annex 22.02 (Nullification or Impairment), the mandate shall indicate it.

7. When a Party wishes the arbitral group to make findings on the degree of adverse commercial effects that generated the non compliance with the obligation of this Agreement by a Party, or a Party's measure has caused nullification or impairment in the sense of Annex 22.02 (Nullification or Impairment) the mandate shall indicate it.

#### *Written Submissions and Other Documents*

8. A Party submitting a document to the arbitral group shall deliver the original and 2 paper copies and one electronic copy to the other Party, the office of the other Party, and to the responsible office. If it is not possible to deliver any part of a document by electronic means, the 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.

9. The complaining Party shall submit its initial written submission to the arbitral group no later than 10 days after the date on which the last panelist is selected.

10. Within 14 days of the delivery to the Parties of the request for establishment of an arbitral group, each Party shall deliver to the responsible office a list of public holidays on which the Party's office is closed. No later than 7 days after the date on which the last panelist is selected, the arbitral group 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 on which the last panelist is selected;
- (b) submission of any rebuttal submission of the complaining Party no later than 21 days after submission of the initial written submission of the Party complained against;
- (c) 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;
- (d) a hearing within 14 days of the date for submission of the rebuttal submission of the Party complained against;
- (e) delivery to the Parties of any written questions from the arbitral group within three days of the date of the hearing;
- (f) 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 arbitral group within 14 days of the date of the hearing;

In establishing the dates for submissions or for the hearing, the arbitral group shall comply with rule 14 and consult with the responsible office to provide additional time if translation of documents will be necessary under rule 77.

11. 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.

12. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the arbitral group proceeding may be corrected by submitting a new document clearly indicating the changes. A Party must correct such errors within 7 days of the date of delivery of the notice, written submission, or other document, or at such other time as the arbitral group provides. The correction of minor errors of a clerical nature shall not affect the arbitral group's schedule.

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

14. If the date for submission of a document by a Party falls on a public holiday on which that Party's office is closed, 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.

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

15. Subject to rules 16 and 17, each document submitted to, or issued by, an arbitral group, including a Party's written submissions, written versions of its oral statements, and written responses to a request or questions from the arbitral group the other Party ("Party submission"), and all notifications made pursuant to Chapter 22 are public.<sup>1</sup> The responsible office shall make such documents and notifications available to the public no later than 10 days after it receives a complete copy. Each Party shall also make the final report of the arbitral group available to the public no later than 15 days after the day on which the final report is issued.

16. No Party may disclose publicly the contents of an initial report presented to the Parties pursuant to Article 22.13 (Preliminary Report) or the contents of any comments made on an initial report.

17. To the extent it considers strictly necessary to protect confidential information, a Party may designate, consistent with the procedures set out in Appendix 2, for confidential treatment specific factual information it includes in a Party submission.<sup>2</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 Party shall exercise the utmost restraint in designating information as confidential.

18. Where a Party designates information contained in a document as confidential, it shall also prepare and deliver in accordance with rule 8 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.

19. If a Party fails to prepare and submit a non-confidential version of a document containing confidential information within 10 days after submission of the document, the other 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 arbitral group.

20. Where confidential information has been redacted from a Party submission pursuant to rule 18 or 19, the non-confidential version of the document shall indicate clearly each place where such information has been redacted.

21. A 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.

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

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

22. Rules 22 through 25 and Appendix 2 apply to information that a Party submits during the arbitral group procedure and designates as confidential; however, except as provided in Appendix 2, paragraph 1, these procedures do not apply to a Party with respect to confidential information first submitted by that Party, including in derivative form.
23. A Party shall treat as confidential the information submitted by the other Party to the arbitral group that the submitting Party has designated as confidential information in accordance with Appendix 2. Nothing in these procedures shall preclude a Party from disclosing statements of its own position to the public.
24. Each Party shall identify, use, store, and dispose of confidential information as specified in Appendix 2.
25. Each 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 arbitral group and responsible office shall ensure that any other person designated as an approved person pursuant to Appendix 1 complies with these procedures.

