

中華民國(台灣)與尼加拉瓜自由貿易協定

自由貿易委員會第三號決議

採認行為規範

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 22.09.1.d 條及第 12.18.3.d 條之規定，

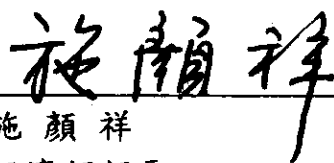
決議

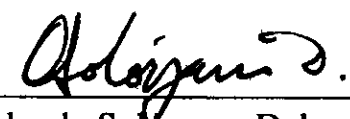
採認本決議附件，亦即爭端解決之行為規範，除非雙方另有合意，本規範將規範中華民國(台灣)與尼加拉瓜自由貿易協定第 22 章爭端解決之程序。

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 Solorzano 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 TRES
LA COMISIÓN DE LIBRE COMERCIO
CÓDIGO DE CONDUCTA**

La Comisión de Libre Comercio entre la República de China (Taiwán) y la República de Nicaragua, en cumplimiento con lo establecido en el artículo 22.09.1.d) y del 12.18.3.d), del mismo Tratado,

HA DECIDIDO:

Establecer el Código de Conducta para los procedimientos de solución de controversias, anexadas, a la presente decisión, el cual, salvo pacto en contrario entre las Partes, regirá 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 Delgado
Ministro de Fomento, Industria y Comercio

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


**DECISION THREE
THE FREE TRADE COMMISSION
ESTABLISHING CODE OF CONDUCT**

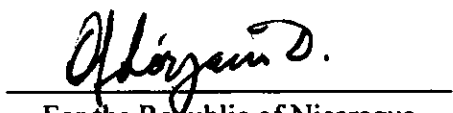
The Free Trade Agreement Commission of the Free Trade Agreement between the Republic of China (Taiwan) and the Republic of Nicaragua, in compliance with Articles 22.09.1.d) and 12.18.3.d) of the Agreement,

HAS DECIDED TO:

Establish the Code of Conduct 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.


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


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

**Code of Conduct for Dispute Settlement Proceedings under Chapter 22
of the Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan)**

1. Definitions

- (a) For purposes of this Code of Conduct,
 - (i) **Agreement** means the Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan), signed on June 16 2006;
 - (ii) **assistant** means a person who, under the terms of appointment of a member, conducts research or provides support for the member;
 - (iii) **candidate** means
 - (a) an individual whose name appears on a roster established under Article 22.08 (Roster); or
 - (b) an individual who is under consideration for appointment as a member of an arbitral group pursuant to Article 22.10 (2) (Arbitral Group Selection); or
 - (c) an individual who is under consideration for appointment as a member of an arbitral group pursuant to Article 12.18 (2) (Dispute Settlement)
 - (iv) **expert** means a person or body providing information or technical advice as set forth in Article 22.12 (Role of Experts);
 - (v) **member** means a member of an arbitral group established under Article 20.07 (Request for Establishment of an Arbitration Group);
 - (vi) **office** means the office that a Party designates under Article 21.03 (1) (a) (Administration of Dispute Settlement Proceedings) for providing administrative assistance to arbitral groups established under Article 22.07 (Request for Establishment of an Arbitration group);
 - (vii) **proceeding**, unless otherwise specified, means an arbitral group proceeding under Chapter 22 (Dispute Settlement);
 - (viii) **responsible office** means the office of the Party complained against; and
 - (viii) **staff**, in respect of a member, means persons under the direction and control of the member, other than assistants; and
- (b) Any reference made in this Code of Conduct to an Article, Annex, or Chapter is a reference to the appropriate Article, Annex, or Chapter of the Agreement.

2. Statement of Principles

- (a) The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship, or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that

a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality, and competence is impaired.

- (b) This Code of Conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, an arbitral group on the basis of disclosures made.

3. Responsibilities to the Process

Every candidate, member, and former member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

4. Disclosure Obligations

- (a) Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process.
- (b) A candidate shall disclose any interest, relationship, or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. Therefore, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
 - (i) any financial or personal interest of the candidate in
 - (A) the proceeding or in its outcome, and
 - (B) an administrative proceeding, a domestic judicial proceeding, or another arbitral group proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (ii) any financial interest of the candidate's employer, partner, business associate, or family member in
 - (A) the proceeding or in its outcome, and
 - (B) an administrative proceeding, a domestic judicial proceeding, or another arbitral group proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (iii) any past or existing financial, business, professional, family, or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate, or family member; and
 - (iv) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods or services.
- (c) Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 4 and shall disclose them. The

obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships, and matters that may arise during any stage of the proceeding.