### *Working of Arbitral groups*

26. The arbitral group shall establish its working schedule, allowing to the Parties adequate time to comply with all steps of the procedure. The working schedule shall establish precise dates and time periods for the submission of all relevant communications, submissions and other document as well as for any arbitral group's hearings.
27. The chair of the arbitral group shall preside at each of its meetings. The arbitral group may delegate to the chair authority to make administrative and procedural decisions.
28. Except as otherwise provided in the Agreement or of these rules, the arbitral group may conduct its activities by any means, including telephone, facsimile transmission, registered mail, courier, telex, telegram, email, videoconference or web links. When deciding which means to use, the arbitral group shall ensure that the means do no diminish Party's right to fully and effectively participate in the procedure.
29. Only panelists may take part in the deliberations of the arbitral group, unless the presence of assistants, interpreters, or translators is allowed during such deliberation.
30. The adoption of any procedural decision that is not covered by these rules, including the arbitral group ruling on the subject matter, shall remain the exclusive responsibility of the arbitral group and most no be delegated.
31. If a panelist dies, withdraws, is removed pursuant to rule 32, or otherwise becomes unavailable to serve, a replacement shall be selected as expeditiously as possible in accordance with the selection procedure followed to select the panelist.
32. If, within 10 days of knowing of the circumstances giving rise to a challenge, the Parties agree that a panelist has violated the Code of Conduct or failed to comply with Article 22.09 (1) (d) (Qualification of Panelist), 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 Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panelist may continue to serve.
33. Any time period applicable to the arbitral group 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.

34. When the arbitral group considers that there is a need to modify any time period applicable in the procedure A arbitral group may, or to make any other procedural or administrative adjustments it shall inform the Parties in writing of the reasons for the change or adjustment and of the time period or adjustment needed.

35. The arbitral group may suspend its work at any time at the request of the complaining Party, for a period not to exceed 12 consecutive months. The arbitral group shall suspend its work at any time if the Parties so request. In the event of such a suspension, all relevant time-frames set out in these Model Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the arbitral group has been suspended for more than 12 consecutive months, the authority for the establishment of the Arbitral group under Article 22.07 (Request for Establishment of an Arbitration Group) shall lapse, unless the Parties otherwise agree.

36. An arbitral group may, after consulting the Parties, modify any time period applicable in the arbitral group proceeding and make such other procedural or administrative adjustments as may be required in the proceeding, such as where a panelist is replaced.

### *Hearings*

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

38. Unless the Parties otherwise agreed by the Parties, the hearing shall be held in the capital of the Party complained against.

39. The arbitral group may convene additional hearings if the Parties so agree.

40. All panelists shall be present during the entirety of any hearings so as to ensure the effective resolution of the dispute and the validity of the arbitral group's actions, decisions and ruling. Where a replacement panelist has been selected after the hearing has occurred, the arbitral group shall hold a new hearing if one of the Parties requests, or if the arbitral group considers a new hearing to be appropriate.

41. All hearings of the arbitral group shall be open for the public to observe,<sup>3</sup> except that the arbitral group shall close the hearing for the duration of any discussion of confidential information.

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

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

44. No later than 3 days before the date of the hearing, each Party shall deliver to the other Party and the responsible office a list of the names of those persons who will be on that Party's delegation attending the hearing. The Parties shall not include in their delegation, persons that directly or indirectly possess a financial or personal

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<sup>3</sup> The expression "observe" does not require physical presence at the hearing. To facilitate public observation of arbitral group hearings, such hearings may be transmitted electronically to the public.

interest in the matter. The Parties may object the presence of any of the aforementioned persons, stating the reasons for said objection. The objection shall be the arbitral group at the beginning of the hearing.

45. The arbitral group 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:

Argument -

- (a) Argument of the complaining Party;
- (b) Argument of the Party complained against;

Rebuttal Argument

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

46. The arbitral group may direct questions to any Party at any time during a hearing.

47. 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 other Party, the office of the other Party, and the arbitral group.

48. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the final date of the hearing.

#### *Supplementary Written Submissions*

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

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

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

52. Each 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 arbitral group under rule 10.

#### *Burden of Proof*

53. A complaining Party asserting that a measure of the Party complained against is inconsistent with its obligations under the Agreement, that the Party complained against has otherwise failed to carry out its obligations under the Agreement, or that a benefit that the complaining Party could reasonably have expected to accrue to it is being nullified or impaired in the sense of Article 22.02 (c) (Scope of Application) shall have the burden of establishing such inconsistency, failure to carry out obligations, or nullification or impairment, as the case may be.

54. A Party asserting that a measure is justified by an affirmative defense under the Agreement shall have the burden of establishing that the defense applies.

#### *Ex Parte Contacts*

55. The arbitral group shall not meet or contact one Party in the absence of the other Party.

56. No panelist may discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other panelists and the other Party.

57. In the absence of representatives of the Parties, an arbitral group may not meet, or have discussions concerning matters under consideration by the arbitral group, with a person or body providing information or technical advice.

#### *Information and Technical Advice*

58. No arbitral group may decide to seek information or technical advice under Article 22.12 (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 Party.

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

60. The arbitral group shall not select a person under rule 59 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 arbitral group shall not select a body under rule 59 that has, or whose owners or controlling principals have, or whose employees working on the arbitral group'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.

61. The Parties may submit comments on the proposed request for information or technical advice up to 5 days after selection of a person or body under rule 59. The arbitral group shall take the Parties comments into account in finalizing the request.

62. The arbitral group 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 the other Party, the Parties, and any person or body selected under rule 59 and make it available to the public.

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

64. The responsible office shall deliver the information or technical advice to the Parties and the office of the other Party, and make it available to the public in accordance with rule 15. The arbitral group shall establish a date for Parties to submit comments on the information or technical advice to the arbitral group within 14 days after the date of delivery, complying with rule 14 and consulting with the responsible office to provide additional time if translation of documents will be necessary under rule 72.

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

### *Proceeding in Case of Disobedience*

66. If the Party complained against fails to submit its written reply within the time period established by these Rules or by the arbitral group without showing a reasonable cause for such fault, the arbitral group shall declare it in disobedience and proceed with the arbitral group proceeding taking into account the submitted information and the declarations made up to that moment.
67. If the Party complained against, duly notified according to the provisions of this Agreement and these Rules, fails to appear before a hearing without a reasonable cause, the arbitral group shall proceed with the arbitral group proceeding taking into account the submitted information and the declarations made up to that moment.
67. If the Party complained against, duly invited to submit its evidence or take any measure in the arbitral group proceeding, fails to do so without a reasonable cause within the time period established by these Rules or by the arbitral group, the arbitral group may decide at its discretion in accordance with the information submitted and the declarations made.
68. If the Party complained against declared in disobedience, proves to total satisfaction of the arbitral group the reasons for which it could not carry out such action, like the ones stated in the previous paragraphs, the arbitral group shall suspend the declaration of disobedience and shall grant a peremptory time period which it deems appropriate for the fulfillment of the corresponding activities.

### *Language of Proceedings, Translation and Interpretation*

69. The Parties shall make their best efforts to submit all written submission and make all oral arguments in the working language.

The working language is English.

70. Each Party shall, within a reasonable period of time before it delivers its initial written submission in an arbitral group proceeding, advise its office and the other Party in writing of whether it will make its written submissions and oral arguments in English or its official language. Where the oral arguments and presentations during the hearings are be presented in the working language, the responsible office has 10 days to may ensure the availability of translation services as appropriate. This procedure shall also be applicable to the meetings when the Parties have been convened by the arbitral group.

71. Where, in accordance with the advice provided by each Party under rule 70, the Parties shall make their written submissions or oral arguments in an arbitral group proceeding in English, or if a panelist requests interpretation at the hearing, the responsible office shall arrange for the interpretation at the hearing. Where a panelist requests translation of a written submission into English, as the case may be, the responsible office shall arrange for the prompt translation and delivery to the Parties of the translated written submissions. Where a 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 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 Party.

72. 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 arbitral group under rule 69, the arbitral group shall make a corresponding adjustment in the timetable issued under rule 10.

73. The costs incurred to prepare a translation of a document to the working language whose translation has not been requested by a panelist shall be borne by the Party requesting the translation. The costs of all other translation and interpretation requirements in an arbitral group procedure shall be borne equally by the Parties.

74. Any 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*

75. The computation time will be counted in calendar days.

76. For purposes of calculation of all computation of time set by the Agreement and these Rules, they will begin to run from the day following the date on which notification is received by the addressee.

77. Where anything under the Agreement or these rules is to be done, or the arbitral group requires anything to be done, within a number of days before or after 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.

#### *Responsible Office*

78. The responsible office shall:

- (a) provide administrative assistance to the arbitral group and experts;
- (b) arrange for the payment of compensation to, and provide administrative assistance to, arbitral group and their assistants, experts, interpreters, translators, court reporters, or other individuals that it retains in a arbitral group proceeding;
- (c) make available to the arbitral group, on confirmation of their appointment, copies of the Agreement and other documents relevant to the proceedings, such as these rules; and
- (d) retain permanently a copy of the complete record of the arbitral group proceeding.

#### *Maintenance of Rosters*

79. The Parties shall inform each office of the composition of the rosters established under Article 12.18 (Dispute Settlement), and Article 22.08 (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*

80. The remuneration of panelists and their assistants, their travel and lodging expenses, and all general expenses of arbitral groups shall be borne equally by the Parties.

81. Each panelist shall keep a record and render a final account of the person's time and expenses to the responsible office and the arbitral group shall keep a record and render a final account of all general expenses.

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

82. An arbitral group may grant a request by a non-governmental entity in a Party's territory to submit written views under Article 22.11.1 (d) (Model Rules of Procedure) if the entity complies with the Appendix 4.

*Suspension of Benefits and Compliance Arbitral groups*

83. The arbitral group shall reconvene when a Party requests an arbitral group under Article 22.16 (Suspension of Benefits) or 22.17 (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.

84. These procedures shall apply to an arbitral group established under Article 22.16 (Suspension of Benefits) or 22.17 (Compliance Review) except that:

- (a) the Party that requests the establishment of the arbitral group shall submit its initial written submission within 7 days after the later of the date on which the arbitral group is reconvened or the date of the constitution of the arbitral group;
- (b) the timetable issued by the arbitral group 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 arbitral group;
- (c) the arbitral group shall establish dates for any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for arbitral group proceedings set out in the Agreement and these rules; and
- (d) unless any Party requests a hearing, the arbitral group may decide not to convene a hearing.

*Investment Disputes in Financial Services*

85. These rules shall apply to an arbitral group 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).

## APPENDIX 1 – APPROVED PERSONS

1. Each Party shall submit to the arbitral group and the Parties a list of its authorized representatives who need access to confidential information submitted by the Parties and whom it wishes to have the arbitral group designate as approved persons.
2. In no circumstances shall a 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 22 from the receipt of confidential information.
3. Each Party shall keep the number of persons on its list as limited as possible. The responsible office shall submit to the arbitral group and the 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 arbitral group designate as approved persons. A Party or the responsible office may submit amendments to its list at any time.
4. A Party may object to the designation by the arbitral group of a person as an approved person within 7 days after receipt of the list or amendments to the list, or within 7 days of becoming aware of information that would establish a violation of the Code of Conduct. Within 7 days after receipt of an objection, the arbitral group 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 arbitral group designates a person after an objection, confidential information may not be disclosed to the approved person until the Party submitting the information has had a reasonable opportunity to:
  - (a) withdraw the information, in which case the arbitral group, and the offices of the Parties, and the Parties shall return any record containing the information to the Party submitting it and the Parties shall, in accordance with the domestic law of such 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 arbitral group 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 arbitral group the Declaration of Non-Disclosure set out in Appendix 3.
7. **Record** means any medium on which information is recorded or stored.

## 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 Party submits confidential information first submitted by the other 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 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 Party that first submitted the information;
  - (c) prior to its disclosure, declaring spoken information to be "Confidential Information" and identifying the 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.
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 arbitral group proceedings.
6. The arbitral group shall not disclose confidential information in its report, but may state conclusions drawn from that information.
7. After the conclusion of the arbitral group proceeding, each Party shall, in accordance with its domestic law:
  - (a) destroy any record provided by each Party containing the information;
  - (b) return any such record to the Party submitting the information, unless the Party that first submitted the confidential information otherwise agrees; or
  - (c) maintain the confidentiality of any such record for ten years.

8. After consulting the Parties, the arbitral group may establish additional procedures that it considers necessary to protect confidential information.
9. The arbitral group may, at the request of or with the consent of the 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 arbitral group a modified Declaration of Non-Disclosure, as appropriate.
10. **Record** means any medium on which information is recorded or stored.

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

1. I acknowledge having received a copy of the Model 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 arbitral group proceedings.

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

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

#### APPENDIX 4 - SUBMISSION OF WRITTEN VIEWS FROM NON-GOVERNMENTAL ENTITIES

1. An entity must deliver its request to submit written views to the responsible office within 7 days after the date of delivery of the initial written submission of the Party complained against, or, if that submission contains confidential information, within 7 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 arbitral group that the entity will address in its written views;
  - (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 Party has made or can be expected to make, or why it brings a perspective that is different from that of the 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.
2. Any request by an entity under paragraph 1 or submission under rule 5 must be made in writing in English. Any page limit of the document 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 8.
3. The responsible office shall promptly provide each timely request to the arbitral group and each Party, and shall make each such request available to the public. The arbitral group shall consider each request and, after consulting the Parties, shall decide within 7 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 arbitral group's decision, and (b) make the decision available to the Parties and the public.
4. In deciding whether to grant leave, the arbitral group shall take into account the factors listed in paragraph 1 and compliance with paragraph 2.
5. If the arbitral group grants the request, the entity shall submit its views to the responsible office by the date the arbitral group determines, which shall not be later than 21 days before the hearing.
6. An entity's written views must comply with paragraph 2 and must:
  - (a) be no longer than 10 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 arbitral group agreed to receive.
7. The responsible office shall promptly provide any written views that the arbitral group receives in accordance with paragraph 4 to the Parties and shall make such written views available to the public.

8. The arbitral group shall provide each Party an adequate opportunity to comment on and respond to any written views that the arbitral group decides to receive.
9. The arbitral group shall not consider written views that do not conform to paragraph 5 and 6. An arbitral group is not required to address in its report any views that it decides to receive.
10. To facilitate the submission of requests to provide written views in a dispute, each Party shall, no later than 14 days after the date of the constitution of the arbitral group, provide public notice of:
  - (a) the establishment of the arbitral group;
  - (b) the opportunity for non-governmental entities in the Parties' territories to submit requests to provide written views in the dispute; and
  - (c) the procedures and requirements for making such submissions, consistent with these rules.
11. The arbitral group may provide additional opportunities for non-governmental entity participation in arbitral group proceedings if the Parties agree.