- (d) In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under subparagraph (b) or (c), a candidate or member should err in favor of disclosure. Disclosure of an interest, relationship, or matter is without prejudice as to whether the interest, relationship, or matter is covered by subparagraph (b) or (c), or whether it warrants recusal, amelioration, or disqualification.
- (e) A candidate shall disclose any interests, relationships, and matters described in subparagraph (b) by completing the Initial Disclosure Statement set out in the Appendix and provided by the responsible office and sending it to the responsible office. A member shall disclose such interests, relationships, and matters by communicating them in writing to the responsible office for consideration by the Parties.
- (f) The disclosure obligations set out in subparagraphs (a) through (e) should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships, or matters whose bearing on their role in the proceeding would be trivial.

5. The Performance of Duties by Candidates and Members

- (a) A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.
- (b) A member shall ensure that the responsible office can, at all reasonable times, contact the member in order to conduct arbitral group business.
- (c) A member shall carry out all duties fairly and diligently.
- (d) A member shall comply with the provisions of Chapter 22 and the applicable rules.
- (e) A member shall not deny other members the opportunity to participate in all aspects of the proceeding.
- (f) A member shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules.
- (g) A member shall take all reasonable steps to ensure that the member's assistant and staff comply with paragraphs 3 (Responsibilities to the Process), 4 (Disclosure Obligations), 5(h) (*ex parte* contacts), and 8 (Maintenance of Confidentiality) of this Code of Conduct.
- (h) A member shall not engage in *ex parte* contacts concerning the proceeding.
- (i) A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct, unless the communication is to the responsible office or to the Parties in response to a request made by them to ascertain whether that candidate or member has violated or may violate the Code.

6. Independence and Impartiality of Members

- (a) A member shall be independent and impartial. A member shall act in a fair manner and shall not create an appearance of impropriety or an apprehension of bias.
- (b) A member shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.
- (c) A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.
- (d) A member shall not use the member's position on the arbitral group to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.
- (e) A member shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence the member's conduct or judgment.
- (f) A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.
- (g) If an interest, relationship, or matter of a candidate or member is inconsistent with subparagraphs (a) through (f), the candidate may accept appointment to an arbitral group and a member may continue to serve on an arbitral group if the Parties waive the violation or if, after the candidate or member has taken steps to ameliorate the violation, the Parties determine that the inconsistency has ceased.

7. Duties of Former Members

A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the arbitral group.

8. Maintenance of Confidentiality

- (a) A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.
- (b) A member shall not disclose an arbitral group report issued under Chapter 22 prior to release of the final report by the Parties. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in a proceeding under Chapter 22.
- (c) A member or former member shall not at any time disclose the deliberations of arbitral group, or any member's view, except as required by law.

9. Responsibilities of Assistants and Staff

Paragraphs 3 (Responsibilities to the Process), 4 (Disclosure Obligations), 5(h) (*ex parte* contacts), 7 (Duties of Former Members) and 8 (Maintenance of Confidentiality) of this Code of Conduct apply also to experts, assistants, and staff.

The disciplines established in this Code of Conduct as applying to members or former members shall apply, mutatis mutandis, to the persons that are called upon in accordance with subparagraphs a and b of paragraph 3 of Article 20.06.

APPENDIX – INITIAL DISCLOSURE STATEMENT

1. I acknowledge having received a copy of the Code of Conduct for Dispute Settlement Proceedings under Chapter 22 of the Free Trade Agreement between the Republic of Nicaragua and the Republic of China (Taiwan) (the "Code of Conduct").
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
 - (a) My financial interest in the proceeding or in its outcome is as follows:
 - (b) My financial interest in any administrative proceeding, domestic court proceeding, and other arbitral group proceeding that involves issues that may be decided in the proceeding for which I am under consideration is as follows:
 - (c) The financial interests that any employer, partner, business associate, or family member may have in the proceeding or in its outcome are as follows:
 - (d) The financial interests that any employer, partner, business associate, or family member may have in any administrative proceeding, domestic court proceeding, and other arbitral group proceeding that involves issues that may be decided in the proceeding for which I am under consideration are as follows:
 - (e) My past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:
 - (f) The past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, involving any employer, partner, business associate, or family member are as follows:
 - (g) My public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods or services is as follows:
 - (h) My other interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) through (g) above are as follows:

Executed on this _____ day of _____, 20__.

By: _____

Name: